

(2016) 10 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 33984 of 2016 and WMP. Nos. 29329 and 29330 of 2016

Dravida Munnetra Kazhagam

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Constitution of India, 1950 — Article 243(T)
Madras City Municipal Corporation Act, 1919 — Section 5(3)
Tamil Nadu Panchayats (Election) Rules, 1995 — Rule 24

Citation : (2016) 5 CTC 689 : (2016) 2 CWC 611 : (2016) 7 MLJ 772

Hon'ble Judges : Mr. N. Kirubakaran, J.

Bench : Single Bench

Advocate : Mr. P. Wilson, Senior Counsel for M/s. R. Girirajan, Advocates, for the Petitioner; Mr. N. Jothi, Advocate, for the Intervenor; Mr. R. Muthukumaraswamy, Advocate General assisted by Mr. K. Subramanian, Govt. Pleader & Mr. T.M. Pappiah, Special Govt. Plead

Final Decision : Dismissed

Judgement

Mr. N. Kirubakaran, J.—"True democracy cannot be worked by twenty men sitting at the Centre. It has to be worked from below by the people of every village".

... Mahatma Gandhi

It is a dream of Mahatma, the Gram Raj or Panchayat Raj which has been in existence for centuries together in ancient India.

2. The elections in the local bodies are conducted by each State to make the third tier governance apart from Parliament and State Assembly. Panchayat Raj has been given recognition by virtue of amendment made to the Constitution, namely 73rd Amendment Act, 1992 with effect from 24.04.1993. It is the bottom-line governance, where people's participation in whole unit, namely Village, Union and District Level, is recognised. The local governance is more vital and

important than the other two tiers. Therefore, all the norms and procedures prescribed for election to the State legislature and Parliament would deem to apply to the Local Body elections also.

3. Whether the contestants to the Local Bodies really represent the people or not is a Million-Dollar question? The person, who is to be elected by the people, has to be a person with integrity, moral values and ethics. Mahatma Gandhi said "When Panchayat Raj is established, public opinion will do what violence can never do". However, in practise, there are many incidents of violence during elections and nomination of candidates with criminal background, who are known for criminal and violent activities and for commission of heinous offences. If this kind of people are allowed to contest the election, whether the dream of the father of the nation will be achieved ? Our policy makers have to ponder over the above issue.

4. Though the issue raised in this writ petition is not connected with the qualifications of the persons, who are contesting the elections, considering the past history, the way in which elections were conducted and the persons, who contested and won the elections, this Court is duty bound to record the grim reality.

5. The issue in this writ petition is challenge to the local body election on the ground that reservation to Scheduled Tribe (ST) population has not been made proportionate to their population in this election.

6. The petitioner is a political party which ruled the State for many years and the present main opposition in the State Assembly and is before this Court with a grievance that Constitutional mandate of providing proportionate reservation to Scheduled Tribes is not made in the Local Bodies Election as mandated under Article 243(D) and (T) of the Constitution of India, by proper provision in the Panchayat, Municipality and Corporation Wards; The total population of Scheduled Tribes, as per 2011 Census, published by the Union of India is 10,19,038, works out to 2.30% of total population and seats in the Local Bodies have not been reserved in proportion to the aforesaid percentage; The Government Orders in G.O.Ms. Nos. 103, 105 and 106, Rural Development and Panchayat Raj (PR.I) Department, though, are dated 16.09.2016, were made available only on 23.09.2016 and no sufficient time was given to the parties as well as to the candidates to get ready for the election and as already stated, the reservation has not been made as per the population. Hence, the above cited Government Orders have to be set aside and adequate reservation has to be made to Scheduled Tribes and thereafter, elections have to be conducted.

7. Mr. P. Wilson, learned Senior Counsel appearing for the petitioner submitted that for 2.30%, no Chairman post in Corporations has been reserved for Scheduled Tribes and similarly for other Local Bodies, namely Panchayat, Panchayat Union, District Union and Wards, less numbers have been reserved. Therefore, for lack of proportionate reservation to the Scheduled Tribe

Population, the notifications issued for conducting of election by the second respondent/Election Commission are vitiated. He pointed out that Chennai Municipal Corporation has 200 wards and no Ward has been reserved for Scheduled Tribes, as per the notification, even though the population of Scheduled Tribes in the City of Chennai is 29,925/- constituting 0.38%. If 200 seats are available, then percentage of population would be 0.76% and they are entitled to 2 Wards. The petitioner relied upon the judgment of the Hon''ble Supreme Court of India in Union of India and Others v. Rakesh Kumar and Others [(2010) 4 SCC 50]. The other judgment relied upon is the First Bench Judgment of this Court in 2007 (2) L.W. 1 [State Election Commissioner Rep. by D. Chandrasekaran, State Election Commission v. All India Anna Dravida Munnetra Kazhagam] wherein a Full Bench of this Court set aside the Corporation election for a number of wards of the Chennai Corporation held during 2006, where fair and proper elections were not held and ordered fresh elections to those wards.

8. The other point which has been raised by the learned Senior Counsel appearing for the petitioner is with regard to the notification issued by the Election Commission under Section 24 of the Tamil Nadu Panchayats (Election) Rules, 1995. As per Rule 24, two notifications have to be issued and the first notification is to specify the date on which the public notice of such election shall be published as per Rule 24(3) and another notification under Rule 24(1) giving poll schedule whereas in this case, notification under Section 24(2) came to be issued only on 26.09.2016, which the second respondent claims to have published at 12.15 a.m on 26.09.2016 and no 24(2) notice has been issued in accordance with the provisions of the Tamil Nadu Panchayats Act, 1994 and the election notification dated 26.09.2016 was belatedly published in the website on 27.09.2016. Therefore, for not following Rule 24 of the Tamil Nadu Panchayats (Election) Rules, 1995, the election notifications are to be set aside.

