

(2019) 07 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 11249, 11312 Of 2015

Jyoti Deepak Chavan And Ors

APPELLANT

Vs

Election Commissioner And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Maharashtra Village Panchayat Act, 1959 — Section 14(1)(J5), 10A, 10A(4), 15, 15A, 27, 30

Representation Of The People Act, 1951 — Section 100

Constitution Of India, 1950 — Article 40, 226, 243K, 243O(b), 324, 329, 329(b)

Bombay Village Panchayat (Election) Rules, 1959 — Rule 7, 11, 12, 31, 31A

Citation : (2019) 07 BOM CK 0028

Hon'ble Judges : R. M. Borde, J;N. J. Jamadar, J

Bench : Division Bench

Advocate : M. A. Chaudhari, Anant Vadgaonkar, Sachindra Bhaskar Shetye, A.I. Patel, K.S. Thorat, S.A. Inamdar, Vijay Killedar, S.B. Thorat, V.M. Thorat, M. V. Thorat

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. These petitions under Article 226 of the Constitution of India, take exception to the order dated 30th October, 2015, passed by respondent no.1 â?

State Election Commission, cancelling the election process commenced by publication of a notice on 1st October 2015, for the election of Village

Panchayat Khuneshwar, Taluka Mohol, District Solapur, under the provisions of Maharashtra Village Panchayat Act, 1959 (hereinafter referred to as

â??the Act of 1959â?), a day prior to the actual polling, which was scheduled to be held on 1st November, 2015, and the subsequent order dated 4th

November, 2015, whereby a fresh election programme for the election of Khuneshwar village panchayat came to be declared.

3. These petitions raise a seminal issue of the contours of the power of the State Election Commission in the matter of election to the panchayat

constituted under Part IX of the Constitution of India. Whether the power of superintendence and control vested in the State Election

Commission subsumes in its fold the power to cancel the entire election process in the wake of allegations of irregularities in accepting or rejecting the

nominations, is the core question which these petitions pose, in the backdrop of the following facts:

The State Election Commission vide publication dated 28th September, 2015 declared the election programme for the village panchayats in 26 districts

of the State of Maharashtra, whose term was to expire in the month of November and December 2015 or which have been newly constituted. The

programme commenced with the publication of notice under Rule 7 of the Bombay Village Panchayat (Election) Rules, 1959 (hereinafter referred to

as 'the Rules of 1959'), leading to the polling of votes on 1st November, 2015 and the declaration of the results on 4th November, 2015. The

village panchayat Khuneshwar, Taluka Mohol, District Solapur, was one of the Panchayats for which elections were to be held in accordance with the

aforesaid programme. The village panchayat Khuneshwar was divided in three wards to elect nine members. 46 nomination forms were tendered for

those nine seats. On 19th October, 2015, the Returning Officer, village panchayat Khuneshwar, by order dated 19th October, 2015 rejected the

nominations of 15 persons, including the nominations of Respondent nos.9 to 14.

One of the disqualifications for being a member of a panchayat, under Section 14(1)(A) of the Act, 1959, is failure to submit a certificate of the

concerned Grampanchayat to the effect that the candidate resides in a house which has a toilet facility and regularly uses such toilet facility or he

regularly uses public toilet where he does not reside in a house having toilet facility. The nominations of 15 persons, including Respondent nos.9 to 14

herein, were rejected by the Returning Officer on the ground that they failed to produce a certificate or show satisfactory material indicating

compliance of the aforesaid requirement. Respondent nos.9, 10, 11 and 14, being aggrieved by the rejection of their nominations, approached this

Court by filing Writ Petition (ST) Nos.29151 to 29154 of 2015. The learned Single Judge of this Court by order dated 21st October, 2015 refused to

entertain these petitions as the election was already underway and the actual poll was to be held on 1st November, 2015.

4. In the meanwhile, grievances were made to the authorities including Respondent no.1 "State Election Commission of improper acceptance and rejection of nominations by the Returning Officer, in connivance with the candidates from the opposite group, and on the strength of false certificates issued by the village officer, Khuneshwar. It was alleged that the village officer, Khuneshwar, issued certificates to the candidates, who did not have the toilet facility, and further falsely certified that the candidates (of the complainant party) do not have the toilet facility, though, in fact, those candidates had the toilet facility and were regularly using the same. Resultantly, the nominations of the persons, who were qualified to become a member of the village panchayat, were rejected and of those who were disqualified in terms of Section 14(1)(5) were accepted.

