
(2016) 01 KAR CK 0241

In the Karnataka High Court

Case No : Writ Petition Nos. 57303/2015, 56726-56729/2015, 56687/2015, 57832/2015, 57815/2015, 57814/2015, 56821/2015, 56820/2015, 56818/2015, 56784/2015, 56780/2015, 56379/2015, 56359/2015, 58067/2015, 57928/2015, 57886/2015, 57758/2015, 57757/2015, 56341-56342/20

S.T. Krishnegowda and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 162(3), Article 226, Article 243, Article 243-D, Article 243-D(6), Article 243-E, Article 243-K, Article 243-O, Article 329(b), Article 40, Article 80

Karnataka Panchayat Raj Act, 1993 — Section 123, Secti

Citation : (2016) 01 KAR CK 0241

Hon'ble Judges : S. Abdul Nazeer, J.

Bench : Single Bench

Advocate : Abhinay P. Patil, Advocate, for the Appellant; V.G. Bhanuprakash, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—1. Since common questions of fact and law are involved in all these writ petitions, they are clubbed together, heard and disposed of by this common order.

2. In all these cases, petitioners have sought for quashing different notifications providing for allotment/reservation of seats for the upcoming Zilla Panchayat and Taluk Panchayat elections. In some of the cases, petitioners have challenged the constitutional validity of amendment to Section 162 of the Karnataka Panchayat Raj Act, 1993 (for short "the Act") by Karnataka Amendment Act No. 17/15 in so far as insertion of the words "and such rotation shall be continued for a period of 10 years" into the proviso after the words "in the District". A challenge has also been made to Karnataka Act No. 37/2003 dated 1.10.2003 whereby the words

"State Election Commission" has been substituted for the word "Government" in sub-section (1) of Section 162.

3. The petitioners in all these cases are the voters residing in different parts of the State of Karnataka. Some of them are aspiring candidates to contest the ensuing Zilla Panchayat and Taluk Panchayat elections. Their main grievance is in relation to the reservation of seats by State Election Commission. It is their case that the reservation of seats has been made in an arbitrary manner without taking into consideration the factual aspects and without adhering to rotation system. It is contended that Election Commission ought to have granted an opportunity of hearing to the voters by publishing the draft notifications.

4. The Election Commission has filed objections to the writ petitions in W.P. Nos. 56341-56342/2012, which has been adopted in all other cases. It is contended that Section 162(1) of the Act provides for reservation of seats in favour of Scheduled Caste and Scheduled Tribes. It also provides for the proportion of the said reservations and also reservation of seats in favour of the backward classes. The provisions of Karnataka Panchayat Raj (Reservation of seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998 (for short "the Rules") are framed by the State Government laying down the procedure for reserving the seats. The Election Commission has strictly followed the provisions of the Act and the Rules by fixing the total number of seats reserved for Scheduled caste, Scheduled Tribe and backward classes. The seats remaining after allotting the aforesaid reservations have been classified as General seats. The Election Commission has also provided 50% horizontal reservation for women in all categories. The total population of every District including the total population of Scheduled caste and Scheduled Tribe has been taken into consideration by the Election Commission while fixing the reservations and allotment has been made strictly in accordance with law.

5. I have heard Sri Jayakumar S. Patil, Sri D.N. Nanjunda Reddy, Sri Vivek Reddy, Sri Ashok Haranahalli, Sri Dhyan Chinnappa, learned Senior counsel and Sri M. Nagarajappa and other learned Advocates appearing for the petitioners, Sri K.N. Phanindra, learned Counsel appearing for the respondent-Election Commission and Sri V.G. Bhanuprakash, learned AGA for the respondent-State.

6. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioners in some of the writ petitions submitted that while granting reservation under Section 162 of the Act, the Election Commissioner ought to have adhered to rotation system and should have made an effort to avoid repetition of the categories in the impugned notification. The Election Commissioner failed to follow the rotation policy mandated under the Act, which has resulted in the same category deriving the benefit for the second term. The Election Commissioner has not applied his mind while making the reservation. It is argued that under Article 243-D of the Constitution, it was incumbent upon the Election Commission to follow the rotation policy. It is argued that rotation for each of the reserved categories requires to be allotted by rotation in a circular

order among the Constituencies of a particular kind till the said category is represented in all the Constituencies of that kind and allotment to the said category cannot be repeated in any Constituency till a cycle of rotation is completed. Every reserved category has to have an independent cycle of rotation. Every such cycle shall be independent of its previous or the succeeding cycle. Before completion of one cycle of rotation for a reserved category, if allotment to that category is repeated in any Constituency, it would be violative of the principle of rotation and such an allotment is illegal and is liable to be set aside.

