

(2000) 04 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2481 of 2000 and Batch

State Election Commission

APPELLANT

Vs

State of Andhra Pradesh and another

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 154, 181, 182, 200
Constitution of India, 1950 — Article 243C, 243E(I), 243G, 243K, 324

Citation : (2000) 3 ALD 456

Hon'ble Judges : T. CH. Surya Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : M/s. C.P. Sarathy for Mr. V.V. Prabhakar Rao, A.A.G., SC for Election Commission, E. Ella Reddy for K.V. Subba Reddy, K.G. Kannabiran for K. Balgopal, A. Satya Prasad, T. Ravi Kumar, T. Bheemsen, K. Nageswara Reddy, R. Subhash Reddy and Movva Chandrasekhara Rao, for the Appellant;

Judgement

Motilal B. Naik, J.—Before we decide the principal issue raised in these writ petitions, we briefly narrate the contentions raised in all these writ petitions.

WPNo.2481 of 2000:

This writ petition is filed by the State Election Commission, represented by its Secretary, Buddha Bhawan, Secunderabad. Petitioner has questioned the validity of the Ordinance No.3 of 2000 dated 5-2-2000 issued by the State of Andhra Pradesh and the consequential letter dated 10-2-2000 of the first respondent and seeks to quash the same as being untenable and repugnant to Article 243-E(3) of the Constitution of India and for issuing appropriate orders.

2. According to the petitioner, as the term of office of the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh would be expiring on 17-3-2000 and 19-3-2000 respectively, it initiated action for conduct of elections to these bodies by taking appropriate steps, viz., addressing letters to all the District Collectors instructing them to take all such steps for smooth conduct of elections to Mandal Parishads and Zilla Parishads petitioner-Election Commission also

issued notification No.738/ SEC-B1/99-20 dated 7-1-2000 notifying the schedule for the revision of electoral rolls of the Gram Panchayats with reference to 1st January, 2000 as the qualifying date. The process of revision, according to the schedule was to commence on 18-1-2000 and to end on 17-2-2000. Thereafter, the petitioner-Election Commission took various steps including convening of meeting of the top level officers of the Panchayat Raj, Municipal Administration, Finance and Police Departments etc., and held meetings with the representatives of the various political parties, ascertained their views as to the holding of the elections. The petitioner-Election Commission has also addressed a D.O. Letter No.919/SEC-B2/ 99-1, dated 28-1-2000 to Sri G.S.R.C.V. Prasada Rao, Secretary to the Government, Panchayat Raj and Rural Department requesting him to finalise and notify the reservations of seats/offices in the Panchayat Raj Department to the members of SCs, STs, BCs and Women and intimate the same on or before 10-2-2000 enabling the Commission to issue the election notification.

3. At that stage, the Governor of Andhra Pradesh promulgated the Andhra Pradesh Mandal Parishads and Zilla Parishads (Transitional Arrangements) Ordinance, 2000 (Ordinance 3 of 2000) through which Ordinance, arrangements are made providing for the administration of the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh till the next ordinary elections to these bodies are held. A copy of the said Ordinance was forwarded by the first respondent to the Secretary to the State Election Commission with a request to place the facts and circumstances before the Election Commission for its consideration, more particularly, the genuine supervening difficulties in holding elections to Mandal Parishads and Zilla Parishads under the existing provisions of law.

WP No.2539 of 2000 :

4. Petitioner, an Ex-Chairman of Cuddapah Zilla Parishad, protesting against the inaction of the Government in not holding the elections to Mandal Parishads and Zilla Parishads though their terms are expiring by 17-3-2000 and 19-3-2000 respectively, has sought a direction to the State Election Commission who is the first respondent in this writ petition, to hold elections to these bodies in time. Inter alia, petitioner has also alleged that the State of Andhra Pradesh which is the second respondent in this writ petition and the first respondent have colluded in not holding elections to these bodies which, according to the petitioner, is intended to defeat the constitutional mandate as provided under Article 243-E of the Constitution of India.

WP No.2988 of 2000 :

5. Petitioner who claims to be the Director of the Institute of Social Sciences, New Delhi has filed this writ petition as a public interest litigation complaining that the inaction of the Government of Andhra Pradesh and the State Election Commission who are respondents 1 and 2 respectively in this writ petition in not

holding the elections to the local bodies within the stipulated time is illegal and also sought in direction to declare the Ordinance No.3 of 2000 dated 5-2-2000 being violative of Article 243-E of the Constitution of India as illegal and void.

WP No. 3021 of 2000:

6. Petitioner in this writ petition is the Communist Party of India (Marxist), A.P. State Committee, represented by its Secretary B. V. Raghavulu. Petitioner seeks to quash the Ordinance No.3 of 2000 issued by the Governor of Andhra Pradesh on 5-2-2000 and further seeks a declaration that the said Ordinance is ultra vires, unconstitutional and opposed to the provisions of Articles 243-E, G and K of the Constitution and consequently seeks a direction to the third respondent-State Election Commission to conduct the elections to intermediate and district level Panchayat Raj institutions and a consequent direction to the State of Andhra Pradesh to take all necessary steps for conducting the elections to these bodies forthwith.

WP No. 3893 of 2000:

1. Petitioner who is the Mandal Parishad, Kovvur, represented by its President seeks a declaration that the Ordinance No.3 of 2000 dated 5-2-2000 issued by the Governor of Andhra Pradesh as unconstitutional and opposed to the provisions of Article 243-E of the Constitution and also seeks a further direction to the respondents to continue the existing body of the Mandal Parishad, Kovvur, West Godavari District till a new body is elected.

WP No. 4244 of 2000

8. Petitioner is the Zilla Parishad Chairman, Ranga Reddy District questions the Ordinance No.3 of 2000 on various grounds and seeks to declare the same as unconstitutional and opposed to Article 243-E of the Constitution of India and consequently a direction to the State Election Commission who is the third respondent in this writ petition to conduct the elections to Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh and also seeks a further direction to the Government of Andhra Pradesh who is the first respondent in the writ petition to take all necessary steps for conducting the elections forthwith.