9. Apart from the above contentions, it is submitted that the ruling party alone had prior knowledge about the details of the election including reserved seats enabling the ruling party to announce their candidates on 26.09.2016 itself, whereas the same is not provided to other political parties and therefore, there is no level playing field. In this regard, the learned Senior counsel relied upon the judgment of the Hon''ble Supreme Court in Rampakavi Rayappa Belagali v. B.V.Jatti and Others [(1970) 3 SCC 147]. Free and fair election has to be conducted. For not providing level playing field to the opposition parties and for lack of proper notification and proper reservation for Scheduled Tribes, the jurisdiction of this Court under Article 226 of the Constitution of India could be invoked and Article 243(U) of the Constitution of India cannot be employed by the Government to proceed with the election process and the respondents cannot take advantage of their own mistake. Relying upon the judgment of the Hon''ble Supreme Court in K. Venkatachalam v. A. Swamickan and Another [AIR 1999 SC 1723 = (1999) 4 SCC 526], it is submitted that Article 226 of the Constitution of India can be exercised when there is a violation of law or violation of

constitutional provisions. Hence, he seeks to allow the writ petition.

10. On the other hand, Mr. R. Muthukumaraswamy, learned Advocate General made the following submissions:

(1) Appropriate reservation has been made according to the Scheduled Tribe population in the State namely 6,69,086 which constitutes 1.653% as per 2011 Census.

(2) Reservation to Scheduled Tribes is given in Village Panchayats as per Section 11, Panchayat Union as per Section 20, District Panchayat Union under Section 32 and President and Chairman of Wards under Section 57 of the Tamil Nadu Panchayats Act. If the total population in the Union exceeds 0.5%, by rounding off to 1, one seat will be provided as per Section 57(4) of the Panchayats Act.

(3) The Chennai City Corporation is concerned, the total population of Scheduled Tribes is 15,718 which constitutes 0.23% and therefore, no seat for Scheduled Tribe has been given.

(4) The State is the Union and the State population alone is taken for deciding the number of seats for Presidents, Chairman reserved for Scheduled Castes, Scheduled Tribes and Women in Village Panchayat, Panchayat Union and District Union whereas the Unit population of the Village Union, Panchayat Union and District Council concerned is taken to decide about the reservation for SC/ST, Women in Wards in the relevant Unit.

(5) With regard to the date of election notification, Rule 24(1) notification was issued on 26.09.2016, Rule 24(2) publication of public notice was also made on 26.09.2016 and similarly, Rule 25(2) notice was also made on 26.09.2016 and therefore, there is no violation of the provisions of law.

(6) Under Article 243(E) and 243(U), election shall not be postponed beyond 5 years and the judgment of the Hon'ble Supreme Court in *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and Others* [(2006) 8 SCC 352] are relied upon.

(7) After the publication of the election notification, election process should not be halted as per the judgment of Hon'ble Supreme Court in *Anugrah Narain Singh and Another v. State of U.P. and Others* [(1996) 6 SCC 303].

(8) Election cannot be postponed and in this regard, relied on the judgment of the Hon'ble Supreme Court referred to is *Boddula Krishnaiah and Another v. State Election Commissioner, A.P and Others* [(1996) 3 SCC 416].

By making above submissions, the learned Advocate General seeks to dismiss the writ petition.

11. Mr. N. Jothi, learned counsel, on his own, intervened and made the following submissions:

(1) The State Election Commission, which does not have the power to identify

the reservation of seats, has identified the seats meant for reservation; Neither any such notification has been issued nor anything has been placed before the State Assembly for its approval with regard to the reservation of seats for Scheduled Castes Scheduled Tribes and Women.

(2) No recognised political party was consulted by the State Election Commission for their due participation in the election.

(3) As per Rule 24 of the Tamil Nadu Panchayats (Election) Rules, 1995, notification informing the public about election has to be the first notice and the second step is to disclose poll schedule, whereas, here, only, notification has been issued giving the poll schedule and therefore, there is violation of Rule 24 of the Tamil Nadu Panchayat (Election) Rules, 1995.

(4) Notification made in the Gazette is not of any use and the date on which it is available for sale to the public is material. In the absence of actual date on which it is made available to the public and the number of days for filing nomination, based on publication of gazette notification, is contrary to the Rules.

(5) The Election Commission should have taken earnest steps to see that election notifications are issued in advance so that enough time is available to all the parties before expiry of 5 years period of the present local bodies.

By making the above mentioned submissions, he wants either postponement of election or setting aside the notifications for reservation and election notification.

12. Heard the parties and perused the records very carefully.

13. The main contention raised by the learned Senior Counsel appearing for the petitioner is with regard to the lack of appropriate reservation to Scheduled Tribes according to their population. The total population of Chennai city is 79,28,941 and the Scheduled Tribe population is 29,935, which constitutes 0.38%. As 200 wards are available, 0.38% has to be taken as $[0.38\% \times 2 = 0.76]$ and 2 seats should have been made available to Scheduled Tribe, whereas not even a single seat was reserved for Scheduled Tribe. However, Mr. R. Muthukumaraswamy, learned Advocate General would submit that total population of Chennai city is 66,79,572 and not 79,28,941 as contended by the other side and the total population of Scheduled Tribes in Chennai City is only 15,718 which is 0.23% and hence, no seat could be reserved.

14. As per Section 5(3) of the Chennai City Municipal Corporation Act, 1919, seat shall be reserved for persons belonging to Scheduled Castes and Scheduled Tribes in the Council, in proportionate to their population. As rightly contended by the learned Advocate General, as proved by census details, the population of Scheduled Tribes in the City of Chennai is 15,718 constituting 0.23% which will not attract any seat in the Chennai Corporation and therefore, it cannot be stated that no proper reservation has been made to the Scheduled Tribes. A perusal of the earlier election details would reveal that there is no reservation for Scheduled Tribes in Chennai Municipal Corporation Wards in 2001 and 2006. Hence,

contention in this regard made by the petitioner is rejected.

15. As per Article 243(T), reservation for the Scheduled Castes and Scheduled Tribes in every municipality is proportionate to the population of Scheduled Castes and Scheduled Tribes and based on the total population of the respective Municipal Corporation, seats were reserved. For the Scheduled Castes and Scheduled Tribes, based on their respective population, 16 seats were reserved for Scheduled Castes (General) and 16 seats for Scheduled Castes (Women) and 92 seats to Women (General) out of 200 seats. Hence, reservation has been made according to the population in respect of Wards in Chennai Municipal Corporation. Similarly, with regard to other Municipal Corporations also, according to population only, reservations have been made.

16. As per Section 11 (Village Panchayat), Section 20 (Panchayat Union), Section 32 (District Panchayat) and Section 57 (Office of the President and Chairman of Village Panchayat, Panchayat Union and District Panchayat), reservations have to be made strictly according to the population of the Unit. Sections 11, 20, 32 and 57 of the Tamil Nadu Panchayat Act are usefully extracted as follows:

"11. Reservation of seats.- [Village Panchayats]

(1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every Village Panchayat and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Village Panchayat as the population of the Scheduled Castes in that Village Panchayat area or of the Scheduled Tribes in that Village Panchayat area bears to the total population of that area.