7. Learned Advocates appearing for different petitioners in other writ petitions have made similar submissions in so far as the rotation of reservation policy is concerned.

8. Sri Vivek Reddy, learned Senior Counsel has also made similar submission in so far as rotation is concerned. It is his further submission that proviso to Section 162 of the Act as amended by Karnataka Act No. 33/2003 is unconstitutional. It is his further submission that a Division Bench of this Court in CHANNIGAPPA & ANOTHER VS. STATE OF KARNATAKA AND OTHERS ? , ILR 2000 KAR 2941 has directed that in future when the Government exercises its statutory power and acts in the matter of rotation/delimitation/adjustment of seats, in terms of the rules, affected parties are to be given an opportunity to have their say with regard to their grievances in the matter. In other words, prior publication of the notification is a must. The Court has observed that the State Government would be well advised to amend the Rules providing for an opportunity to the affected general public to avoid any criticism on the Government. The direction contained in this judgment has not been followed by the Election Commission and the State Government. Thus, the notification is bad in law. In this connection, he strongly relied on the decision of the Apex Court in the case of STATE OF U.P. AND OTHERS VS. PRADHAN SANGH KSHETTRA SAMITI AND OTHERS ? , 1995 Supp (2) SCC 305.

9. Sri D.N. Nanjunda Reddy, learned Senior Counsel would contend that the question in relation to the validity of the Rules providing for rotation has been considered by the Division Bench of this Court in H.C.YATHEESH KUMAR AND OTHERS VS. THE KARNATAKA ELECTION COMMISSION AND OTHERS ? , ILR 2005 KAR 3323. In the said decision, it has been held that the Rules are unconstitutional. The order of stay granted by the Supreme Court does not amount to revival of the Rules. In this connection, he has relied on the decision of the Apex Court in the case of SHREE CHAMUNDI MOPEDS LTD. VS. CHURCH OF SOUTH INDIA TRUST ASSOCIATION, CSI CINOD SECRETARIAT, MADRAS ? , (1992) 3 SCC 1. Therefore, the notifications issued by the Election Commission is invalid.

10. Sri Dhyan Chinnappa, learned Senior Counsel submits that the amendment to proviso to Section 162(1) of the Act is first of all invalid and it is violative of Article 243-D of the Constitution. Assuming that it is valid, it has retrospective

operation. It is in the nature of clarificatory amendment.

11. Sri M. Nagarajappa, learned Counsel appearing for some of the petitioners submits that Act No. 37/2003 delegating power to the State Election Commission for reservation of seats in the Zilla Panchayat, is invalid.

12. Learned Counsel appearing for various other writ petitioners have urged almost similar contentions.

13. Sri K.N. Phanindra, learned Counsel appearing for the respondent-State Election Commission submits that the State Election Commission has strictly followed the provisions of the Act and the Rules while fixing the total number of seats reserved for Scheduled Caste, Scheduled Tribe and backward classes and allotment thereof. The seats remaining after allotment as above has been classified as General seats. The Election Commission has also provided for 50% horizontal reservation for women in all categories. The total population of every District including the total population of Scheduled Caste and Scheduled Tribe has been taken into consideration while fixing the reservations. At the very first step, the population of the entire District and the number of seats fixed for the entire District is taken into consideration and after calculating the proportion, the number of Scheduled Caste and Scheduled Tribe, BC-A, BC-B and General seats and also the number of seats reserved in each category for women is fixed for the entire District. Thereafter, the population of every Taluk within each respective District is taken into consideration for allotting the reservations to the seats falling within each Taluk. The Election Commission has therefore prepared a chart of the entire District showing the names of all Taluks falling within a District and also the Scheduled Caste and/Scheduled Tribe population of each Taluk. After the preparation of the chart of the population of each Constituency in each Taluk, the Election Commission depending on the number of Scheduled Tribe seats available in the District has allotted the same to the Taluk having the highest Scheduled Tribe population. The same procedure has been followed for allotting the Scheduled Caste seats within the District. In case, a Constituency within a Taluk has the highest Scheduled Tribe population but had been allotted a Scheduled Tribe seat in the previous term, the said Constituency is eliminated and the next Constituency having the highest Scheduled Tribe population is allotted the Scheduled Tribe seat. The same procedure has been followed while allotting Scheduled Caste seats thereafter.