WP No. 4509 of 2000:

9. Petitioner No. 1 is the Chair-Person, Zilla Parishad, Nellore District and second petitioner is the ZPTC Member, Udayagiri Mandal of Nellore District. They seek a writ of mandamus declaring the Ordinance No.3 of 2000 dated 5-2-2000 issued by the first respondent-Government of Andhra Pradesh in this writ petition and the consequential G.O. Ms. Nos.85 and 86 dated 13-3-2000 issued by the second respondent as violative of Article 243-E of the Constitution of India and A.P. Panchayat Raj Act, 1994 and also to set aside the same and a further direction to the respondents to continue these petitioners and other members of Zilla Parishad, Nellore District till the elections are held.

WP No.4604 of 2000 :

10. Petitioner No.1 is the President, Mandal Praja Parishad, Shivampet, Medak District, the second petitioner is the President Mandal Praja Parishad, Gajwel, Medak District. They assail the legality of the Ordinance No.3 of 2000 and the consequential G.O. Ms. No.85 and 86 dated 13-3-2000 issued by the first respondent and seek to quash the same as being illegal, arbitrary, unconstitutional and opposed to Article 243-E of the Constitution of India and further seek a consequential direction to allow these petitioners to continue as Presidents of the respective Mandal Parishads till the elections are held.

WP No.2690 of 2000 :

11. Petitioner No.1 is the A.P. Panchayat Sarpanches Association represented by its President, petitioner No.2 is the Sarpanch, Vuyyuru Gram Panchayat, Krishna District, petitioner No.3 is the Sarpanch, Thatlapadu Gram Panchayat, Tirumalayapalem Mandal, Khammam District, petitioner No.4 is the Sarpanch, Dharmavaram Gram Panchayat, Dharmavaram Mandal, Karimnagar, District petitioner No.5 is the Sarpanch, Ragannaguda Gram Panchayat, Hayathnagar Mandal, Ranga Reddy District, petitioner No.6 is the Sarpanch, Odapalem, Bandar Mandalam, Krishna District, petitioner No.7 is the ZPTC member, Devarakonda, Nalgonda District, petitioner No.8 is the member, Gunnadavalli MPTC, Devarakonda Mandal, Nalgonda District, petitioner No.9 is the President, Andhra Pradesh MPTC Association, Bandar Mandalam and petitioner No. 10 is the President, Mandala President, Abyudayanagar, Chintalkunta, L.B. Nagar Municipality, Hayathnagar Mandal, Ranga Reddy District. These petitioners seek a different relief from this Court than the relief sought by the other writ petitioners in the above eight writ petitions.

12. According to these ten writ petitioners, consequent to the 73rd Constitutional amendment, the earlier three tier system of Panchayats in the State was replaced by five tier system. Two new offices namely, Mandal Parishad Territorial Constituency and Zilla Parishad Territorial Constituency were added, while replacing the three tier system. Elections to the Mandal Parishads and Zilla Parishads under the A.P. Panchayat Raj Act, 1994 were held in the year 1995 and their term would expire on 17-3-2000 and 19-3-2000 respectively. These petitioners complain that from the practical experience gained during these five years from 1995 to 2000, it is found that the offices of MPTCs. and ZPTCs. are superfluous and are causing hindrance for the smooth and effective functioning of Panchayat bodies at all levels. Consequently, the rural development at all levels has been affected. The problems of the Gram Panchayat cannot be effectively represented in the Mandal Parishads and Zilla Parishads by the representatives of the Gram Panchayats and Presidents of Mandal Parishads since they have no right to vote in the meetings of the Mandal Parishads and Zilla Parishads respectively. The first petitioner-association felt that the present five tier system is counterproductive and therefore, agitating for the restoration of the old three-tier system as existed prior to the 73rd amendment to the

Constitution in view of these practical difficulties and made several representations to the State Government to restore the three tier system of the Panchayats in the State of Andhra Pradesh by bringing necessary amendments to the A.P. Panchayat Raj Act. The State Legislature has also unanimously passed a resolution on 16-11-1999 requesting the Government of India to pass an amendment to Article 243C of the Constitution of India which deals with the composition of Panchayats so as to give freedom to the Legislatures either to opt for three tier system or five tier system. According to the petitioners, pursuant to the said resolution, the Union of India has introduced the Constitutional 87th Amendment Bill, 1999 in the Rajya Sabha which in effect restores the old three tier system as requested by the A.P. State Assembly in place of the existing five tier system. The said amendment is likely to be passed in the current Budget Session of the Parliament. In this background, petitioners submitted that if elections to the offices of MPTCs. and ZPTCs., are held pending the 87th Constitutional Amendment Bill which is before the Parliament, several legal and practical complications would arise apart from heavy financial burden on the State Exchequer. Keeping this aspect in view, the Government promulgated Ordinance No.3 of 2000 making transitional arrangements for the administration of these bodies till ordinary elections are held. Petitioners, therefore, justified the action of the Government in promulgating the Ordinance No.3 of 2000.

13. Keeping in tune with the Constitutional 73rd Amendment Act, 1992 which envisages to strengthen and revitalise the Panchayat Raj bodies so that they can subserve the needs of the teeming millions that live in the rural areas, the Andhra Pradesh Panchayat Raj Act, 1994 (Act No. 13 of 1994) has been enacted by the State of Andhra Pradesh. Prior to the enactment of Act No.13 of 1994, the Sarpanches of the Gram Panchayats in a Mandal formed as electoral college for electing the President of Mandal Parishad. Similarly, the Presidents of Mandal Parishads in a District formed as electoral college to elect the Chairperson of the Zilla Parishad. After the commencement of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994), two more offices, viz., Mandal Parishad Territorial Constituency (MPTC) and Zilla Parishad Territorial Constituency (ZPTC) were created introducing five tier system, which means more representation to SCs., STs., BCs., and women in these bodies.