5. In the backdrop of the said grievance, the Block Development Officer, Panchayat Samiti, Mohol, caused an enquiry to be conducted in respect of the grievances of issuance of false certificates regarding the use of toilet facility by the village officer (Gramsevak), Khuneshwar village panchayat. A report came to be submitted to the Chief Executive Officer, Solapur, on 23rd October, 2015. Likewise, the Tahsildar, Mohol, also caused an enquiry to be conducted in the matter of improper rejection of nominations based on the certificates issued by the Gramsevak. The Tahsildar submitted a report to the District Collector on 28th October, 2015. As it transpired that the Gramsevak had not faithfully issued the certificates regarding the use of the toilet facility by the persons, who had submitted the nominations, the said Gramsevak Mr. Chendage S. M. came to be suspended by the order of the Chief Executive Officer, Zilla Parishad, Solapur, on 27th October, 2015. The Election Inspector also submitted a report to the State Election Commission on 28th October, 2015 adverting to the improper acceptance and rejection of the nominations. On 28th October, 2015, the District Collector, Solapur, addressed a communication to the State Election Commission adverting to the reports of the enquiry conducted by the Tahsildar, Mohol, and the Block Development Officer, Panchayat Samiti, Mohol, and suggested that the election programme for the election of village panchayat

Khuneshwar be cancelled and a fresh election be held to ensure fair and transparent election process. On the basis of the said report, the State

Election Commission, by the impugned communication dated 30th October, 2015, cancelled the entire election programme for the village panchayat

Khuneshwar, opining, inter alia, that the election process was not being carried out in a fair and transparent manner.

6. Being aggrieved, the Petitioners, by filing Writ Petition No.11249 of 2015, sought a writ to quash and set aside the order dated 30th October, 2015,

cancelling the election and a further direction to the Respondents to conduct the election in pursuance of the process initiated on 1st October, 2015,

from the stage it stood cancelled. Since Respondent no.1 "State Election Commission issued circular on 4th November, 2015 and declared a fresh

election programme for village panchayat Khuneshwar to be commenced by publication of notice under Rule 7 of the Rules of 1959 leading to the poll

on 5th December, 2015, the Petitioners preferred Writ Petition No.11312 of 2015 and challenged the said circular dated 4th November, 2015, whereby

a fresh election programme came to be declared.

7. To complete the narration of facts, it would be necessary to note at this juncture itself that when these petitions were taken up for consideration of

prayer for interim relief on 2nd December, 2015, this Court recorded a prima facie view that a very drastic action of cancellation of election process

was taken by the State Election Commission just a day before the actual polling and the validity of the said action was required to be tested. Thus,

though the Division Bench made it clear that the fresh election process (in terms of the circular dated 4th November, 2015) shall continue in all

respect, yet, the result of the election shall not be declared without prior permission of this Court. The Division Bench further directed the State

Government to appoint an Administrator as the term of the village panchayat had come to an end. The situation which thus obtains is that the results

of the election held on 5th December, 2015, for Village Panchayat, Khuneshwar, have yet not been declared and an Administrator looks after the

affairs of the Village Panchayat, as of today.

8. The State Election Commission has controverted the averments in the petitions and professed to support its action of cancellation of the election and

holding fresh election in terms of the programme declared on 4th November,

2015, by tendering an Affidavit in reply of Rajaram P. Zende, Joint Secretary, State Election Commission. The substance of the resistance put forth by the State Election Commission is that the Gramsevak of village Khuneshwar was guilty of misdemeanour. He had issued false certificates to the persons who were not having toilet facility. He had cancelled the earlier certificates, certifying the use of toilet facility by certain candidates, which resulted in rejection of their nomination forms. The State Election Commission is entrusted with the responsibility to ensure free and fair election process. In the backdrop of these allegations and the report submitted by the District Collector, Solapur, based on the enquiries conducted by Block Development Officer, Panchayat Samiti, Mohol and Tahsildar, Mohol, the State Election Commission was satisfied that the election process for the election of the Grampanchayat Khuneshwar was far from free and fair and, therefore, in exercise of the power conferred by sub-section (4) Section 10A of the Act, 1959, the State Election Commission decided to cancel the entire election programme with an objective of giving fair opportunity to all candidates. In the absence of any specific allegations of malafide attributed to the officers of the State Election Commission, this Court may not interfere with the decision taken by the State Election Commission which is vested with the power of superintendence and control over the conduct of elections to the panchayat. In substance, the State Election Commission had taken the decision with an intention to ensure free and fair election process.

9. Respondent nos.9 to 16 have also contested the petition by tendering an Affidavit in reply of Mr. Mohan Bhagwat Chavan (Respondent no.15).