Provided that for the first election for the Village Panchayat to be held immediately after the commencement of this Act, the provisional population figures of the Panchayat Village as published in relation to 1991 census shall be deemed to be the population of the Panchayat Village.

(2) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one-third of the total number of seats reserved for the persons belonging to Scheduled Castes and Scheduled Tribes.

(3) Seats shall be reserved for women in the Village Panchayat and the number of seats reserved for women shall be, as nearly as may be, one-third including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes] of the total number of seats in the Village Panchayat:

Provided that such seats reserved for women shall be allotted by rotation to different wards in such a manner as the Inspector may, by notification, direct.

(4) The reservation of seats under sub-section (1) and (2) shall cease to have

effect on the expiration of the period specified in Article 334 of the Constitution."

"20. Reservation of seats.- [Panchayat Union Councils]

(1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every Panchayat Union Council and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat Union Council as the population of the Scheduled Castes in that Panchayat Union area or of the Scheduled Tribes in that Village Panchayat area bears to the total population of that area.

Provided that for the first election for the Panchayat Union Council to be held immediately after the commencement of this Act, the provisional population figures of the Panchayat Union as published in relation to 1991 census shall be deemed to be the population of that Panchayat Union.

(2) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one-third of the total number of seats reserved for the persons belonging to Scheduled Castes and Scheduled Tribes.

(3) Seats shall be reserved for women in the Panchayat Union Council and the number of seats reserved for women shall be, as nearly as may be, one-third including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes of the total number of seats in the Panchayat Union Council:

Provided that such seats reserved for women shall be allotted by rotation to different wards in such a manner as the Inspector may, by notification, direct.

(4) The reservation of seats under sub-section (1) and (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

"32. Reservation of seats.- [District Panchayats]

(1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every District Panchayat and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that District Panchayat as the population of the Scheduled Castes in that District Panchayat area or of the Scheduled Tribes in that District Panchayat area bears to the total population of that area.

Provided that for the first election for the District Panchayat to be held immediately after the commencement of this Act, the provisional population figures of the District Panchayat area as published in relation to 1991 census, shall be deemed to be the population of the District Panchayat area.

(2) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one-third of the total number of seats reserved for the persons belonging to Scheduled Castes and Scheduled Tribes.

(3) Seats shall be reserved for women in the District Panchayat and number of seats reserved for women shall not be less than one-third including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes of the total number of seats in the District Panchayat:

Provided that such seats reserved for women shall be allotted by rotation to different territorial wards in such manner as the Government may, by notification, direct.

(4) The reservation of seats under sub-sections (1) and (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

(5) Reservation of seats under this section, Section 11 and Section 20, shall be made by the Government or by any officer authorised by the Government in this behalf.

(6) While determining the number of seats in Village Panchayats, Panchayat Union Councils and District Panchayats under this section, Section 11, and Section 20 for the purpose of reservation, any fraction thereof shall be disregarded.

"57.Reservation of seats in the office of President, Chairman, etc.

(1) Office of the Presidents of Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats, shall be reserved for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the State or the Scheduled Tribes in the State bear to the total population of the State:

(1-A) Offices of the Presidents of the Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats shall be reserved for women belonging to the Scheduled Castes and Scheduled Tribes from among the offices reserved for the persons belonging to Scheduled Castes and Scheduled Tribes which shall not be less than one-third of the total number of offices reserved for the persons belonging to the Scheduled Castes and Scheduled Tribes.

(1-D) Offices of the Presidents of the Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats in the State shall be reserved for women which shall not be less than one-third including the number of offices reserved for women belonging to the Scheduled Castes and Scheduled Tribes of the total number of such offices in the State:

Provided that the offices reserved under this Section, shall be allotted by rotation to different panchayats at each level in such manner, as may be prescribed].

(2) Reservation of the offices of the Presidents of the Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats, shall be made by the Government or by any officer authorised by the Government in this behalf.

(3) The reservation of the offices of Presidents of the Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of the District Panchayats made under sub-section (1) in respect of the persons belonging to the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

(4) While determining the number of offices of Presidents of the Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats, under sub-section (1) for the purpose of reservation any fraction which is less than half shall be disregarded and half and more than half shall be regarded as one.

As per the data given, the total number of District Panchayat Chairpersons available for 2006, 2011 was 31 only. The number of seats reserved for Scheduled Tribes in 2006 and 2011 was nil, as the population was less than 0.5% and therefore, no seat was allotted either in 2006 or in 2011. Whereas as per 2011 population census, Scheduled Tribe population of the State is 66,90,086 which is 1.653% and for the total number of 32 posts, the number of seats available for Scheduled Tribes is 0.56% and therefore, it has been rounded off and one seat has been reserved for District Panchayat Chairman. Similarly, for Chairperson of Panchayat Unions are concerned, in 2006 and 2011, based on 2001 census, total Scheduled Tribe population was 1.496% and considering the availability of 385 chairman posts, 4 posts were given in 2006 and 2011 whereas in 2016, the total Scheduled Tribe Population is 1.653% and therefore, out of 388 chairman posts, 6 posts have been reserved for Scheduled Tribe. Similarly in respect of Village Panchayat in 2006, 156 posts were reserved out of 12,618 posts and in 2011, 152 posts were reserved out of 12,524 and in 2016, out of 12,524 posts 207 posts have been reserved for Scheduled Tribes and there is an increase in number of seats reserved for Scheduled Tribes in 2016 compared to 2006 and 2011 period.

17. The number of Chairpersons reserved for Scheduled Tribes in Town Panchayats is again based on the population of the State. In 2006, out of 561 Town Panchayats, 3 posts were reserved for 2006 and 2011 and the same is maintained even in 2016 also.

Municipalities

18. As far as Chairpersons reserved for Scheduled Tribes in Municipalities are concerned, taking into consideration the population in the municipal area,

namely 0.42%, one post was reserved as Chairperson of municipality, namely Gudalur (Nilgiris). The abstract of the Chairpersons of Municipalities reserved for the Urban Local Body Elections 2016 is furnished below:

S.No.