14. Under sub-section (5) of Section 153 read with Section 154 of the A.P. Panchayat Raj Act, 1994, the term of office of the President or Vice-President of a Mandal Parishad who is elected at an ordinary election shall be five years from the date appointed by the State Election Commissioner for the first meeting of the Mandal Parishad after the ordinary election. Similarly, under sub-section (6) of Section 181 read with Section 182 of the A.P. Panchayat Raj Act, 1994, the term of office of the Chairman or Vice-Chairman of a Zilla Parishad who is elected at an ordinary election shall be five years from the date appointed by the State Election Commissioner for the first meeting of the Zilla Parishad after the ordinary election. Elections have been held to the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh on 6-3-1995 and 10-3-1995

respectively and their term would expire on 17-3-2000 and 19-3-2000 respectively.

15. For holding elections to the local bodies, in the 73rd Constitutional Amendment, a separate institution is created under Article 243K, which is known as the State Election Commission, which shall have the power of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats. The State Election Commission in the State of Andhra Pradesh, so constituted as provided under Article 243K of the Constitution read with Section 200 of the A.P. Panchayat Raj Act, 1994, has been functioning since 12-9-1994.

16. As the term of the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh would be expiring by 17-3-2000 and 19-3-2000, the State Election Commission is obliged to hold elections to these bodies. In that direction, steps were taken by the State Election Commission by addressing letters to all the District Collectors in the State and other authorities for taking such steps for smooth conduct of elections to the Mandal Parishads and Zilla Parishads. The State Election Commission also issued notification notifying the schedule for revision of electoral rolls and also took steps as are required for conduct of elections to these bodies. There was also correspondence between the State Election Commission and the State Government as to the holding of elections. The Secretary, Panchayat Raj Department-first respondent in WP No.2481 of 2000 by letter dated 17-1-2000 informed the State Election Commission that the past experience revealed that the posts of MPTCs. and ZPTCs., are found to be superfluous. As per the resolution of the A.P. State Assembly, the Government of India moved 87th Constitutional Amendment by introducing a Bill to that effect in the Rajya Sabha which is likely to be taken up in the Rajya Sabha in this Budget Session. It is in this background, the State Government requested the State Election Commission to await the constitutional amendments and conduct ordinary elections to Mandal Parishads and Zilla Parishads thereafter. However, the State Election Commission vide its letter dated 21-1-2000 conveyed to the State Government, its inability to postpone the elections to the Mandal Parishads and Zilla Parishads, in view of the constitutional mandate under Article 243-E of the Constitution.

17. While the matter stood thus, Ordinance No.3 of 2000 dated 5-2-2000 was promulgated by the Governor of Andhra Pradesh making transitional arrangements providing for appointment of Special Officers to carry out the administration of Mandal Parishads and Zilla Parishads on expiry of their term till ordinary elections are held to these bodies. Sequel to the Ordinance No.3 of 2000, the Government has also issued G.O. Ms. No.85 and 86 on 13-3-2000 appointing Special Officers for Mandal Parishads and Zilla Parishads for a period of six months or till the date of assumption of office by the elected members whichever is earlier.

18. The controversy in all these writ petitions centers around the Ordinance No.3

of 2000 dated 5-2-2000 issued by the Government of Andhra Pradesh. We have heard the learned Counsels appearing for the writ petitioners and the learned Additional Advocate-General, representing the State, elaborately. Though all the learned Counsels have taken us elaborately on various aspects relating to the implication arising out of the lis and cited several decisions, we only propose (o deal broadly with the gist of their contentions and refer to few decisions, which in our view, are enough to support their contentions legally.

19. On behalf of the writ petitioner-State Election Commission in WP No.2481 of 2000, Sri C.P. Sarathy, learned senior Counsel submitted that under extraordinary circumstances, the State Election Commission has approached this Court invoking the jurisdiction under Article 226 of the Constitution of India seeking quashing of the Ordinance No.3 of 2000 dated 5-2-2000 by declaring it as untenable and repugnant to Article 243-E of the Constitution of India. According to the learned senior Counsel, as the term of the members of the MPTC and ZPTC would expire by 17-3-2000 and 19-3-2000 respectively, being the appropriate authority to conduct elections to these bodies as envisaged in Article 243K of the Constitution, the State Election Commission has taken all such steps which are necessary for conduct of elections before the expiry of their term. According to the learned Counsel, the State Election Commission initiated dialogues with the concerned Government authorities and held discussions with the District Collectors and other officials and also with the leaders of all political parties and finally addressed a DO letter to the Secretary to Government, Panchayat Raj Department on 28-1-2000 requesting him to finalise and notify the reservations of seats/offices in the Panchayat Raj Department for the members of SCs., STs., BCs. and women enabling the State Election Commission to issue election notification paving way for conduct of elections to these bodies. Learned senior Counsel submitted that as long as the identification and reservation of seats to these categories are not finalised and intimated to the Election Commission by the State Government, notification for holding the elections cannot be issued by the Election Commission. Learned senior Counsel stated that the State Government instead of identifying the reserved constituencies for these categories and intimating the same to the Commission for taking further appropriate steps, promulgated the Ordinance No.3 of 2000 providing appointment of Special Officers to run the administration of the Mandal Parishads and Zilla Parishads till ordinary elections are held to these bodies. This attempt of the State Government, according to the learned senior Counsel, is in the nature of preventing the State Election Commission from discharging its Constitutional obligation arising out of Article 243-E to hold elections. Learned senior Counsel stated that the scheme of the Constitution of India as provided under Article 243-E has to be implemented by holding elections before the expiry of the five year terms of these bodies. Learned senior Counsel stated, by promulgating the Ordinance, the State Government has created an obstacle in the way of the State Election Commission for conducting the elections. Learned senior Counsel further submitted that this act of the State Government, in effect,

amounts to frustrating the constitutional scheme envisaged under Article 243-E of the Constitution and on that ground alone, the impugned ordinance is liable to be declared as invalid. Learned senior Counsel, therefore, submits that the Ordinance No.3 of 2000 be declared as ultra vires the provisions of the Constitution and further seeks a consequential direction to the State Government to notify and finalise the reservations to the categories of SCs., STs., BCs. and Women and forward the same to the State Election Commission for taking appropriate steps for the conduct of elections to these bodies.