The Respondents contend that one Chandrahar Manohar Chavan, the then Sarpanch of the outgoing village panchayat, in collusion with the Gramsevak of village Khuneshwar, was instrumental in getting the nominations of the persons of the opposite group rejected. In the process, the nominations of the candidates who had submitted the certificates issued by the Gramsevak to the effect that they have and were using the toilet facility, were rejected on the strength of contrary certificates issued by the very same Gramsevak. Similarly, the Returning Officer in collusion with the Gramsevak accepted the nomination forms of the candidates belonging to the group of the said erstwhile Sarpanch despite genuine objection by

the members of the Respondent group to the effect that those persons were not having toilet facility. In all, the nominations of 15 persons belonging to

the group opposing Petitioner no.1 and Chandrahar Manohar Chavan came to be rejected. The actions of Petitioner no.1 and the said Chandrahar

Chavan were actuated by a malifide design to rig the election to the village panchayat. The device adopted by the Petitioners was to scuttle the very

participation of the candidates of the opposite group in collusion with the Gramsevak of village panchayat, Khuneshwar, and the Returning Officer as

well. In the circumstances, the State Election Commission was justified in directing cancellation of the tainted election process, and holding of a fresh

election process.

10. With these pleadings, the petitions were set down for hearing. We have heard Mr. Chaudhari, the learned Counsel for the Petitioners; Mr. Shetye,

the learned Counsel for Respondent nos.1 and 2 â?" State Election Commission; Mr. Patel, the learned Counsel for Respondent nos.3 and 4; Mr.

Inamdar, the learned Counsel for Respondent nos.5 and 6; Mr. S. B. Thorat, the learned Counsel for Respondent no.8 and Mr. V. M. Thorat, the

learned Counsel for Respondent nos.9, 10 and 12 to 16.

11. Mr. Chaudhari took a slew of exceptions to the course adopted by Respondent no.1. Firstly, Respondent no.1 is, in law, not empowered to cancel

the election on the eve of actual polling. Secondly, Respondent no.1 â?" State Election Commission transgressed its supervisory power in directing

cancellation of the election on the basis of the allegations of improper rejection of the nominations, which was a matter of a proper election dispute.

Thirdly, the action of the commission, in a way, amounts to an egregious overreach as this Court by its order dated 21st October, 2015 had declined to

entertain the Writ Petition Nos.29151 to 29154 of 2015 filed by Respondent nos.9, 10, 11 and 14 against rejection of their nominations. Fourthly, the

recourse to the residuary provisions contained in subÂsection (4) of Section 10A could not have been made by Respondent no.1 â?" State Election

Commission in the facts and circumstances of the instant case as the ultimate impact of the action of Respondent no.1 was to stall the election

process.

12. Per contra Mr. Shetye, the learned Counsel for Respondent nos.1 and 2 stoutly defended the impugned action of Respondent no.1. It was urged

with tenacity that the State Election Commission is entrusted with the constitutional responsibility to hold free and fair elections. The provisions contained in Article 243K of the Constitution of India vest all pervasive control in the State Election Commission in the matter of election to the panchayats, like the control vested in the Election Commission by Article 324 of the Constitution of India in the matter of elections to Parliament and the Legislatures of the States and the offices of the President and Vice-President. The provisions contained in sub-section (4) of Section 10A of the Act of 1959 are required to be read in juxtaposition with the power of superintendence and control vested in the State Election Commission under Article 243K of the Constitution of India. There is no reason to construe the broad amplitude of the provisions contained in Article 243K and Section 10A(4) of the Act of 1959, in a restrictive sense. In a given situation, when the State Election Commission comes to a conclusion that the elections to the panchayat can not be conducted in a fair, transparent and impartial manner, the State Election Commission is duty bound to take remedial measures, including a direction for cancellation of the election, and conducting of the election process afresh, urged the learned Counsel for Respondent nos.1 and 2.

13. The learned Counsel would further urge that in the facts of the case, where the enquiries conducted by the responsible officers of the State, revealed irregularities on the part of the officers, who were entrusted with the responsibility of ensuring fair election, the State Election Commission was within its right in directing cancellation of the election process. The learned Counsel for Respondent nos.1 and 2 submitted with a degree of vehemence that this Court can not inquire into the justifiability of the satisfaction arrived at by the State Election Commission, in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

14. The learned Counsels for the private Respondents have supported the impugned orders, by advancing submissions on similar lines as advanced by the Counsel for Respondent nos.1 and 2.