14. It is argued that having regard to the specific bar contained in Article 243-O of the Constitution of India, proviso to Section 162(3) of the Act as amended cannot be challenged. The issue as regards the bar under Article 243-O is pending before the Hon'ble Supreme Court in Civil Appeal No. 4523/2005. It is argued that Act No. 17/2015 is valid and is prospective in nature and it is not retrospective. The amendment Act is not declaratory in nature and is substantive in nature. Act 17/2015 is not contrary to Article 243-D of the Constitution. 1998 Rotation Rules are not affected by virtue of Act 17/2015. The interim order granted by the Hon'ble Supreme Court in Civil Appeal No. 4523/2005 had stayed

the operation and suspended the decision of the Division Bench of this Court in H.C. YATHEESH KUMAR's case (supra). Therefore, the Rotation Rules is deemed to be in force. Article 243-D of the Constitution does not set out any procedure or guidelines for giving effect to rotation of reservations. It only provides for allotment/fixing of reservations to the Panchayat areas. By virtue of this Article and Section 162 of the Act, the reservation to the Panchayat area as a whole i.e. to a particular Zilla Panchayat or a Taluk Panchayat is fixed by the State Election Commission based on the parameters set out therein. Thereafter, for effecting rotation of reservations, steps are taken by the Election Commission by following the procedure as set out under 1998 Rotation Rules. The reservations are allotted to the Taluks within each District and thereafter within each Taluk by rotation based on population of Scheduled Caste and Scheduled Tribe.

15. Having regard to the contentions urged broadly, the points for consideration in these writ petitions are:

(i) Whether the reservation of the seats by the Election Commission is valid in law?

(ii) Whether The State Election Commission is justified in reserving the seats in accordance with the Rotation Rules having regard to the interim order granted by the Hon'ble Supreme Court in Civil Appeal No. 4523/2005?

(iii) Whether Act No. 17/2015 amending proviso to Section 162(3) of the Panchayat Raj Act, 1993 is constitutionally valid?

(iv) Whether this amendment has retrospective effect?

(v) Whether the Election Commission was justified in issuing a notification impugned herein without its prior publication?

(vi) Whether Act No. 37/2003 amending Section 162(1) of the Panchayat Raj Act, 1993 is valid?

16. Before proceeding to consider the above points, let us understand the objects and reasons for passing the Constitution 73rd and 74th Amendment Acts, 1992, which inserted Parts IX and IXA of the Constitution. In the Government of India Act, 1935, the power to enact legislation was specifically given to the Provincial Legislature by Entry 12 in the Provincial Legislative List. By virtue of this power, new Acts were enacted by many States vesting powers of administration, including criminal justice, in the hands of the Panchayats. Notwithstanding such existing legislation, the makers of the Constitution of Independent India were not satisfied with the working of these local bodies as institutions of popular Government and, therefore, a Directive was included in the Constitution in Article 40 as under:

"The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

17. But notwithstanding this Directive, not much attention was given to hold elections in these local units as a unit of representative democracy in the country as a whole. Therefore, it was considered necessary to further the organization of these local units by inserting specific provisions in the Constitution itself on the basis of which the Legislatures of the various States might enact detailed laws according to the guidelines provided by the Constitutional provisions. The ideas so evolved, culminated in the passing of Constitution 73rd and 74th Amendment Acts, 1992, which inserts Parts IX and IXA in the Constitution. These constitutional amendments contemplated a hierarchical structure of elected local bodies. Part IX of the Constitution envisages a three tier system of Panchayats, namely, (a) The village level; (b) The District Panchayat at the district level; and (c) the Intermediate Panchayat, which stands between the village and district Panchayats in the State.