20. On behalf of the writ petitioners in WP Nos.2539, 2988, 3021, 3893, 4244,4509 and 4604 of 2000, learned senior Counsel Sri K.G. Kannabhiran, leading the arguments, submitted that Article 243-E of the Constitution of India is mandatory and not directory and as such, the State Government and the Election Commission are bound to hold elections to the Mandal Parishads and Zilla Parishads bodies before the expiry of their five year term. Elaborating his arguments, learned senior Counsel submitted that the 73rd Constitutional Amendment Act, 1992 has been passed by the Parliament with the avowed object of strengthening and revitalising the Panchayat Raj bodies which have become weak and ineffective owing to a variety of reasons including failure to holding regular and periodical elections, prolonged supersession, inadequate representation to the weaker sections like Scheduled Castes, Scheduled Tribes, Backward Classes and Women, Lack of financial resources and inadequate devolution of powers and responsibilities on them. Learned senior Counsel stated that in order to cure the maladies that have crept in the Panchayat Raj institutions, certain broad objectives in regard to the constitution, composition, powers and functions have been introduced. A separate institution called "State Election Commission" is also created which is empowered to hold elections to the Panchayat Raj bodies. Learned senior Counsel submitted that under Article 243-E(3) of the Constitution of India, it is mandated that the term of an elected panchayat body shall be for five years and elections shall be held before the expiry of five years. Learned senior Counsel stated that when the 73rd Constitutional amendment has been introduced with this avowed object to strengthening and revitalising the Panchayat Raj institutions including holding of regular and periodical elections, the effort of the State Government in promulgating the Ordinance No.3 of 2000 on 5-2-2000 through which transitional arrangements are made to administer the Mandal Parishads and Zilla Parishad bodies, is an act of colourable exercise of power by the State, to frustrate the constitutional mandate. Learned senior Counsel nextly submitted that Article 243-E of the Constitution is mandatory and as such neither the State Government nor the Election Commission has power to tinker with the provisions of Article 243-E and if any effort is made by any authority to tinker with the constitutional mandate either by legislative or executive measure it would be an act of fraud being played on the Constitution. It is further submitted by the learned senior Counsel that through the impugned ordinance, though it appears that a transitional arrangement is made, providing appointment of Special Officers to

the Mandal Parishads and Zilla Parishads till ordinary elections are held, but in effect, this attempt has pushed the elections to these bodies for an indefinite period which is contrary to the constitutional scheme.

21. While drawing our attention to the impugned Ordinance No.3 of 2000, learned senior Counsel has taken us to the preamble of the Ordinance and the supervening difficulties indicated for promulgating the said ordinance, viz., (1) the offices of members of Mandal Parishad and Zilla Parishad Territorial Constituencies are found to be superfluous and hindering the smooth and effective functioning of the Panchayats at all levels and restructuring of the Panchayats is inevitable; (2) Government of India have introduced a bill to amend Article 243C of the Constitution of India pursuant to the resolution passed by the State Legislative Assembly requesting the Government of India to take steps to amend Article 243C of the Constitution and it has not yet been passed by the Parliament; (3) avoidable huge burden on the state exchequer if elections to the Mandal and Zilla Parishads are held under the existing provisions of law.

22. According to the learned senior Counsel, unforeseen natural calamities in the State like flood, earthquake, cyclone could be few genuine supervening difficulties. However, the so called difficulties enlisted by the Government as "supervening difficulties" cannot, by any test, be termed as supervening difficulties. According to the learned senior Counsel, the entire effort of the State Government in issuing the impugned Ordinance No.3 of 2000 is only intended to negate and frustrate the 73rd constitutional amendment which is impermissible. Under these circumstances, learned senior Counsel prayed this Court to declare the impugned Ordinance No.3 of 2000 as unconstitutional and to issue appropriate directions to the State Election Commission to hold elections to the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh forthwith.

23. Learned Counsels appearing on behalf of the petitioners in other writ petitions - Sri E. Ella Reddy, Sri T. Bheemsen, Sri Satya Prasad, Sri & Subhash Reddy, Sri Nageshwar Reddy and Sri T. Ravikumar, while adopting the arguments advanced by Sri KG. Kannabhiran, learned senior Counsel, also took us to the other relevant provisions relating to Article 243-E and Schedule VII List II of the Constitution of India and Act No. 13 of 1994 and submitted that the impugned Ordinance No.3 of 2000 dated 5-2-2000 is liable to be declared as invalid.

24. On behalf of the writ petitioners in WP No.2690 of 2000, Sri Movva Chandrasekhara Rao, learned senior Counsel submitted that prior to the 73rd Constitutional Amendment, there was three tier system, the Gram Panchayat at the village level, Mandal Praja Parishad at the intermediate level and Zilla Praja Parishad at the District level were working on sound lines. However, pursuant to the 73rd constitutional amendment, two more offices, namely, Mandal Parishad Territorial Constituency (MPTC) and Zilla Parishad Territorial Constituency (ZPTC) were added making it to five tier system. Elections to these bodies were held in the year 1995 and the term of the Mandal Parishads and Zilla Parishads would come to an end by 17-3-2000 and