Category

No. of Offices

1

Scheduled Caste

17

2

Scheduled Tribe

1

3

Women (General)

52

4

General

54

Municipal Corporations

Similarly in respect of reservation for Chairperson in Municipal Corporations, the percentage of Scheduled Tribe Population is 0.22% as per 2011 census and therefore, no seat has been reserved for Scheduled Tribe. The following is the tabulation giving the details of reservation in Municipal Corporation for the Local Body Elections 2016:

S.No.

Category

No. of Offices

1

Scheduled Tribe

2

2

Women (General)

5

3

General

5

Town Panchayats

19. Insofar as Town Panchayats are concerned, in 2006 and 2011, 25 seats were reserved for Scheduled Tribes and whereas in 2016, 26 seats have been reserved.

Wards

20. In District Wards, 8 Wards were reserved during 2006 and 2011 and it got increased to 9 Wards in 2016. 64 Wards were reserved for Schedule Tribes in Panchayat Union during 2006 and 2011 and also in 2016, based on the total population of Panchayat Union. Village Panchayat Wards are decided according to concerned village population. In 2011, 1,040 Wards were reserved and it has been increased to 1,121 with an increase of 21 seats in 2016.

21. The above data would categorically prove that reservation has been made to various categories according to their percentage in the total population as per yardsticks prescribed under Sections 11, 20, 32 and 57 of the Panchayats Act, 1994. Elections were conducted in 2006 and 2011 based on 2001 census and 2016 is to be conducted as per 2011 census. Further, the details would show that regarding number of seats reserved, either Status Quo is maintained or there is appropriate increase in number of seats for Scheduled Tribes. Hence, the contention that there is no proportionate reservation for Scheduled Tribe according to their population is without any substance and there is no violation of Constitutional directives. Consequently, the impugned Government Orders viz., G.O.Ms. Nos. 103, 105, 106 dated 16.09.2016 as well as notification dated 18.09.2016 in Roc.No.12318/2016/C2 issued by the respondents are valid.

22. In Anugrah Narain Singh and another v. State of U.P. And Others [(1996) 6 SCC 303], petitions were filed questioning the defects in the election rules and delimitation of constitutional wards, arbitrary reservation for Women and Scheduled Castes and other sections and postponement of election was sought. The said writ petition was allowed by Lucknow Bench of Allahabad High Court, even though similar writ petitions were dismissed by the Allahabad Bench. The Hon"ble Supreme Court, taking into consideration the bar under Article 243(ZG), held that, High Court has no jurisdiction to entertain writ petition challenging the election on the ground of defects in the electoral roll and arbitrary reservation for Scheduled Castes and other sections. It is relevant and useful to extract para 35 of the said judgment:

"35. Lastly, the Court on no account should have directed postponement of the elections by the impugned judgment and order dated 13-11-1995. On 11-10-1995, the notification for holding the municipal elections was issued.

16-10-1995 to 20-10-1995 was the period during which the nomination papers could be filed. 24-10-1995 was the last date for withdrawal of nomination papers. Voting was to take place between 17-11-1995 to 20-11-1995. The writ petition was filed as late as 26-10-1995 on the allegation that there were defects in the electoral rolls, delimitation of constituencies and reservation of seats. A similar writ petition moved before the Lucknow Bench of the Allahabad High Court (WP No. 2997 of 1995) had been dismissed by the Court on 18-10-1995. Barely one week before the voting was scheduled to commence, the Court decided to intervene in the matter regardless of the repeated warnings given by this Court in a number of earlier decisions. The Court decided to intervene in the matter and stop the election process while it was nearing completion. In Lakshmi Charan case [(1985) 4 SCC 689], it was held that the Court should not intervene even when the elections were imminent. Here, the election was well under way."

In the above Apex Court judgment also, the contention of the petitioner regarding reservation is rejected.

Violation Of Rule 24 Of The Tamilnadu Panchayats (Election) Rules, 1995

23. Though the plea and the prayer are only with regard to reservation for Scheduled Tribes only, a contention has been made during arguments that the election notifications dated 26.09.2016 has not been issued as per Rule 24 of the Tamil Nadu Panchayat (Elections) Rules, 1995. The issue has been pleaded by the petitioner by filing additional affidavit and all the parties have addressed the issue. The contention raised with regard to non-compliance of Rule 24 of the Tamil Nadu Panchayat (Elections) Rules, 1995 is a point of law and it need not be pleaded. The pleadings in the writ petition cannot be raised to the level of pleadings in a Civil Court proceedings. Election Notifications gazetted on 26.09.2016 have been placed before this Court and the said notifications have been challenged by the petitioner as well as by the intervenor on the ground of non-compliance of Rule 24. Therefore, the issue of non-compliance of Rule 24 and the consequences of non-compliance have to be decided by this Court necessarily, as the parties themselves, consciously and willingly, made submissions on this issue. Therefore, it is the duty of this Court to give a verdict on this issue. There cannot be any technical objection in this regard. Both Mr. P. Wilson and Mr. N. Jothi vehemently argued that as per Rule 24, there should be two notifications, namely, publication of Gazette notification has to be made under Rule 24(1) and 24(3) and another public notice of election has to be made as per Rule 25. According to them, the announcement was made by the second respondent/Election Commission on 25.09.2011 at 6.15 p.m. and there is no publication of public notice of election as per Rule 24(2) and hence, the entire election process is vitiated. However, learned Advocate General would submit that the Election Commission announcement was made on 25.09.2016; Section 24(1) notification was issued on 26.09.2016 and as per Rule 24(2) publication of public notice of election was also issued on 26.09.2016 and as per rule 25, notice of election was affixed on 26.09.2016 itself in every Local Body, complying with

Rule 24.

24. To understand the procedure contemplated under Rule 24 of the Tamilnadu Panchayat Rules, the rule has to be seen and the same reads as follows:

"24. Notification of programme of election.-

(1) For the purposes of filling up of ordinary and causal vacancies in the offices of Ward members of 12 Panchayats or Presidents of Village Panchayats as the case may be, the State Election Commission, in pursuance of and in consonance with the Constitutional provisions in this behalf, shall in consultation with the Government, by one or more notifications published in the manner prescribed, call upon the electors of such Wards and Panchayats to elect Ward members of the respective Panchayats, and/or Presidents of Village Panchayats, as the case may be, on such date or dates as may be specified therein.