15. Before we advert to deal with the justifiability of the impugned action, in the light of aforesaid submissions, we deem it appropriate to notice the nature of the power of superintendence and control vested in the State Election Commission in the matter of election to Village Panchayat, and the

development of law in this regard. A clear appreciation of the contours of power of the State Election Commission would facilitate a seamless enquiry

into the question as to whether the State Election Commission was justified in resorting to the impugned actions, in the facts and circumstances of the instant case.

16. Article 40 of the Constitution enjoins the State to take steps to organise village panchayats and endow them with such powers and authority as

may be necessary to enable them to function as units of self-Government. To give impetus to the democratic institutions of local self-Government at

the grass root level, Part IX of the Constitution dealing with 'The Panchayats', came to be inserted by the Constitution 73rd Amendment Act

1992. Article 243K of the Constitution of India, thus, provides that the superintendence, direction and control of the preparation of electoral rolls for,

and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be

appointed by the Governor. Clause 4 of Article 243K further provides that, subject to the provisions of the Constitution, the Legislature of a State may,

by law, make provision with respect to all matters relating to, or in connections with, elections to the Panchayats.

17. This constitutional prescription, vesting the power of superintendence and control in the State Election Commission is akin to the power of

superintendence and control vested in the Election Commission in the matter of elections to Parliament and State Legislatures as provided in Article

324 of the Constitution of India.

18. It would be contextually relevant to note that Section 10A of the Act of 1959 incorporates an identical provision to the effect that the

superintendence, direction and control of the preparation of the electoral rolls for, or conduct of elections to the panchayats shall vest in the State

Election Commission. Subsection (4) of Section 10A of the Act of 1959, further saves the general and residuary power of the State Election

Commission by providing that notwithstanding anything contained in the Act and the Rules, the Commissioner may issue such special or general orders

or directions which may not be inconsistent with the provisions of the Act for fair and free elections.

19. A conjoint reading of the aforesaid constitutional prescription and the

provisions of the Act, 1959, would lead to an inference that in the matter of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the panchayats, the power vests in State Election Commission. Undoubtedly, the legislature of the State may, by law, make provision with respect to all the matters relating to or in connection with the elections to the panchayat. It appears that if there is any law made by the State Legislature, then the State Election Commission has to regulate its action and decisions in conformity with the provisions of valid law made by the State Legislature. Conversely, in the absence of law made by the State Legislature, on a particular matter, the State Election Commission has the requisite authority to pass appropriate order in the matter of the preparation of electoral rolls and the conduct of the elections conducive to a fair, transparent and impartial electoral process.

20. At this juncture, it is necessary to note the jurisdictional constraints of the courts in electoral matters. Article 243(b) of the Constitution provides that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such a manner as is provided for by or under any law made by the Legislature of a State. Clause (b) of Article 243 is *pari materia* with Clause (b) of Article 329 which proscribes interference by courts in the electoral matters, for election to the parliament and State Legislatures except by way of election petition. In tune with the aforesaid constitutional provisions, Section 15 of the Act of 1959 designates the Court before which the validity of any election of a member of a panchayat, may be called in question by any candidate at such election or by any person qualified to vote at such election and makes the consequential and incidental provisions. Section 15A of the Act incorporates bar to interference by courts by declaring that no election to any panchayat shall be called in question except in accordance with the provisions of Section 15; and no Court other than the Judge referred to in that Section shall entertain any dispute in respect of such election.

21. Since the provisions of Article 243K are *pari materia* with the provisions of Article 324 of the Constitution, the exposition of law as regards the scope of, and limitations on, the power of superintendence and control of the Election Commission under Article 324, would equally govern the said power of the State Election Commission in the matter of elections to village

panchayats under Article 243K. Likewise, the enunciation of the legal position on the jurisdictional limitations on interference in electoral matters, by courts, under Article 329(b) would clearly govern the said aspect under Article 243(b) in the matter of interference by courts in election to panchayats.

22. The earliest pronouncement which enunciated the import of the term 'election' under Part XV of the Constitution, in the backdrop of the bar, contained in Article 329 (b), to interference by courts in electoral matters, was of the Constitution Bench in the case of N. P. Ponnuswami vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist., and others AIR 1952 Supreme Court 6.4 In the said case the nomination of the appellant therein for election to the Madras Legislative Assembly from Namakkal Constituency was rejected by the Returning Officer. The said rejection was sought to be challenged by the appellant by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution. The Madras High Court did not entertain the challenge in view of the provisions contained in Article 329 of the Constitution of India. Dismissing the appeal, the Supreme Court expounded the legal position. Explaining the import of the word 'election' used in Part XV of the Constitution, the Court observed as under:

“It seems to me that the word ‘election’ has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression, ‘conduct of elections’ in Art. 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Art. 329 (b).