19-3-2000. Counsel submitted that the five years experience from 1995 to 2000 has shown that the offices of MPTCs and ZPTCs are superfluous and causing hindrance to the smooth and effective functioning of the Panchayats at all levels. The elected Presidents of the Panchayats have no say in the Mandal Parishads and the Presidents of Mandal Parishads have no say in the Zilla Parishad. Counsel submitted that the five tier system has proved counter-productive besides creating confusion and causing friction between the sarpanches and MPTC and ZPTC members. According to the learned Counsel, the first petitioner-association and its district units have passed several resolutions requesting the State Government to amend the law and restore the old three-tier system. The A.P. State Legislative Assembly has also passed a unanimous resolution on 16-11-1999 requesting the Government of India to pass an amendment of Article 243C of the Constitution of India, giving freedom to the State Legislatures to opt for either three tier system or five tier system to the Panchayat Raj bodies. According to the learned Counsel, the Union of India has introduced the Constitution 87th Amendment Bill, 1999 in the Rajya Sabha providing amendment to Article 243C of the Constitution as per the request made by the State Legislative Assembly and the said bill is likely to be passed in the Budget Session of the Parliament. Counsel, therefore, submitted that if elections to MPTCs. and ZPTCs., are held now pending passing of the 87th Constitutional Amendment Bill, several legal and practical complications would arise if the said bill is passed apart from causing avoidable financial burden on the State exchequer. Learned Counsel submitted that it is in this background, the State Government has promulgated Ordinance No.3 of 2000 providing for transitional arrangements to run the administration of these institutions by appointing Special Officers till ordinary elections are held. Counsel submitted, the supervening difficulties mentioned in the Ordinance are just reasons for postponing the elections to these bodies. Counsel stated that neither there is any effort nor desire to defeat the Constitutional mandate as pleaded by the other Counsels representing the other writ petitioners. Learned Counsel also stated that the State is competent under Article 40 of the Constitution of India to take care of the interests of the local bodies and that Schedule VII List II, Item 5 falls within the domain of the State and therefore, promulgation of the ordinance by the State Government is well within its powers and such exercise of power by the State cannot be termed as colourable exercise of power by the State to defeat the constitutional mandate.

25. On behalf of the State of Andhra Pradesh, counters have been filed which are sworn in by the Secretary to the Government, Panchayat Raj Department. In the counters, the State Government has taken more or less a similar stand taken by the petitioners in WP No.2690 of 2000 and it is stated that on the basis of the experience gained from 1995 to 2000 it was found that the five tier system of Panchayats is not functioning on the expected lines and in the background of several representations made by the elected Sarpanchas associations, the State Government convened an All Party Meeting and secured their view on the

working of the five tier system. It is further indicated that the A.P. Legislative Assembly has also passed a resolution on 16-11-1999 urging the Union of India to cause an amendment to Article 243C of the Constitution and pursuant to which the 87th Constitutional Amendment Bill is introduced in the Rajya Sabha and the same is likely to be passed in the Budget Session of the Parliament and if elections to these bodies are held now, several legal and practical problems would arise besides causing avoidable financial burden on the State Exchequer. It is also indicated in the counter that the Ordinance No.3 of 2000 has been promulgated by the Government of Andhra Pradesh seeking to appoint Special Officers to these bodies till the ordinary elections are held.

26. Learned Advocate-General appearing on behalf of the State of Andhra Pradesh, mainly contended that on the basis of a unanimous resolution passed on 16-11-1999 by the A.P. Legislative Assembly requesting the Government of India to cause necessary amendment to Article 243C of the Constitution of India to give freedom to State Legislatures either to opt for three tier or five tier Panchayat Raj system, the Union of India introduced the Constitution 87th Amendment Bill, 1999 in the Parliament and the said bill is likely to be passed by the end of the Budget Session of the year 2000. Learned Additional Advocate-General submitted that the Government was of the view that if elections to these bodies are held now, there will be legal and practical complications once the proposed amendment bill is passed by the Parliament, apart from resulting in avoidable heavy financial burden on the State Exchequer and as such, considering these genuine supervening difficulties, the Government promulgated Ordinance No.3 of 2000 making transitional arrangements for the administration of Mandal Parishads and Zilla Parishads by appointing Special Officers till ordinary elections are held to them. Learned Additional Advocate-General made efforts to convince us but for the genuine supervening difficulties which were enlisted in the Ordinance No.3 of 2000, the State Government is very much interested to hold elections to these local bodies within the time frame. It is also contended by the learned Additional Advocate-General that the State Government is well within its power to promulgate the impugned ordinance and it cannot be said that it is a colourable exercise of power. It is also submitted that Article 243-E of the Constitution is not mandatory and it is only directory and pleaded that the allegations made in the other eight writ petitions are far from reality and deserve no consideration by this Court.

27. In the light of the submissions made on behalf of the writ petitioners as well as the respondents, the issues that arises for our consideration are :

- (1) Whether the impugned Ordinance No.3 of 2000 dated 5-2-2000 is valid ?
- (2) Whether the provisions under Article 243-E of the Constitution of India are mandatory or directory ?
- (3) Whether the State Election Commission is justified in approaching this Court seeking appropriate directions ?

28. The experience of more than 40 years after independence showed that the village level bodies which are the pillars of democratic edifice in the country have not achieved the object of the Constitutional scheme of ushering the Gram Swaraj for various reasons such as failure of holding regular and periodical elections, prolonged supersessions, inadequate representation to the weaker sections like SCs., STs., BCs. and Women, lack of financial resources and inadequate devolution of powers and responsibilities on them.

29. Through the 73rd Constitutional Amendment, the Parliament desired to strengthen and revitalise the Panchayat Raj bodies so that they can effectively function and subserve the needs of the teeming millions that live in the rural areas. In order to make these institutions function effectively, the Parliament has also provided avenues to these bodies for resource mobilisation and has also provided a fixed tenure to them. While doing so, the Parliament has also taken care for providing reservations to various categories such as SCs, STs, BCs and Women with the expectation that their participation in the local bodies would usher in achieving the "Gram Swaraj" which was the dream of the father of Nation-Mahatma Gandhi. Apart from this, under Article 243K of the Constitution, a separate Institution-State Election Commission is created for holding elections to these Panchayat Raj bodies. The functions and duties of the State Election Commission are incorporated under Article 243K of the Constitution of India. Likewise, under Article 243K, the duration of the Panchayat Raj bodies has been fixed as five years from the date appointed for its first meeting and no longer.

30. Consequent upon the 73rd and also the 74th Constitutional Amendments, falling in line with the objectives of these amendments, the State of Andhra Pradesh enacted the Andhra Pradesh Panchayat Raj Act, 1994 (Act No. 13 of 1994) which provides, inter alia, territorial constituencies for each tier and election of members thereto directly from territorial constituencies, reservation of seats and offices for Scheduled Castes, Scheduled Tribes, Backward Classes and Women, duration of Panchayats, disqualifications of members, powers and functions of Panchayats, Audit and accounts. Finance Commission to review the financial position of the Panchayats and to make recommendations to the Government.