18. In furtherance of the 73rd Amendment of the Constitution, the Karnataka Panchayat Raj Act, 1993 was enacted by the State Legislature providing for the three tier Panchayat Raj system in the State with elected bodies at the Village, Taluk and District levels, in order to achieve the objectives such as democratic decentralization for greater participation of the people and more effective implementation of rural development programmes, empowerment of weaker sections and to function as units of local-self Government.

19. In order to effectuate the purpose of the Act, the State Government has made the Karnataka Panchayat Raj (Reservation of seats in Taluk Panchayats and Zilla Panchayats by rotation) Rules, 1998 ("Rotation Rules" for short).

20. Section 162 of the Act provides for the reservation of seats for Scheduled Caste and Scheduled Tribes in Zilla Panchayats to be undertaken by the State Commission. The said Section also provides for preparation of the said reservation. Section 162(2) provides for reservation of seats in favour of backward classes. The Rotation Rules framed by the State Government in exercise of power under Section 311 of the Act read with Sections 123 and 162 lay down the procedure for reservation of the seats.

21. Section 124(c) of the Act determining the territorial constitution and the constituencies in which seats are reserved for Scheduled Caste, Scheduled Tribe, backward classes and women read with Section 163 providing for delimitation of territorial constituencies as amended by Act No. 8/2000 and the notifications issued by the State Government in the year 2000 identifying the reservation of constituencies to Scheduled Castes, Scheduled Tribes, Backward Classes and for Women to Taluk Panchayats and to Zilla Panchayats was challenged in a public interest litigation before this Court in CHANNIGAPPA's case (supra). One of the arguments in the said case was whether the Act 8/2000 amending Section 162 of the Act whereby, the words "State Election Commission" has been substituted by the words "Government" is invalid and is violative of Article 243-D of the Constitution? Another question was whether the rules of natural justice is applicable when the Government in exercise of statutory powers alters the

reservation by way of rotation? While upholding the validity of the amendment, the Division Bench in paragraph 39 has observed as under:

"39. We, however, direct that in future as and when Government exercises its statutory power and acts in the matter of rotation/delimitation/adjustment of seats, in terms of the rules, affected parties are to be given an opportunity to have their say with regard to their grievances in the said matter. We would further observe that the State Government would be well advised to amend the rules providing for an opportunity to the affected general public to avoid any criticism on the Government."

22. When the seats were reserved for the election to the Zilla Panchayats in the year 2005, writ petitions were filed challenging the validity of the Rules in H.C. YATHEESH KUMAR's case (supra). In the said case, the Division Bench has framed the following questions for consideration:

"(1) Whether this Court has no jurisdiction to entertain the writ petitions under Article 226 of the Constitution in view of the bar under Article 243-O of the Constitution of India?

(2) Whether the Karnataka Panchayat Raj (Reservation of Seats in Taluka Panchayats and Zilla Panchayats by Rotation) Rules, 1998 are ultra-vires to Section 162 of the parent Act of 1993 and Article 243-D of the Constitution of India?

(3) Whether the impugned notifications issued by the State Election Commission on different dates between mid-April and end of May, 2005 relating to the allotment of reserved category seats to different Constituencies are contrary to Parent Act, 1993 and Article 243-D of the Constitution?

(4) Whether the impugned notifications issued by the State Election Commission on different dates between mid April and end of May 2005 relating to delimitation of the constituencies in Zilla Panchayat and Taluka Panchayat are liable to be quashed?"

23. While answering the first question, the Division Bench held that there is no bar for this Court to entertain the writ petition. On the second question, it was held that allotment of seats on the basis of population by Talukwise is contrary to Article 243-D of the Constitution and Section 162 of the Act. It was also held that sub-rule (4) of Rule 3 is contrary to Article 243-D of the Constitution and Section 162 of the Act.

24. This judgment of the Division Bench was challenged by the Election Commission by filing SLP before the Supreme Court raising the following questions:

"(1) Whether the Division Bench erred in failing to appreciate that Article 243-O is a complete bar on the interference of the High Court under Article 226 in regard to matters stipulated therein?

(2) Whether the High Court erred in failing to appreciate that the ratio in Chandrakumar's case would have no application to case where the bar on interference of Courts is a Constitutional bar?