“..”

(emphasis supplied)

After referring to the Halsbury's Laws of England, the Court further observed that the word ‘election’ may be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps some of which may have an important bearing on the result of the process.

23. In the aforesaid case, after adverting to the question as to whether the law of elections in this country contemplates two attacks on matters

connected with election proceedings: one, while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of

the Constitution of India, and another, after they have been completed by means of an election petition, the Supreme Court recorded the conclusions in

paragraph 16 as under:

16. The conclusions which I have arrived at may be summed up briefly as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a

matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all

disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or

protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to

anything which does not affect the election; and if any irregularities are committed while it is in progress and they belong to the category or

class which, under the law by which elections are governed, would have the effect of vitiating the election and enable the person affected to

call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before

any Court while the election is in progress.

(emphasis supplied)

24. The aforesaid pronouncement of the Supreme Court, was followed with approval by another Constitution Bench in the case of Mohinder Singh Gill

and another vs. The Chief Election Commissioner, New Delhi and others. (1978) 1 Supreme Court Cases 40.5 In the said case, the Election

Commission had cancelled the election process in the Ferozepore parliamentary constituency, and directed a fresh poll for the whole constituency in

the wake of the allegations of destruction of postal ballot papers and the removal of ballot boxes from one of the assembly segments of the

constituency. The appellant therein asserted that the Election Commission had arbitrarily cancelled the election process, which would have otherwise

returned him as the elected candidate.

25. In the light of the aforesaid facts, in paragraph 29 of the said judgment, the Constitution Bench noticed that there were two types of challenges.

The first challenge relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and

acts in furtherance of an election. In the facts of the said case, the question which the Supreme Court pose unto itself was, 'whether the order for

reÂpoll of the Chief Election Commissioner was, â??anything done towards the completion of the election proceedingsâ? and whether the

proceedings before the High Court facilitated the election process or halted its progress'. The later part of the question was said to revolve around the

point as to whether the cancellation of the poll and reordering of fresh poll was 'part of election', and challenge to it was, 'calling it in question'.

26. In paragraph 31, the Supreme Court observed, inter alia, that if the regular poll, for some reasons, has failed to reach the goal of choosing by

plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. On the said

assumption, it was held that a writ petition challenging the cancellation coupled with reÂpoll amounts to calling in question a step in 'election' and is

therefore barred by Article 329(b). If no reÂpoll had been directed the legal perspective would have been very different. The mere cancellation would

have then thwarted the course of the election and different considerations would have come into play.

27. After an elaborate consideration the Constitution Bench expounded the law in the following terms:

â??92 (1) (a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commissioner and its officers for carrying

forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and

culminating in the final declaration of the returned candidate.

(2) (a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the

conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other,

depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid

law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is

silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition.

Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as

conformance to such canons can reasonably and realistically be required of it as fairplay. Action in a most important area of the constitutional

order, viz., elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To put the matter beyond

doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability.

Whether it has been complied with is left open for the Tribunal's adjudication.

(3) The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the

election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election

Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such

processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do

other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing

law.??

(emphasis supplied)

28. It would be advantageous to notice that the aforesaid two Constitution Bench judgments of the Supreme Court were again considered by a Three

Judge Bench of the Supreme Court in the case of Election Commission of India vs. Ashok Kumar and others (2000)8 Supreme Court Cases 216. In

the said case, in exercise of the writ jurisdiction under Article 226 of the Constitution of India, the Kerala High Court had stayed the notification issued

by the Election Commission of India containing directions as to manner of

counting of votes for the parliamentary elections. The Supreme Court was again confronted with the question of jurisdiction of the High Court to entertain petitions under Article 226 of Constitution and issue interim directions

after commencement of the electoral process. After referring to the aforesaid two Constitution Bench judgments, the Supreme Court observed that

there may be a few controversies which may not attract the wrath of Article 329(b), as indicated in paragraph 20, which reads as under:

â??20. Vide para 29 in Mohinder Singh Gill case, the Constitution Bench noticed two types of decisions and two types of challenges : The first

relating to proceedings which interfere with the progress of the election and the second which accelerate the completion of the election and acts in

furtherance of an election. A reading of Mohinder Singh Gill case points out that there may be a few controversies which may not attract the wrath of

Article 329 (b). To wit:

(i) Power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be

expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out

where the repository of power may act in breach of law or arbitrarily or mala fide.