31. u/s 154 of the A.P. Panchayat Raj Act, 1994, the term of office of a member of Mandal Parishad is provided and u/s 182, the term of office of a member of the Zilla Parishad is provided. In both the cases, the term is fixed at five years from the date appointed by the State Election Commissioner for the first meeting of the Mandal Parishad or Zilla Parishad, as the case may be, after the ordinary election.

32. Article 243-E(1) of the Constitution provides that every Panchayat, unless sooner dissolved by any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Thus it is clear, the Parliament was more particularly concerned, providing a fixed tenure to the Panchayats under the Panchayat Raj system and that is why under Article 243-E

of the Constitution, the duration of the Panchayat has been fixed for five years and no longer.

33. On behalf of the writ petitioners (except writ petitioners in WP No.2690 of 2000), it is urged before us by various Counsel that when Article 243-E of the Constitution emphasises that the term of the elected panchayat to be five years and no longer and elections to the Panchayat bodies shall be completed before the expiry of their five year term as specified in clause (1) of Article 243-E of the Constitution of India, it is not open to the State Government or the Election Commission to extend the term of the Panchayat bodies beyond five years. Even if the Panchayat bodies are to be dissolved for any reasons, elections shall be held to them within a period of six months from the date of their dissolution. Counsel therefore, contended that elections to the Panchayat bodies, viz., Mandat Parishads and Zilla Parishads, shall be held before the expiry of their five year term.

34. It may look as if through the impugned ordinance No.3 of 2000 dated 5-2-2000, the State Government has desired not to extend the term of the elected panchayat bodies beyond five years. But, however, after promulgation of the ordinance, a Cabinet meeting of the Council of Ministers was held on 5-2-2000 and that by a communication dated 10-2-2000 addressed to the Secretary, State Election Commission, the State Government desired the Secretary to the Election Commission to appraise the Election Commission about the ordinance and the cabinet decision as also the desire of the Government which favoured postponement of the elections to the Panchayat bodies. This is precisely what is being agitated before us by the petitioners on the ground that though there is a constitutional requirement under Article 243-E of the Constitution for holding elections to the Panchayat Raj bodies before the expiry of their five year term, the Government through the legislative device has sought to defeat that constitutional mandate.

35. In *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, the Supreme Court was considering the power of the Governor under Article 213 of the Constitution to repromulgate Ordinances from time to time without getting them replaced by Acts of the Legislature. In that context, the Supreme Court held thus :

"The power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be "perverted to serve political ends". It is contrary to all democratic norms that the Executive should have the power to make a law, but in order to meet an emergent situation, this power is conferred on the Governor and on Ordinance is issued by the Governor in exercise of this power must, therefore, of necessity be limited in point of time."

The Supreme Court further held thus :

"It is settled law that a constitutional authority cannot do indirectly what it is not

permitted to do directly. If there is a constitutional provision inhibiting a constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision."

36. Thus it is clear from the above pronouncement of the Supreme Court that when there is a constitutional provision prohibiting an authority from doing a particular act, circumventing that provision by adoption of subterfuge by such authority (to suit its needs) is impermissible.

37. Admittedly, the term of the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh would expire by 17-3-2000 and 19-3-2000 respectively. As required under Article 243-E of the Constitution of India, elections to these bodies should have been held prior to 17-3-2000 and 19-3-2000. However, as a matter of fact, no elections are held so far to these bodies on the ground of some supervening difficulties which are enlisted in the impugned Ordinance No.3 of 2000.

38. One of the basic structures of the Constitution of India is Democracy. Democracy means self-governance. That is to say, peoples participation in the governance of the country. The foundation of democracy rests on the pillars of self-governance. In order to usher in the dream of "Gram Swaraj" which is the vision of the Constitution, self-governance is better achieved by clothing the local bodies with sufficient powers. In tune with this avowed object, the Parliament has inserted the 73rd Amendment to the Constitution to rejuvenate and revitalise the Panchayat Raj bodies. For the better functioning of these institutions, holding periodical and regular elections are inevitable. Towards this end, the Parliament brought in the 73rd Constitutional amendment and through Article 243-E of the Constitution, fixed the term of the Panchayats for five years and no longer.

39. Democracy being one of the basic structures of the Constitution of India which provides self-governance, any effort to tinker with the basic structure of the Constitution shall be declared as illegal. This view is very much clear by a pronouncement of the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . In the said decision, the Supreme Court was considering the constitutional validity of 24th, 25th and 29th Amendments to the Constitution. By a majority of 7 against 6 Judges, the Supreme Court declared that the basic structure or frame work of the Constitution cannot be tinkered with and if any attempt is made by any process, such an attempt shall be declared as unconstitutional. It may look as if no effort is made to tinker with the basic structure of the Constitution. But, however, holding of periodical and regular elections to the democratic bodies within the time frame is one of the facets of democratic system. If any attempt is made to make these bodies defunct by not holding elections within the time frame, such an attempt shall be declared unconstitutional.

40. If we analyse the objects and reasons for the 73rd Constitutional

Amendment, the law makers were keen to rejuvenate and strengthen the Panchayat Raj institutions and desired that by infusing and rejuvenating these Panchayat Raj bodies, the dream of Gram Swaraj could be achieved. It is with this avowed objective, necessary amendments were provided in the Constitution to Article 243. One of the hallmarks of the 73rd Constitutional Amendment is providing for a fixed term of five years to these bodies and also creating a separate authority for holding elections to these bodies. Article 243F, of the Constitution is one such measure which fixes the term of the elected body for five years. Likewise, Article 243K creates a body known as "State Election Commission" which shall have the power of superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Panchayats. Looking at the express provision made under Article 243-E of the Constitution fixing the term of the elected bodies for five years and no longer, there is no doubt in our mind to hold that the provisions under Article 243-E of the Constitution are mandatory and not directory as contended by the learned Additional Advocate-General appearing on behalf of the State of Andhra Pradesh.