(3) Whether the High Court erred in failing to appreciate that the term "election" is wide enough to take into its ambit the process of delimitation of constituencies and allocation of seats/reservation?

(4) Whether the High Court erred in holding that the writ petitions were maintainable?

(5) Whether the High Court erred in overlooking the series of judgments of this Hon'ble Court reiterating time and again that the election process should not be interfered with?

(6) Whether the impugned judgment is in the teeth of the judgment of this Hon'ble Court in the case of Boddula Krishnaiah Vs. State Election Commissioner, A.P. , (1996) 3 SCC 416 and N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency ? , AIR 1952 SC 64 as regards the finding on maintainability of the writ petitions are concerned?

(7) Whether the High Court erred in failing to appreciate that principles of natural justice are not required to be followed for the purposes of delimitation of constituencies as held by this Hon'ble Court in the case of Tulsipur Sugar Company Vs. Notified Area Committee , (1980) 2 SCC 295 and State of Punjab Vs. Tehal Singh , (2002) 2 SCC 7?

(8) Whether the High Court failed to appreciate that the Rules and Notifications impugned in the writ petition are valid and legal and are not liable to be struck down?

(9) Whether the High Court failed to appreciate that the Rules and Notifications impugned in the writ petition are valid and legal and are not liable to be struck down?

(10) Whether the High Court erred in holding that Taluk wise allocation of reservation is contrary to Article 243-D and the Karnataka Panchayat Raj Act, 1993?"

25. Special leave was granted in the said case and the matter was registered as Civil Appeal No. 4523/2005. An interim order was passed as under:

"Respondent Nos. 1 and 2 who were writ petitioners in the High Court have chosen not to make appearance though noticed in the matter of grant of interim relief. The learned Counsel for the respondent No. 3-State of Karnataka does not oppose the prayer made by the appellant-Commission.

Heard on the question of grant of interim relief. The learned Senior Counsel for the appellant invites our attention to the Constitution Bench decision of this Court in the case of Meghraj Kothari Vs. Delimitation Commission and Others ? ,

1967 (1) SCR 4000.

In view of the fact that special leave has been granted and the matter registered as a Civil Appeal, this Court would certainly examine the constitutional and legal issues arising for decision in the case. But, we are clearly of the opinion that elections ought to be held and cannot be kept in abeyance indefinitely. The operation of the impugned judgment of the High Court is directed to be stayed. Let the elections be held which shall be subject to the result of this appeal."

26. An application was filed for vacation of the interim order. The Supreme Court rejected the said application by a detailed order. This decision is reported in (2006) 9 SCC 181 (between KARNATAKA STATE ELECTION COMMISSION VS. H.C. YATHEESH KUMAR AND OTHERS). The observations of the Supreme Court in paragraph 5 and 6 of the judgment is as under:

"5. We have heard learned Senior Counsel appearing for the parties on question of vacation of stay. Elections were last held in July 2000, the Rules held to be ultra vires by the High Court were made in the year 1998 and the writ petitions were filed in the year 2005. As already noted, the order which has led to the preparations being made and huge amounts spent for conduct of elections was passed by this Court on 3.10.2005, the calendar of events published on 14.10.2005 and the present applications have been filed on 16.11.2005. Under Article 243-E of the Constitution, the Panchayat elected in the year 2000 will continue for five years from the date appointed for its first meeting and no longer. The question is also about the applicability and interpretation of Article 243-O of the Constitution which bars interference by Courts in electoral matters.

6. Having regard to the facts and circumstances of the case and having heard learned Counsel and examined the constitutional provisions, prima facie, we are of the view that the question requires deeper consideration and that is the reason that leave was granted, as above noted. Having regard to the totality of the circumstances, we find no ground to vacate the order dated 3.10.2005 which, if vacated, would result in staying the elections which have already been directed to be held subject to the result of this appeal."

(emphasis supplied)

27. With this background, let me consider the first question as to whether the rotation policy envisaged in the Rotation Rules is valid?