(ii) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the

election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of

the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law.

In Mohinder Singh Gill case, this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under

Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one

nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of

preventing an election and not promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream.â??

(emphasis supplied)

29. The Supreme Court, after referring to other pronouncements on this aspect,

concluded as under:

29. The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result

of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached

and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute

till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay

on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial

determination.

(emphasis supplied)

30. Though the aforesaid pronouncements, essentially dealt with the limitations on, and the extent of, interference by the High Court under Article 226

of the Constitution of India, in the matter of the election, in general, and the decisions taken by the Election Commission, in particular, these

pronouncements also indicate the types of the decisions taken by the Election Commission, which may be amenable to the writ jurisdiction of the

Court.

31. The position which emerges is that the term election, which occurs in Article 243K has a wide connotation and includes the entire process from

the issue of the notification to the declaration of results under the Act of 1959 and the Rules of 1959. Likewise, the words, "superintendence,

direction and control" used in Article 243K have a wide connotation and are reservoir of the powers which are not specifically spelled out but are

necessary to be exercised for the avowed object of holding free and fair elections. Thus construed broadly, the said power includes within its fold,

even a power to direct re-poll or for that matter, a direction for cancellation of the election and holding a fresh election process, in a deserving case.

This power to order a fresh electoral process is not controlled by Rule 31 and 31A of the Rules of 1959, which empowers the State Election

Commission to order adjournment of poll in emergencies, and a fresh poll in case of destruction of ballot boxes etc. Purity of election process is of

paramount importance. If the State Election Commission comes to the conclusion

that the electoral process may not result in a free and fair election

and the entire electoral process needs to be cancelled, such a direction may not necessarily be beyond the province of 'the superintendence, direction

and control' vested in the State Election Commission.

32. The crucial question which, however, wrenches to the fore is whether the State Election Commission would be justified in resorting to such a

drastic measure of cancellation of the electoral process and directing a new election, where the grievance complained of is in the realm of an election

dispute. To put it in other words, whether an irregularity in acceptance or rejection of the nominations, which is a matter of pure electoral dispute

susceptible to an election petition to be adjudicated by the special election tribunal, would empower the State Election Commission to cancel the

election?

33. Indisputably scrutiny of nomination papers is a vital stage in the election process. Rules 11 and 12 of the Rules of 1959 make provisions for the

scrutiny of the nomination papers and the decision thereon by the Returning Officer. However, scrutiny of nominations and acceptance or rejection

thereof are but a couple of steps in the electoral process. Undoubtedly, the Returning Officer is expected to discharge the said function of scrutiny of

nominations with objectivity and impartiality. The possibility of improper rejection or acceptance of nominations is recognised and addressed by law.

The legislations governing the elections, therefore, provide that improper acceptance or rejection of nominations as the ground for calling in question

the validity of any election. A reference to the provisions of Section 100 of the Representation of the People Act, 1951, may be apposite. Improper

rejection of the nomination is provided as an independent ground for declaring the election to be void, in addition to the aspects of disqualification of the

returned candidate to be chosen, and the improper acceptance of any nomination where the result of the election, in so far as it concerned the

returned candidate, has been materially affected. In this view of the matter, it is incontrovertible that the challenge to the electoral process on the

strength of the allegations of improper rejection or acceptance of nominations is a matter for election dispute and the election can not be called in

question on that ground except by way of an election petition before the designated court/tribunal.

34. The reason for postponing the adjudication of such challenge, post election, is not far to seek. If every improper rejection or acceptance of nomination is allowed to be agitated before the completion of election, no electoral process can be taken to its logical culmination. Moreover, the question as to whether, in a given case, nomination was improperly rejected or accepted is essentially rooted in facts. The said question can hardly be adjudicated de hors the factual foundation and material in proof thereof. In a majority of cases, the issue can not be decided without evidence in support or rebuttal. Thus, the challenge to the validity of election based on the ground of improper acceptance or rejection of nomination is relegated to post election stage.

35. It was strenuously urged on behalf of the Respondents that in the case at hand the improper rejection of the nomination was not restricted to one or two candidates. The Returning Officer and the Gramsevak, who were entrusted with the responsibility to ensure free and fair election, connived with the opposite group and thus the electoral process was vitiated. Even if we construe these submissions rather generously and take the allegations of misdemeanour on the part of the Gramsevak, Village Panchayat Khuneshwar and the Returning Officer, at par, yet the nature of the dispute does not change. Even the improper acceptance or rejection of nominations of multiple candidates, selectively, is rooted in facts. It would be rather hazardous to draw an inference that the entire electoral process was vitiated merely because nominations of the candidates belonging to a particular group were allegedly rejected. The ultimate question that warrants adjudication is whether the nomination was improperly rejected in each case.