41. A Division Bench of the Karnataka High Court in Prof. B.K. Chandrashekar and Another Vs. State of Karnataka and Another, , reacting to the similar situation declared that Article 243-E of the Constitution of India is mandatory and not directory. We respectfully agree with the said view of the Karnataka High Court on this aspect.

42. We, therefore, answer issue No.2 accordingly.

43. In an unreported decision in WP (Civil) No.719 of 1995 dated 12-8-1997, the Supreme Court has observed thus :

"..... it is necessary to emphasise that various clauses of Article 243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in case of genuine supervening difficulties to hold such elections e.g., unforeseen natural calamities in the State like flood, earthquake etc., or extremely urgent situation prevailing in the State for which election of the Panchayats cannot be held within the time frame. It will be unfortunate if the concerned States remain insensitive to the constitutional mandate of holding election of Panchayats in time and by unjustified action, allows old bodies to continue in the office of the Panchayats. We hope and trust that the State Government will be alive and sensitive to the duties and responsibilities flowing from the mandates of the Constitution in holding Panchayat elections."

44. Though under Article 243-E of the Constitution of India, holding of elections to Panchayat Raj bodies before the expiry of their term is mandatory, however, if there are genuine supervening difficulties which prevent the State to hold elections, postponement of elections to these bodies could be justifiable. The question is what are the supervening difficulties that could be regarded as just and reasonable grounds for postponing the elections. In our view, the

supervening difficulties could be an act of nature like floods, cyclones, earthquake and such other unforeseen natural calamities or extreme urgent situation prevailing in the State, due to which holding of elections to the Panchayat Raj bodies becomes impossible within the time frame. This view is expressly seen in the above unreported decision of the Supreme Court in WP (Civil) No.719 of 1995, dated 12-8-1997.

45. In the preamble of the Ordinance No.3 of 2000 which was promulgated by the State of Andhra Pradesh on 5-2-2000, the gist of the supervening difficulties was enlisted. On the pretext of these supervening difficulties, the State Government has pleaded its inability to hold elections to the Panchayat Raj bodies and requested the State Election Commission to postpone elections to these bodies by a communication dated 10-2-2000.

46. Now, let us analyse the supervening difficulties, mentioned in the Ordinance No.3 of 2000 by the State Government for not holding the elections to the Panchayat Raj bodies within the time frame, which are indicated as under viz.

(1) The A.P. Legislative Assembly passed a resolution on 16-11-1999 requesting the Union of India to take steps to amend Article 243C of the Constitution of India relating to the composition of and elections to the Panchayats to provide an organic link between the panchayats at all levels;

(2) The Government of India having introduced a Bill to amend Article 243C of the Constitution of India and it has not yet been passed by the Parliament;

(3) The provisions of the Andhra Pradesh Panchayat Raj Act, 1994 may have to be suitably and comprehensively modified and amended accordingly after the said Bill becomes a Law;

(4) The offices of members of Mandal Parishad and Zilla Parishad Territorial Constituencies are found to be superfluous and hindering the smooth and effective functioning of the Panchayats at all levels and restructuring of the Panchayats is inevitable for making them better instruments of Local Self Government and Public Service;

(5) There are genuine supervening difficulties in holding any ordinary elections to the Mandal Parishads and Zilla Parishads under the existing provisions of law in the meanwhile which will result in practical and legal complications and avoidable huge burden on the State exchequer and Government machinery as notwithstanding such changes in the law in the composition of and elections to the Panchayats, there may be legal hurdles in restructuring the Panchayats during the term of office of the persons elected in such ordinary elections frustrating the very object of such changes;

(6) The term of the existing Mandal Parishads and Zilla Parishads cannot be extended any longer in view of article 243E of the Constitution and there will be a legal vacuum in the administration of the Mandal Parishads and Zilla Parishads in the absence of any provision in the law for any alternative or transitional

arrangement and as the State is duty bound to provide an authority to discharge the functions of the Mandal Parishads and Zilla Parishads to avoid any break down of their administration adversely affecting the public interest.

47. As already indicated above, the provisions of Article 243-E of the Constitution of India are mandatory and not directory, there is no escape for the State Government from holding elections to the local bodies on the ground that an amendment is proposed to Article 243C of the Constitution of India and the same is pending before the Parliament. Admittedly, as of today, the said amendment is yet to be passed by the Parliament. In our view, anticipating an amendment to the provisions of Article 243C of the Constitution, cannot be a ground to postpone the elections to the local bodies and the constitutional mandate adumbrated under Article 243C of the Constitution, as it stands today, has to be respected in its letter and spirit and cannot be sought to be defeated.

48. The other "supervening difficulty" pressed into service by the State Government in not conducting elections to the Panchayat Raj bodies before the expiry of their term, is avoidable huge financial burden on the State exchequer if the Parliament passes the 87th Constitutional Amendment Bill, consequent to which the offices of MPTCs. and ZPTCs., would stand abolished. We are afraid, we cannot countenance to this reason as a "supervening difficulty" inasmuch as to keep the wheels of democratic bodies moving, holding of periodical and regular elections to these democratic bodies are like infusing life in these bodies. The system of democracy involves the process of elections. Financial constraint can never be a ground for postponing the elections. This ground, in our view, is untenable and cannot be accepted as one of the supervening difficulties seeking to postpone the elections to the Panchayat Raj bodies.

49. The desire of the State Government to seek an amendment to the provisions under Article 243C of the Constitution of India seeking to revert back to the three tier system of Panchayat Raj may be a genuine effort. The unanimous resolution passed by the A.P. State Legislative Assembly on 16-11-1999 requesting the Union of India to amend the Article 243C of the Constitution, and acting upon such a resolution, the State Government taking steps to get an amendment to Article 243C of the Constitution could also be a genuine effort made by the State. But, however, as discussed by us, the supervening difficulties pleaded by the State Government to postpone the elections to the Panchayat Raj bodies fall short of the "genuine supervening difficulties" as described by us in the preceding paragraphs. The grounds urged by the Government for postponing the elections cannot stand the test of judicial scrutiny and we cannot accept them as "genuine supervening difficulties". Any legislative device of the Government comes in direct conflict with the mandatory provisions of Article 243-E of the Constitution, such device has to be declared as ultra vires the said provisions of the Constitution.