(2) The notifications referred to in sub-rule (1) shall specify-

(i) the date on which the public notice of election shall be published;

(ii) the last date for making nominations, which shall be the seventh day after the publication of the public notice referred to in clause (i) or if that day is a public holiday, the next succeeding day which is not a public holiday, the hours between which the nomination can be made being 11-00 a.m. and 3-00 p.m. on each day;

(iii) the time and date for taking up the scrutiny of nominations, which shall be 11-00 a.m. of the date immediately following the last date for making nominations or, if that date is a public holiday, the next succeeding day which is not a public holiday;

(iv) the hour and date upto which the withdrawal of candidatures can be made, which shall be 3-00 p.m. on the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(v) the date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the seventh day after the last date for the withdrawal of Candidatures;

(vi) the date before which the election shall be completed; and

(vii) the date on which the meeting of the newly elected Ward members of the Panchayat shall be held for the election of Vice-President or Chairperson or Vice-chairperson as the cases may be.

(3) The notifications referred to in sub-rule (1) shall be published-

(i) in the case of both ordinary and causal election of members of District Panchayats, in the Tamil Nadu Government Gazette and in the respective District Gazette;

(ii) in the case both ordinary and causal election of members of the Panchayat Union Councils, in the respective District Gazettes; and

(iii) in the case of both ordinary and causal elections of the Presidents of Village Panchayats and/or members of Village Panchayats, in the concerned District Gazette.

(4) the State Election Commission may also arrange to publish the notifications at such other places as it deems fit, to give further publicity to the notification."

A close reading of the above rule would reveal that (1) The Election Commission, in consultation with the Government, by one or more notification published in Tamilnadu Government Gazette as per 24(3) is to call upon electors to elect their representatives on such date or dates as stated in the said notification. The said notification should give the notice of the date on which the public notice election shall be published as per 24(5). There should be one "notification" under Rule 24(1) and two, "publications" as stated in Rule 24 viz., one as per sub-rule 1 and another as per sub-rule 2(1). Rule 24(1) speaks about one "publication of notification" under Rule 24(3) giving the date of the election, whereas Rule 24 2(i) is about another publication of public notice of election which should be done as per Rule 24(5). For 2006 election, the notification was notified on 19.09.2006 and the same was published on 20.09.2006 through Gazette. Similarly for 2011 election, the notification was notified on 21.09.2011 and the same was published on 22.09.2011 through gazette. For better appreciation, 2011 notification as notified on 21.09.2011 is extracted as follows:

"Tamilnadu State Election Commission,

Chennai-600106.

Statutory Order

Abstract

Elections-Ordinary Elections-Corporations, Municipalities/Third Grade Municipalities and Town Panchayats - Councillors/Members and Mayors/Chairmen - Conduct of - Notified.

S.O.No.45/2011/TNSEC/ME-1

Dated, the 21st September, 2011.

Order:

The appended Notification will be published in the Extraordinary issue of the Tamil Nadu Government Gazette dated the 22nd September, 2011.

(By order of the Tamil Nadu State Election Commission)

Encl: Appendix and Annexure

V.M. XAVIER CHRISSE NAYAGAM, Secretary.

The appended Notification was notified on 22.09.2011, notifying publication of public notice of election on 22.09.2011. When the above is the position, there is no notification by Election Commission as per Rule 24(1) and there was only press release on 25.09.2016 and it does not satisfy Rule 24(1). Press release giving the poll schedule cannot be considered as notification or publication. Hence, no such notification notifying the date of publishing of public notice has been issued.

25. The intention of legislature is clear to give definite interval between two notification prescribed under Rule 24. The notification under Rule 24(2)(i) should specify the date of the proposed election followed by subsequent notification containing Election Schedule under Rule 24(1). By no stretch of imagination both notification could be issued on the same day. Unwarranted hurry is shown by the State Election Commission. Further various general notifications published in concerned District Gazettes for this election refer various orders as dated as 25.09.2016 in the preamble portion itself and those orders have not been produced. That apart, as per Rule 24(3), notification referred to in Rule 24(1) has to be published in both in the Tamil Nadu Gazette and in the respective District Gazette, whereas only District Gazette publications alone have been submitted and no Tamil Nadu Gazette has been produced. It would also prove non-compliance of Rule 24.

26. Notification informing the public about election is to be issued first as per Rule 24(2)(i). Thereafter, poll schedule notification should be published as per Rule 24(1). In this case, the poll schedule was announced in the press meet on 25.09.2016 and no notification to the public about the conduct of election was made. As per Rule 24, there should be at least two different date should be available viz., date of notifying notification of election and date of publication of public notice of election. In the present election, no notification has been issued by Tamil Nadu State Election Commission, notifying notification of election to be published in gazette and only gazette publication alone was published on 26.09.2016. Publication of gazette notification and publication of public notice of election are on the very same date viz., 26.09.2016. It only proves clear violation of Rule 24.

27. It is submitted by Mr. B. Kumar, learned Senior Counsel for State Election Commission that in the early hours of 26.09.2016 viz., at 12.15 a.m. (midnight), public notice of election was made and Rule 24(1) notification was gazetted on 26.09.2016 itself and Rule 25 notice of election was affixed on 26.09.2016 at 10.00 a.m. at every local body office. The said contention cannot be accepted. In the early hours, viz., 12.15 a.m. on 26.09.2016, it could not have been done as it is not humanly possible to do, when the Government offices have been closed. It cannot be expected that people took note of the said notice. The purpose of the procedure under Rule 24 is to inform the public and all stake holders about the date of poll and poll schedule and it cannot be done in the midnight. It appears the election commissioner has done in the above unknown manner,

mechanically, without application of mind. Statutory rules have to be complied with, in letter and true spirit, to achieve the object of informing the public, candidates and parties about the poll and its schedule. The elections could not be rushed through defeating the object of the rules. When publication of public notice of election and notification of election schedule are contemplated, it could not be done on the very same day. Rules framed are Subordinate Legislation and they have force of Statute. The Apex Court in *Tamil Nadu Electricity Board v. State Spinning Mills Ltd.*, [(2008) 7 SCC 353] held that Subordinate Legislation has to be read in the same manner as if it is part of the Act. Therefore, violation of Rule 24 is violation of Statute and therefore, the election notifications are invalid.