36. The aforesaid submission is also required to be appreciated in the light of the fact that in the electoral battle, allegations and counter-allegations are hurled thick and fast. The veracity of the allegations reflecting upon the qualification or disqualification of a particular candidate to contest the election is required to be decided in the light of the established facts. Reverting to the facts of the instant case, the risk in adjudicating such claims on the basis of mere allegations can be demonstrated by reference to the report of the Block Development Officer dated 23rd October, 2015, which forms the basis of the further report of the District Collector, Solapur, to the State Election Commission; the trigger for the passing of the impugned

order. A perusal of the report dated 23rd October, 2015, indicates that Respondent no.16 herein had made a grievance that the Gramsevak of village Khuneshwar had issued false certificates to six candidates of the opposite group that they have and use the toilet facility. The report reveals that, on an enquiry, it transpired that out of those six persons, the toilet facility was not available for two persons only, namely, Netaji Maruti Chavan and Shahu Arun Chavan. Rest of the four persons had toilet facility and the certificates issued by the Gramsevak were proper. Evidently, the allegations in respect of those four persons were found to be, prima facie, incorrect, even though the said enquiry was not in the nature of a formal adjudication after providing an efficacious opportunity of hearing to all the interested persons. Precisely for this reason, the matter ought to be left for adjudication by the electoral tribunal in an election petition.

37. In the aforesaid view of the matter, we are persuaded to hold that the allegations of improper acceptance or rejection of each of the nominations were required to be adjudicated by the election tribunal after the conduct of the election. The State Election Commission was not equipped to take a decision to cancel the entire election process on the basis of the reports that some nominations were improperly accepted or rejected. The impugned decisions, therefore, suffer from the vice of arbitrariness and also run counter scheme of the adjudication of electoral dispute in the manner known to law, that is by way of election petition. In our view, there is an inherent risk in resorting to the residual provisions contained in sub-Â section (4) of Section 10A of the Act of 1959, to countermand the elections on the strength of allegations of improper acceptance or rejection of nominations, which warrant factual adjudication.

38. A profitable reference, in this context, can be made to a recent Three Judge Bench judgment of Supreme Court in the case of West Bengal State Election Commission vs. Communist Party of India AIR 2018 Supreme Court 396.4 In the said case, as many as 20,159 seats of the panchayats had gone uncontested. It was alleged that overwhelmingly large majority of those seats have been bagged by candidates supported by the ruling dispensation in the State of West Bengal. In the backdrop of these allegations, the intervention of the Supreme Court was sought on the ground that the process of election was polluted, on account of large scale obstructions to the

filing of nomination papers by the candidates. The Supreme Court declined to exercise the jurisdiction to interdict the declaration of the results of the uncontested seats by observing, *inter alia*, as under:

“Thirdly, once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudice the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. We are emphatically of the view that any challenge to the election must take place in a manner which is known to law.”

(emphasis supplied)

39. It is imperative to note that the Supreme Court declined to intervene in the electoral process even where the allegations were that more than 20,000 seats had gone uncontested. The question as to whether the election in each of those constituencies stood vitiated by obstruction having been caused to the candidates from filing their nominations, was ruled to be a matter for adjudication in an election petition. It is true that in the said case, the Supreme Court was not confronted with the question as to whether the Election Commission could have countermanded the elections in the backdrop of such allegations. However, the underlying principle is emphatically stated: A challenge to the validity of the election based on certain allegations rooted in facts must take place in a manner known to law, by way of an election petition.

40. This takes us to the challenge to the impugned orders based on principle of propriety, on the part of the State Election Commission, after this Court had refused to entertain the petitions challenging the rejection of nominations,

preferred by the Respondent nos.9, 10, 11 and 14. It was urged that once the learned Single Judge of this Court rejected Writ Petition Nos.29151 to 29154 of 2015, by order dated 21st October, 2015, the State Election Commission could not have ventured to cancel the election on the self-same allegations of improper rejection of nominations. It was further submitted that the impugned action of the State Election Commission amounts to sitting in appeal over the decision of this Court.