50. For all the reasons, we hold that the Ordinance No.3 of 2000 dated 5-2-2000 issued by the Governor of Andhra Pradesh is devoid of merits and consequently

we declare it as invalid. Since we have declared the Ordinance No.3 of 2000 dated 5-2-2000 as invalid, the consequent G.O. Ms. NOs.85 and 86 dated 13-3-2000 issued by the Secretary to Government, Panchayat Raj Department, Government of Andhra Pradesh, shall also stand quashed.

51. We answer issue No.1 accordingly.

The last issue now remains to be answered by us is whether the State Election Commission is justified in approaching this Court under Article 226 of the Constitution of India seeking appropriate directions.

52. Under the scheme provided under 73rd and 74th Constitutional Amendments, on the lines of the Election Commission of India which is created under Article 324 of the Constitution of India, a separate institution, viz., State Election Commission is constituted and it is vested with the power of superintendence, direction and control, preparation of electoral rolls and conduct of, all elections to the Panchayat bodies in the State. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, the Supreme Court held that the domain of holding elections to Parliament and State Legislatures, as provided under Article 324 of the Constitution of India shall be vested with the Election Commission. This view has been consistently reiterated by the Supreme Court in its later pronouncements in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and in *Election Commission of India Vs. State of Haryana*, .

53. When the State Election Commission which is a constitutional functionary is confronted with a situation against the backdrop of promulgation of Ordinance No.3 of 2000 by the State Government, making transitional arrangement and the consequent communication dated 10-2-2000 sent to it by the State Government indicating the desire of the Government to postpone the elections, the Election Commission which is an authority under Article 243K of the Constitution for holding elections to Panchayat Raj bodies was placed in a precarious situation. The State Election Commission cannot function and discharge its duties without the co-operation of the State Government. However, in the backdrop of promulgation of Ordinance No.3 of 2000 dated 5-2-2000 and in the absence of the State Government identifying the seats/offices reserved for SCs., STs., BCs. and Women and forwarding such list to the Election Commission, the State Election Commission cannot proceed with the conduct of elections to these bodies. Having regard to these circumstances, we are of the view, the State Election Commission is justified in approaching this Court seeking appropriate directions.

54. We answer this issue accordingly.

During the course of hearing of these writ petitions, the term of the Mandal Parishads and Zilla Parishads expired on 17-3-2000 and 19-3-2000 respectively and the transitional arrangement made through the impugned Ordinance No.3 of 2000 was given effect to by appointing the Special Officers to these bodies.

Though some of the writ petitioners have pleaded that the elected members to these bodies whose term came to an end by 17-3-2000 and 19-3-2000 be permitted to be continued in office till the ordinary elections are held, we do not think, such request could be accepted in view of the mandatory provision under Article 243-E(I) of the Constitution of India which contemplates that every panchayat unless sooner dissolved under any law for the time being in force shall be continued for five years from the date appointed for its first meeting and no longer. Since the constitutional mandate under this provision has permitted dissolution of the Panchayat before the five year term but no extension is permitted beyond five years, we do not think we can accept this request. We accordingly reject the said request.

55. The State Election Commission in its Writ Petition No.248I of 2000 has complained to this Court that as a result of the issuance of Ordinance No.3 of 2000 dated 5-2-2000 by the State of Andhra Pradesh, it is unable to proceed with the process of completing the elections to Mandal Parishads and Zilla Parishads. It is further stated by the Election Commission that it has taken all necessary steps for conduct of elections to these bodies and is ready to hold elections. It is further complained by the Election Commission that though a request has been made by it on 28-1-2000 to the Secretary to Government, Panchayat Raj Department requesting him to identify the seats/offices reserved for SCs., STs., BCs. and Women according to the provisions of Act No. 13 of 1994, and communicate such list to the Commission for issuing the election notification, so far no such list is communicated to the Election Commission by the Government and it is also stated by the Election Commission that in the absence of such list, it is unable to proceed further with the process of conducting elections. We agree with the Election Commission on this aspect. Unless the State Government identifies the seats/offices reserved for SCs., STs., BCs. and Women and sends such list to the Election Commission, the State Election Commission cannot issue election notification. As the identification of seats for the above categories has to be done on rotation basis, it would consume some time and keeping this aspect in mind, we direct the State Government to identify the seats/offices for the above categories and intimate the same to the Election Commission on or before 31-5-2000. On receipt of such list from the State Government, the Election Commission shall proceed to complete the entire process of conducting elections by 30-6-2000. However, we make it clear, if in the meantime, the proposed 87th Constitutional Amendment Bill is passed by the Parliament, it shall be open to the State Election Commission to take notice of such development, examine the implication arising out of such amendment and shall reschedule the election programme, provided if the actual voting has not taken place by that time. The Election Commission shall also be entitled to ascertain the views of the Government as well as various political parties, if necessary, for re-scheduling the election programme.

56. Since we have invalidated the Ordinance No.3 of 2000 dated 5-2-2000 and quashed the consequent G.O. Ms- Nos.85 and 86 dated 13-3-2000 and also

rejected the request of some of the writ petitioners to continue the elected members to these bodies beyond their term of five years till ordinary elections are held and directed the State Election Commission to complete the entire process of elections to the Panchayat Raj bodies by 30-6-2000, the vacuum created by this order has to be properly met. Taking into consideration the factual position, we direct that the transitional arrangement made by the Government pursuant to G.O. Ms. Nos.85 and 86, dated 13-3-2000 shall be continued with respect to the Mandal Parishads and Zilla Parishads in the State of Andhra Pradesh till ordinary elections to these bodies are held.

57. In the result, Writ Petition Nos.2481, 2539, 2988, 3021, 3893, 4244, 4509 and 4604 of 2000 shall stand allowed in the above terms. Writ Petition No.2690 of 2000 shall stand dismissed. However, no costs.