28. Article 243-D provides for reservation of seats. It states that seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. Article 243-D(6) contemplates the power of the State Legislatures to

reserve seats as well as Chairperson positions in favour of a backward class of citizens. The striking feature of the new provisions inserted in the Constitution under Articles 243 to 243ZG is that they are in the nature of basic provisions which are to be supplemented by laws made by the respective State Legislature, which will define the details as to the powers and functions of the various organs such as State Election Commission, State Government, etc. Article 243-D is only a basic provision in relation to reservation of seats. It stipulates allocation of seats by rotation to different constituencies. Therefore, it is open to the State Legislature to prescribe the procedure and the term of rotation.

29. The Karnataka Panchayat Raj Act, 1993 has been enacted to establish a three tier Panchayat Raj system in the State with elected bodies at the Grama, Taluka and District levels, in keeping with the aforesaid Constitution Amendment. Section 162 of the Act provides for reservation of seats in the Zilla Panchayat. Section 311 of the Act authorizes the State Government to make Rules to effectuate the purpose of the Act and it is in exercise of this power, the Rotation Rules have been made to carry out the purpose of the Act. Reservation of seats in terms of the impugned notification has been made by the Election Commission in accordance with the Rotation Rules for Scheduled Caste, Scheduled Tribe and backward classes. It is also clear that the remaining seats after allocation of the aforesaid reservation have been classified as General seats. The State Election Commission has also provided for 50% of horizontal reservation for Women in all categories.

30. The Election Commission has contended that while allotting the reservation to Zilla Panchayat, at the very first step, the population of the entire District and the number of seats fixed for the entire District is taken into consideration and after calculating the proportion, the number of Scheduled Caste and Scheduled Tribe, BC-A, BC-B and General seats and also the number of seats reserved in each category for women is fixed for the entire District. Thereafter, the population of every Taluk within each respective District is taken into consideration for allotting the reservations to the seats falling within each Taluk. It is further contended that the State Election Commission has prepared a chart of the entire District showing the names of all Taluks falling within a District and also the Scheduled Caste and Scheduled Tribe population of each Taluk. After the preparation of the chart of the population of each Constituency in each Taluk, the Election Commission depending on the number of Scheduled Tribe seats available in the District allots the same to the Taluk having the highest Scheduled Tribe population. The same procedure has been followed for allotting the Scheduled Caste seats within the District. It is only thereafter, the Commissioner following the procedure prescribed under Rule 3 of the Rules first allots the Scheduled Tribe seats and thereafter the Scheduled Caste seats and backward class seats to every constituency within a Taluk. The Election Commission once again prepares a chart of the total population and Scheduled Caste and Scheduled Tribe population of every constituency within a Taluk and then allots the Scheduled Tribe seat first to the constituency having the highest Scheduled Tribe population

provided that the said constituency did not have Scheduled Tribe seat in the previous term. In case, a Constituency within a Taluk has the highest Scheduled Tribe population but had been allotted a Scheduled Tribe seat in the previous term (2010-2015), the said Constituency is eliminated and the next Constituency having the highest Scheduled Tribe population is allotted the Scheduled Tribe seat. The same procedure has been followed while allotting Scheduled Caste seats thereafter.

31. Thus, the reservation for allocation of seats by the Election Commission has been made in accordance with the Rotation Rules and no infirmity has been shown in any of the cases by any of the learned Counsel for the petitioners.

32. The validity of Rotation Rules was challenged in H.C. YATHEESH KUMAR's case (supra). In the said decision, this Court has held that the Rotation Rules are ultra vires of the Constitution. As has been stated above, the Hon'ble Supreme Court has stayed the operation of the judgment of this Court. In other words, the order of this Court has been suspended and that is why the Election Commission has issued the impugned notification in accordance with the Rules. I do not find any infirmity in the notifications.

33. At this stage, it is necessary to consider the second question raised by Sri D.N. Nanjunda Reddy, learned Senior Counsel that the stay of operation of the judgment does not revive the Rotation Rules. Hence, the notification is bad in law. In this connection, learned Senior Counsel has relied on the decision of the Apex Court in SHREE CHAMUNDI MOPEDES LTD.'s case (supra). In the said case, the appeal has been dismissed and the High Court had granted stay of dismissal order. The Hon'ble Supreme Court observed that the stay of the dismissal order would not amount to revival of the appeal proceedings. The order which have been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out. This decision has no application to the facts of the present case.