28. It is trite that if the power is given to do certain thing in a certain way, the thing must be done in that way or not at all. The following judgment which laid down the above dictum are in *Taylor v. Taylor*, 1876 1 Cd.426 and the judgment in *Nazir Ahmad v. Emperor*, AIR 1936 Privy Council 253(1); in *State of Uttar Pradesh v. Singhara Singh and Others*, AIR 1964 SC 358; *Babu Verghese v. Bar Council of Kerala and Others*, 1999 (2) CTC 722 (SC); in *Ramchandra Muralilal Bhattad and Others v. State of Maharashtra and Others*, 2007 (2) SCC 588; and in *Indian Bank's Association, Bombay and Chandrakishore Jha v. Mahavir Prasad*, AIR 1999 SC 3558; and *Gujarat Urija Vikash Nigam Ltd. v. Essar Power Ltd.*, 2008 (4) SCC 755. Therefore, for violation of procedures contemplated under Rule 24, the Election notifications dated 26.09.2016 issued by the Tamil Nadu Election Commission notifying the local body election to be held on 17.10.2016 and 19.10.2016 are vitiated and they are set aside.

29. The Hon'ble Supreme Court of India in *Kishanssing Tomar v. Municipal Corporation of the City of Ahmedabad and Others* [(2006) 8 SCC 352] held that State Commission shall not put forward any excuse based on unreasonable grounds and not yield to situations created by vested interests to postpone elections. In the said judgment, it is stated that except in exceptional circumstances of man-made calamities such as rioting or breakdown of law and order, or natural calamities, Election Commission would be justified in delaying the Election Process. It is well settled law that once the election process commences, it could not be halted or interfered with. One of the judgments of the Hon'ble Apex Court in *Anugrah Narain Singh and Another v. State of U.P. and Others* [(1996) 6 SCC 303]. In this case, the very basis of election, election notifications are not issued according to law and it goes to the root of the matter. The very basis of the election notifications have been found to be vitiated and therefore, it is pre-election process. When pre-election step to set the election process in motion is set aside, the prohibition under Articles 243(ZG) and 243(O) would not be applicable.

30. Further, it has to be stated that there is a delay on the part of the Government in commencing the process of reservation of seats for Scheduled Castes and Scheduled Tribes Women. Last minute announcement would definitely

cause prejudice to the political parties including the candidates and voters. Thereafter, the Election Commission is hurriedly conducting the process without sufficient time to the parties. There is no necessity for the State Government to delay in identifying and reserving seats for weaker sections. The State Government is very much aware that five year period of office of local bodies would come to an end in October 2016 and therefore, steps should have been taken in advance so that sufficient time is given to all the parties to know whether, Wards/Local bodies have been reserved or not and to get ready for participation in the election. The contention of the petitioner is that though the notifications are dated 16.09.2016 and 18.09.2016, they have been uploaded in the website only on 23.09.2016. The said contention cannot be ignored, as there is no evidence produced by the Government to show that Gazette Notifications were uploaded then and there. A feeble attempt has been made by the State Government to justify the delay stating that it was due to pendency of W.P. No. 23411/2016 etc. filed by the writ petitioner and others challenging the Tamil Nadu Municipal Laws (Amendment) Act, 2016. However, it is seen, even the said amendment was introduced in the Tamil Nadu Assembly in the last minute. Hence, at least, hereafter, the State Government should make earnest steps to start the process, at the earliest, so that sufficient time is available to all the parties. However, what is to be noted is that the petitioner is the main opposition party in the Tamil Nadu State Assembly and it is the duty of the main opposition party to urge the Government and Election Commission to take steps in advance to conduct the election and therefore, the petitioner is also equally responsible for this situation.

31. It is contended by the learned Senior Counsel appearing for the petitioner that there is no level playing field available to all the parties and the ruling party is in an advantageous position. The said contention has got force. When the alleged poll notice and schedule were made on 26.09.2016, the ruling party is stated to have announced candidates' list. It would only denote that the ruling party was privy to the election date and got ready in advance having an early start in the poll work, when other stakeholders had only knowledge about poll notice by announcement made by Election Commissioner on 25.09.2016 at 06.15 p.m. in a press meet. Even for that, political parties were not invited. The political parties should have sufficient time to have poll alliance, identifying candidates, filing nominations and for campaign. Hence, this Court holds that there is no level playing field for all the parties. Not providing level playing field is one of the reasons for setting aside the election notification. As held by the Hon'ble Apex Court in *Rampakavi Rayappa Belagali v. B.V. Jatti and Others* [(1970) 3 SCC 147], free and fair elections are foundations of democratic institutions and election should not only be fairly and properly held but should also seem to be so conducted so as to inspire confidence in the minds of the electors that everything has been above board and has been done to ensure free elections. Para 21 of the said judgment is usefully extracted as follows:

"21. In conclusion it may be observed that the impression left by the facts and

circumstances of this case on our mind is that the authorities concerned in the Mysore State were not careful or discreet enough in posting Hasbi for the second time to Jamkhandi in July 1966 when it was known that the relations between him and respondent No. 2 had been very unhappy in the past and by which time it could also be foreseen and appears to be known that there would be another contest between respondent No. 1 and respondent No. 2 who had been fighting elections since 1952. Similarly with regard to Kallur it would have been a wise step to transfer him before the elections from the area in which Jamkhandi is situate because he had also figured similarly in the previous contest between the two respondents. Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done but must also seem to be done; similarly elections should not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in the minds of the electors that everything has been above board and has been done to ensure free elections. It will be a sad day in the history of our country when the police and the Government officers create even an impression that they are interfering for the benefit of one or the other candidate. This is particularly so if a candidate is holding an important position or assignment like respondent No. 1, who, at the material time was a Minister in the State."

Hence, the election notification issued by the State Election Commission is null and void for the following reasons:

- (i) There is non-compliance of Rule 24 of The Tamil Nadu Panchayats (Elections) Rules, 1995, by issuance of public notice, firstly, about the conduct of election, as per Rule 24(2)(i) and notifying the poll schedule under Rule 24(1) subsequently;
- (ii) This Court is unable to accept the contention of the Election Commission that poll schedule notification was issued in the midnight at 12.15a.m. on 26.09.2016;
- (iii) There is no level playing field available to all the parties, as the ruling party, obviously, had prior information about the election, as proved by announcement of its candidates on the date of notification;
- (iv) There is no sufficient time given to other parties to get ready for the election and
- (v) The Election Commission having delayed the onset of the election work, is rushing through the procedures, in a hurried manner, thereby causing prejudice to the other contesting parties.