41. Mr. Shetye, the learned Counsel for the Respondent nos.1 and 2, on the other hand, submitted that Respondent nos.1 and 2 were not aware of the passing of the order dated 21st October, 2015, whereby the petitions preferred by Respondent nos.9, 10, 11 and 14 were rejected. The learned Counsel was at pains to impress upon the Court that the State Election Commissioner would not have taken any action which ran in teeth of the order passed by this Court, if the order was brought to notice of the State Election Commission. We are not inclined to delve into the aspect as to whether the State Election Commissioner was, in fact, aware of the order passed by this Court on 21st October, 2015, in above numbered Writ Petitions.

Having regard to the constitutional office which the State Election Commissioner occupies, we are sure that had the State Election Commissioner been aware of the order passed by this Court, the State Election Commissioner would have shown due deference to the said order.

42. However, we are not persuaded to assure ourselves in equal measure that even the concerned officers of the State at the District and Taluka level were unaware of the order passed by this Court on 21st October, 2015. When an election is contested fiercely, every move of the opponent is marked. The nomination forms were rejected by the Returning Officer by order dated 19th October, 2015. Respondent nos.9, 10, 11 and 14 promptly preferred the petitions, and those petitions were heard on 21st October, 2015. It would be naïve to assume that the concerned officers had no inkling of the said development of refusal by this Court to entertain the challenge against rejection of the nominations, when the reports were being prepared and submitted to the superior authorities and the State Election Commission.

43. The situation which thus emerges is that the alleged improper rejection of nominations, which constituted linchpin of the challenge to the validity of

the electoral process, was duly challenged by invoking the writ jurisdiction of this Court. This Court declined to entertain the said challenge by a speaking order dated 21st October, 2015 as this Court was of the view that since the election was already underway it would not be appropriate to exercise the discretion and entertain the petitions at that stage. In this setting of the matter, even if the issue of propriety is discounted, the ultimate impact of the impugned order viz the order passed by this Court on 21st October 2015 can not be ignored. In the view of this Court, as recorded in the order dated 21st October, 2015, the grievances of the Respondents were to be adjudicated in an appropriate proceeding, after the elections were over. The impugned orders whereby the election was cancelled on the very same factual foundation, thus, ran counter to the spirit of the order passed by this Court on 21st October, 2015. The impugned orders have the propensity to undermine the judicial determination, may be unintended.

44. The conspectus of the aforesaid consideration is that the impugned orders deserve to be quashed and set aside. This propels us to the aspect of relief. The developments in the interregnum can not be lost sight of. The elections pursuant to the publication dated 4th November, 2015 have already been held. The results of the election, however, have not been declared. The prayer of the petitioners to start the election process in terms of the election programme declared on 1st October, 2015, which was cancelled by the impugned order, cannot be considered. The situation can not be restored to the day prior to the passing of the impugned order. Conversely, since the impugned order dated 30th October, 2015, is not sustainable and deserves to be quashed and set aside, in our view, the subsequent election held in pursuance of the publication dated 4th November, 2015, also can not be legally sustained.

45. Live mandate is the soul of an electoral democracy. The peoples' representatives are expected to seek legitimacy after a specific period. Under Section 27 of the Act of 1959, the term of office of the members of the panchayat is of five years. Article 243E of the Constitution provides that every panchayat shall continue for five years from the date appointed for its first meeting and no longer and thereby proscribes the continuation in office of the members of the panchayat on the basis of a stale mandate. For this

reason also, we are persuaded to hold that it may not be in consonance with the principles of democratic governance to now declare the results of the election held in the year 2015 and allow the members elected therein to hold office for the period of five years henceforth.

46. For the forgoing reasons, we are inclined to allow the petitions and direct Respondent no.1 to hold fresh elections to the Village Panchayat

Khuneshwar in accordance with the provisions of the Act of 1959 and the Rules of 1959. Resultantly, the petitions stand allowed in the following

terms:

(i) The impugned order dated 30th October, 2015 and the order whereby fresh elections to Village Panchayat Khuneshwar were held stand quashed

and set aside.

(ii) The elections held to Village Panchayat Khuneshwar on 5th December, 2015 are declared to be invalid.

(iii) Respondent no.1 is directed to hold fresh elections to Village Panchyat Khuneshwar in accordance with law, as expeditiously as possible.

(iv) In the circumstances, the parties shall bear their respective costs.

47. Rule made absolute in aforesaid terms.

48. Mr. M. V. Thorat , the learned Counsel for Respondent nos.9, 10 and 12 to 16, seeks interim stay to the order passed by us. For the reasons

recorded in the judgment, the oral request made by the learned Counsel for Respondent nos.9, 10 and 12 to 16, does not deserve to be considered and

the same stands rejected.