34. Having regard to the order of stay granted by the Supreme Court, Rotation Rules is deemed to be in force, otherwise, the stay order granted by the Hon'ble Supreme Court would amount to be redundant/superfluous. As long as the interim order granted by the Supreme Court is in operation, the order of this Court in H.C. YATHEESH KUMAR's case (supra) is suspended and the Rotation Rules are operative. In fact, the Supreme Court while staying the order of this Court has observed "let the elections be held subject to the result of this appeal". It is settled that an order even though interim in nature is binding till it is set aside.

35. That brings me to the next question as to whether Act No. 17/2015 amending proviso to Section 162(3) of the Act is constitutionally valid?

36. Learned Counsel appearing for the Election Commission argues that having regard to the bar contained in Article 243-O, this question cannot be considered by this Court under Article 226 of the Constitution of India.

37. Section 162 of the Act provides for reservation of seats in the Zilla Panchayats. The first proviso as amended states that the seat reserved under sub-sections (1) and (2) shall be allotted by rotation to different constituencies in the District. The words "and such rotation shall be continued for a period of ten years" has been inserted after the word "district". In view of this amendment, the rotation has to be made for a period of 10 years. First of all, this question need not be gone into at this stage because the reservation for the current election has been made in accordance with the Rotation Rules. This argument can be considered when the Election Commission reserves the seat for the next election in the year 2020.

38. Article 243-O states that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any Court. Under this Article, there is a complete bar for considering the validity of reservation of seats under Section 162 of the Act. The Supreme Court in *N.P. PONNUSWAMI VS. THE RETURNING OFFICER ?* , AIR 1952 SC 64 while considering Article 329(b), has held in paragraph 13 as under:

"13. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Sec.80 of the Act is almost identical, with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution." It think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress."

39. In *H.C. YATHEESH KUMAR*'s case (supra), this question was also raised on behalf of the petitioners. Therefore, the first point for consideration framed by this Court is "whether this Court has jurisdiction to entertain writ petitions under Article 226 of the Constitution in view of the bar under Article 243-O of the Constitution of India?". The Court has declined to accept the contention that the writ petitions cannot be maintainable in view of the bar contained in Article 243-O of the Constitution. The first question raised by the Election Commission before the Hon'ble Supreme Court in Civil Appeal No. 4523/2005 challenging *H.C. YATHEESH KUMAR*'s case (supra) is "whether the Division Bench erred in failing to appreciate that Article 243-O is a complete bar on the interference of the High Court under Article 226 in regard to matters stipulated therein?" The matter is pending before the Supreme Court on this question also. The Supreme Court in its subsequent order, while refusing to vacate the stay granted earlier has observed "the question is also about the applicability and interpretation of Article 243-O of the Constitution which bars interference by Courts in electoral matters". Therefore, it is unnecessary to express any opinion on this question in these cases.

40. The other contention raised by Sri Dhyan Chinnappa, learned Senior Counsel is that the Constitution does not provide for a term. The amendment is a clarificatory and has retrospective operation.

41. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective.

42. The above contention of Sri Dhyan Chinnappa, learned Senior Counsel has already been answered by me while considering the first question. Suffice to say that Article 243-D is in the nature of a basic provision which are to be supplemented by laws made by the respective State Legislature, which will define the details as to the reservation of seats for Scheduled Caste and Scheduled Tribe. It is in furtherance of this provision, Section 162 of the Act has been enacted and the Rotation Rules have been made. The expression "may" contained in Article 243-D authorizes the Legislature to fix the term of reservation. The Division Bench in H.C.YATHEESH KUMAR's case (supra) has held that the expression "may" contained in this Article is a command in the context and not discretion. The matter is now pending before the Hon"ble Supreme Court. Therefore, I do not express any opinion on this question also.

43. That brings me to the next question as to whether prior publication of the notification was necessary in order to validate the impugned notification?

44. Sri Vivek Reddy, learned Senior Counsel strenuously argued that in CHANNIGAPPA's case (supra), a mandamus has been issued to the State Government to give opportunity to the affected parties to have their say with regard to their grievances in relation to the rotation/delimitation/adjustment of seats. Reliance was placed on the decision of the Apex Court in PRADHAN's case (supra). It is argued that CHANNIGAPPA's case (supra) rendered by the Division Bench is binding on this Court.