32. This Court already set aside the Election Notifications for Local Bodies. However, the present term of the local body is to be over by the end of October, 2016. It is well settled that the period of office of local bodies is only five years and cannot be extended beyond five years as per Articles 243-E and 243-U. Therefore, after expiry of five years in October, 2016, there would be vacuum. Hence, the State Government has to invoke Section 261 of the Tamil Nadu Panchayats Act, 1994 which is extracted as follows:

S.261.Transitory Provision.

(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, the Government may, by notification, if necessary, appoint Special Officers to exercise the powers and discharge the functions of the Village Panchayats, the Panchayat Union Councils, or the District Panchayats, as the case may be, until the day on which the first meetings of the Village Panchayats, the Panchayat Union Councils, or the District Panchayats, as the case may be, are held after ordinary elections to the said Panchayats after the commencement of this Act."

By invoking the above provision, the Government shall appoint Special Officer to exercise powers and discharge functions of local bodies. Till election is over and new elected representatives take charge, the Special Officer shall be in the administration.

33. Though Special Officers are directed to be appointed, the State Election Commissioner shall issue fresh election notifications for elections to the local bodies, conduct elections and conclude as per law at the earliest. However, the Election Commission shall conclude the election on or before 31st December, 2016.

34. There are many complaints regarding reservation or de-reservation of seats, mass deletion and addition of voters from the voter list, complaints of convicted persons contesting elections, auctioning of posts. These complaints should be addressed simultaneously.

35. At this juncture, this Court has to point out that unpleasant and violent incidents took place during 2006 and 2011 elections for Chennai City Municipal Corporation when booth capturing by violent methods and meddling with the election process by illegal methods by use of force were reported. Allegations were made against the parties which were in power during 2006 and 2011. In 2006, allegations were made against the petitioner herein and a Full Bench of this Court in All India Anna Dravida Munnetra Kazhagam v. The State Election Commission [2007-2-L.W.1] was constrained to cancel the elections for some of the Wards conducted for City Municipal Corporation. In 2011, it was the turn of the present ruling party which was accused of adopting the very same violent methods allegedly adopted by the petitioner party in 2006 elections. It is therefore, common man's impression that both bigger parties including some other political parties have been indulging in violent methods to win the elections by hook or crook. What is expected is free and fair election. All the political parties have to do their democratic duty by cooperating with the Election Commission and State Machinery for peaceful conduct of election.

36. Election is a process by which will of the people is known. The will should be out of free will, unbiased and should not be obtained by corruption of the voters or by committing violent activities. It is in the public domain, money and liquor used to flow at the time of election, irrespective of whether the election is for

Parliament or State or Local Bodies. Unless money flow is curtailed/prevented, free and fair election is not possible. Use of money power is common by all the political parties and one political party cannot escape making allegations against other party. People have been driven to the extent to think that, at the time of election, by electing their representatives, they are only giving licence to them to indulge in "Activities" which would result in injury to the public interest. People should frown up and shun people with questionable integrity, criminal background irrespective of the political considerations. Then only, there would be a chance for this country to safeguard and sustain democracy.

37. This Court hopes that all the political parties would understand the democratic principles and choose the candidates with integrity, honesty and service-oriented mind. Candidates with criminal background are often selected by invariably all the political parties, knowing very well about their antecedents as habitual offenders, land grabbers and hard core criminals. In spite of that, the political parties, for the reasons best known to them, are nominating those elements for the election, spoiling and destroying the very principle of democracy and clean administration against public interest. If criminal elements become law makers and policy makers, the consequences would be very dangerous. At least, this election should be a first step towards a change for the better from the old one. The Election Commission cannot act mechanically and it should be alive to the reality, taking into consideration that many elected representatives of local bodies have been murdered for the past few years due to their criminal antecedents, murky real estate transactions and mining activities. When the contestants having criminal background become elected representatives, they cannot discharge their function of doing service to the society as per law. The Local Body representatives are the persons, who have to be in touch with the common man, day in and day out, and they are expected to know the problems of the common man and address the same. Making use of their position as Local Body heads, if elected criminal elements would continue their criminal activities, it would go against the very purpose of conducting the elections. No ordinary citizen would dare enough to approach the elected representatives, to sort out their grievance, if they have criminal background. Public interest requires only candidates with integrity, honesty, moral values, commitment to serve people, to be elected. Therefore, it is the bounden duty of the Election Commission to verify the antecedents of the candidates by getting affidavits from the candidates, as the State Election Commission notification bearing S.O. No. 43/2006/TNSEC/EG dated 01.09.2006 mandates every candidate desiring to contest an election to a local body, to furnish full and complete information, in regard to five categories including criminal background referred to in para five of the preamble to the notification, at the time of filing nomination. It is similar to affidavits obtained from the candidates contesting to the State Assembly as well as Parliament Assembly as per Rule 4A of the Conduct of Election Rules, 1961 and in Form 26 wherein assets and liabilities, number of cases faced and pending against the candidates have to be filled.

38. It is not understandable as to how criminal elements are freely allowed to contest and get elected in elections, in spite of notification dated 01.09.2006. Therefore, it creates a doubt in the minds of the people including this Court as to whether the notification is strictly followed by the State Election Commission. Therefore, this Court directs the State Election Commission to strictly follow its notification dated 01.09.2006 by getting affidavit compulsorily from the contestants disclosing the details including criminal antecedents. The details so collected from the candidates should be consolidated and recorded and data based for follow-up in future. The notification dated 01.09.2006 should be widely publicised sensitising the public.

39. Following the judgments given by the Hon''ble Supreme Court of India in Union of India v. Association for Democratic Reforms and Another with People's Union for Civil Liberties (PUCL) and Another v. Union of India and Another [(2002) 5 SCC 294] and People's Union for Civil Liberties (PUCL) and Another v. Union of India and Another [(2003) 4 SCC 399], in an effort to secure information to the voters in respect of each candidate, the State Election Commission issued notification bearing S.O. No. 43/2006/EG dated 01.09.2006 mandating the candidates desiring to contest a local body to file an affidavit to furnish full and complete information in regard to five categories including criminal background at the time of filing nomination. When the notification has been issued in 2006, the State Government by this time should have amended Rule 26 of the Tamil Nadu Panchayats (Election) Rules, 1995 by inserting a sub-rule translating the above said State Election Commission notification dated 01.09.2006. Therefore, the State Government is directed to pass appropriate amendments in Rule 26 of the Tamil Nadu Panchayats (Election) Rules, 1995 in this regard, at the earliest.

40. The directions to be given in this case, is an effort to do complete justice taking into account, the reality of the criminal elements hijacking the local bodies. The criminal elements dominating by getting elected to local bodies, even to the Assembly and Parliament is an extraordinary situation. Extraordinary situation requires extraordinary remedies as declared by the Hon''ble Apex Court in Prithipal Singh v. State of Punjab [(2012) 1 SCC 10]. This Court has power and jurisdiction to issue such directions by moulding the relief. A Three Judges Bench of the Hon''ble Apex Court declare that in Shivaji Rao Nilagekar Patil v. Dr. Mahes Madhan Gosavi and Others [(1987) 1 SCC 227] wherein, it has been held in para 51 that when situation arises for providing remedies, Court should not remain a mute spectator. Para 51 of the said judgment is usefully extracted as follows:

51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards in (sic is) an equally grave menace as the pollution of the environment. Where such situations cry out the courts should

not and cannot remain mute and dumb."

The power of this Court to do complete justice by moulding the relief has been recognised by a Three Judges Bench of the Hon"ble Supreme Court in *B.C. Chaturvedi v. Union of India and Others* [AIR 1996 SC 484]. Para 23 of the said judgment is usefully extracted as under:

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in *Shivdeo Singh case* [*Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter."

41. The State Election Commission is discharging an important function of conducting elections to elect candidates for local bodies, who will be in the administration for five years. Article 243-K(1) of the Constitution gives all powers to him/her not only to conduct the election but also to see that criminal elements are not contesting the election and prevent them from entering local bodies in the interest of public. In view of that only, the Hon"ble Apex Court in *Union of India v. Association for Democratic Reforms and Another* [2002 (5) SCC 294] and *People's Union for Civil Liberties (PUCL) and Another v. Union of India and Another* [2003 (4) SCC 399], recognised the powers of the Election Commission of India under Article 324 which is *parimateria* the same. Subsequent amendment was made to the Representative of People's Act, 1951 by insertion of Sections 33-A and 33-B in 2002. Similar power is available to the Election Commission. Already, the State Election Commission issued notification dated 01.09.2006 requiring details of candidates including their criminal background by an affidavit. It is the duty of the Election Commission to prevent/curtail criminal elements getting elected to Parliament, State Assembly and Local Bodies. In exercise of its Constitutional power, the State Election Commission shall write to the Recognised and Registered political parties asking them not to field and support candidates with criminal background, as many political parties are shamelessly fielding habitual offenders, land grabbers, goondas as candidates of their parties.

42. While upholding the impugned Government Orders, to maintain purity in public life, this Court moulds the relief and gives the following directions:

(i) Election Notifications dated 26.09.2016 issued for conduct of Local Body

Election by the State Election Commission on 17.10.2016 and 19.10.2016 are vitiated for non-compliance of Rule 24 of the Tamil Nadu Panchayat (Elections) Rules, 1995.

(ii) The State Election Commission is directed to issue fresh notifications, conduct elections and complete the election process, as per law, at the earliest, not later than 31.12.2016.

(iii) The State Government is directed to invoke Section 261 - Transitory provision of the Tamil Nadu Panchayats Act, 1994, to administer the Local Bodies by appointment of Special Officers till the elections are held, as the present terms of the present Local Bodies are to expire soon and the same cannot be extended beyond five years.

(iv) The State Government shall amend Rule 26 of the Tamil Nadu Panchayats (Election) Rules, 1995 by insertion of a sub-rule to incorporate State Election Commission Notification bearing S.O.No.43/2006/EG dated 01.09.2006 mandating the candidates desiring to contest to a local body, to file a separate affidavit, to furnish full and complete information, in regard to five categories, including criminal background, at the time of filing nomination, at the earliest.

(v) The State Election Commission shall follow its notification bearing S.O. No. 43/2006/EG dated 01.09.2006 by suitably and strictly informing the Election Officers to reject the nominations of candidates who fail to file affidavit, as per the above notification dated 01.09.2006.

(vi) The State Election Commission shall sensitise the public especially candidates about its notification dated 01.09.2006 requiring affidavit disclosing criminal cases against the candidate by issue of advertisements so that the voters would be informed about the details of the candidates.

(vii) The State Election Commission shall consolidate, record and data base the details provided by the candidates in the form of affidavits and upload them in its website.

(viii) The State Government and State Election Commission shall look into and decide about complaints regarding reservation, de-reservation of posts, deletion or addition of genuine eligible voters and enrolment of bogus voters etc., before conducting the election, after issuance of fresh election notifications.

(ix) The State Election Commission shall write to recognised and registered political parties/organisations, in exercise of power under Article 243K of the Constitution of India asking them not to field/sponsor any candidate with criminal background/history for the local body election within four weeks to prevent criminalisation and hijacking of local bodies by criminal elements.

43. The above directions are issued at present regarding the relief sought for by the petitioner in main writ. However, the Writ Petition is kept pending for passing further orders and to implement the orders passed by this Court. Both the State

Government and State Election Commission shall file action taken reports regarding compliance of the directions issued.

44. Call the matter in the first week of January, 2017.

45. At the risk of repetition, in the interest of public, this Court feels it appropriate to make the following observations:

46. It is common knowledge that major political parties are fielding candidates for Local Body Elections, except at the Village Level. The candidates fielded by them, should be persons with integrity, honesty and a sense of commitment to serve the society. However, invariably, many candidates, who contest the elections, are chosen by political parties, based on their affluence and muscle power and they are also found to be persons with criminal antecedents. Of late, media reports reveal many elected representatives of Local Bodies, belonging to various political parties, being done to death, due to their criminal antecedents or illegal mining operations or real estate business. When the State Election Commission, as per the direction given above, writes to all the recognised and registered political parties, calling upon them, not to field any candidate, with criminal background, the political leaders are duty bound to see that such candidates are not chosen as contestants. The offices of Local Bodies are not places for profit-making, but for doing service to the society. The framers of our Constitution reposed faith in the political leaders and they are only elected by the people, with utmost trust and faith in them. Therefore, it is their duty and responsibility to avoid criminal elements and choose appropriate candidates, who will be in a position to serve the public.