45. Sri K.N. Phanindra, learned Counsel appearing for the Election Commission submits that in PRADHAN's case (supra), the decision was rendered on the basis of concession offered by the State Government and also based on the provision contained in the UP Act existing therein. Relying on the decision of the Supreme Court in STATE OF PUNJAB VS. TEHAL SINGH AND OTHERS ? , (2002) 2 SCC 7, it was argued that once the power exercisable is legislative in character, the same is not subjected to rule of natural justice. This question was considered in H.C. YATHEESH KUMAR's case (supra). The Division Bench has directed the State Government and the State Election Commission to frame necessary Rules or guidelines in this regard. However, this judgment has been stayed by the Hon"ble Supreme Court.

46. It is no doubt true that in CHANNIGAPPA's case (supra), the Division Bench has observed that neither Article 243-D of the Constitution nor Section 162 of

the Act set out any stipulation that mandates either granting an opportunity of hearing to the voters or publishing draft notification before issuance of delimitation and reservation notifications. In paragraph 39 of the judgment in CHANNIGAPPA's case (supra), the Division Bench has observed that the State Government would be well advised to amend the Rules providing for an opportunity to the affected general public. The Rules have never been amended so far. PRADHAN's case (supra) is with regard to granting of an opportunity and publishing of draft notification for delimitation of panchayat area based on the concession offered by the State Government and also based on the provision contained in the UP Act. This is clear from paragraphs 48 and 49 of the judgment in PRADHAN's case (supra). In TEHAL SINGH's case (supra), the Supreme Court has held that declaration of a territorial area of a gram sabha and establishing of a gram sabha do not concern with the interest of an individual citizen or a particular resident of that area and it relates to public in general or concerns with a general directions of a general character which is generally held to be an act legislative in character. Once the power exercisable is legislative in character, the same is not subjected to rule of natural justice.

47. It is to be stated here that in H.C. YATHEESH KUMAR's case (supra), this question was raised on behalf of the petitioners. After considering CHANNIGAPPA's case (supra), the Division Bench has observed as under:

"36. Transparency is a must for the growth of healthy democracy. In a democratic form of Government, voters have right to know as to how the delimitation of constituencies is done and how the reserved categories of seats are allotted by rotation to different constituencies in a Panchayat. Equally it is more important to hold free and fair elections to achieve the constitutional object of social justice and decentralization of powers. We trust the State Government and the State Election Commission to frame necessary rules or guidelines to translate into reality in letter and spirit, the mandate in Article 243-D of the Constitution and Section 162 of the Parent Act of 1993 expeditiously."

48. As noticed above, this judgment has been stayed by the Supreme Court. Therefore, we have to await the decision of the Apex Court in this regard. Since there is a stay order, question of implementing the directions contained in CHANNIGAPPA's case (supra) or in H.C. YATHEESH KUMAR's case (supra) does not arise at this stage.

49. The last question for consideration is whether Act No. 37/2003 amending Section 162(1) of the Act is valid?

50. Sub-section (1) of Section 162 as amended by Act No. 8/2000 had authorised the "Government" to reserve the seats in the Zilla Panchayats instead of "State Election Commission". The Constitutional validity of this amendment was questioned in CHANNIGAPPA's case (supra). Issue No. 2 framed in CHANNIGAPPA's case (supra) is whether the Amendment Act 8/2000 is in violation of Article 243-D of the Constitution of India. At paragraph 30 of the

judgment, the Division Bench has held that amendment providing for substitution of the "Election Commission" to "the Deputy Commissioner and the Government" is constitutionally valid and is not opposed to Article 243-K of the Constitution.

51. The Amendment Act 37/2003 is only a converse situation where power of reservation is given to State Election Commission from the Government. Article 243-K clearly states 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. This Article authorizes the Legislature of a State to make provision with respect to all matters relating to or in connection with elections to the Panchayats. I am of the view that the amended Act is constitutionally valid.

52. There is no merit in these writ petitions. They are accordingly dismissed.

53. In view of the dismissal of the writ petitions as above, I.A. No. 1/2016 filed in W.P. Nos. 59683/2015 and 2042/2016 do not survive for consideration. They are accordingly dismissed. No costs.