
(2021) 04 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition ST.No. 3462, 96313, 99711 Of 2020, 230 Of 2021, Civil WP-LD-VC-188, 268, 329 Of 2020, Transferred From Original Side WP-LD-VC-187of 2020, Interim Application St.No. 516, 543 Of 2021 In Writ Petition No. 3462 Of 2020, 237, 244 Of 2021, CIVIL

Vidyadhar Mokhal & Ors

APPELLANT

Vs

State Of Maharashtra & Anr

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 213(1), 226, 243A, 243B, 243C, 243E, 243F, 243K, 243ZD, 324

Maharashtra Village Panchayats Act, 1959 — Section 2(ai), 2(j), 2(g), 3(9), 3(14), 7, 8A, 10, 11, 10A, , 10A(4), 27(1), 28, 38, 151, 151(1)(a), 151(1)(c), 176, 176(2) (xlvii), 182, 182(1)

Maharashtra Zilla Parishad And Panchayat Samitis Act, 1961 — Section 3(I), 9, 94

Citation : (2021) 04 BOM CK 0001

Hon'ble Judges : S.S.Shinde, J;M.S.Karnik, J

Bench : Division Bench

Advocate : Shyam Dewani, A.A. Kumbhakoni, P.P. Kakade, Akshay Shinde, B' Panel, Nisha Mehra, Ajit Kadethankar, G.S. Godbole, Shivani Samel, Deepashikha Godbole, S B Talekar, Madhavi Ayyappan, Anand Deshpande, Kalyan Kumar

Final Decision : Partly Allowed/Disposed Of

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. This group of Petitions is being disposed of by a common judgment and order as a common issue is involved and argued. By this Petition filed under Article 226 of the Constitution of India the petitioners pray for a declaration that the impugned Ordinance No.10 of 2020 i.e. the Maharashtra Village Panchayats (Amendment) Ordinance, 2020 (hereinafter referred to as 'the Ordinance' for short) is unconstitutional and/or ultra vires the provisions of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as 'the said Act' for short).

3. The petitioners have further prayed for the directions to the State to forthwith withdraw and/or cancel the impugned Government Resolution ('G.R.' for short) dated 13th July, 2020 issued by the Rural Development Department and also the impugned G.R. dated 14th July, 2020 issued by the Rural Development Department and/or for quashing thereof.

4. In view of the subsequent developments during the course of hearing of this Petition, the petitioners have restricted their challenge presently only as regards the G.R. dated 13th July, 2020 which provides for appointment of administrator for the Grampanchayat by the Chief Executive Ofcer ('CEO' for short) of the respective Zilla Parishad in consultation with the Guardian Minister of the respective district. According to the petitioners, seeking advice of the Guardian Minister before appointing an administrator will defeat the constitutional scheme of free and fair elections.

5. The facts of the present Petition in brief are as under :-

On 17th March, 2020, on account of Covid-19 pandemic, the Maharashtra State Election Commission issued orders for postponement of the elections of Gram Panchayats in the State where the process of elections had reached. Due to pandemic, it was not possible to conduct fresh elections in all Gram Panchayats where the tenure of the earlier elected committee had come to an end.

6. By the impugned ordinance, the respondent - State has amended the said Act by exercising powers under Article 213 (1) of the Constitution of India on the ground that there existed an emergency warranting issuance of an ordinance and thereby amending Section 151 of the said Act by adding second proviso to sub-clause (c) of sub-section (1) of Section 151 of the said Act. By this amendment it is provided that in case it is not possible to conduct elections of Gram Panchayat/s according to the schedule fixed by the State Election Commission ('SEC' for short) on account of any natural calamity or emergency or war or financial emergency or administrative difficulties or pandemic ; the Government can appoint any person as 'Administrator' of such Gram Panchayat.

7. After the ordinance came to be issued, the respondent issued G.R. dated 13th July, 2020 whereby the CEO of the Gram Panchayat is empowered to appoint administrator on the advice of the concerned Guardian Minister. The challenge in this petition is now restricted to the G.R. dated 13th July, 2020 to the extent of seeking advice of the concerned Guardian Minister. It is the contention of the petitioners that for ensuring free and fair elections, the role of the Guardian Minister in the matter of appointment of an administrator has to be eliminated and to that extent the impugned G.R. dated 13th July, 2020 needs to be struck down.

8. Learned counsel contended that by virtue of the impugned G.R. dated 13th July, 2020, the Guardian Minister of a particular district would decide as to who should be appointed under the amended proviso as a person in charge of the Gram Panchayat. According to counsel, this clearly defeats the constitutional

mandate in more than one way. In the first place due to such uncontrolled power, the ruling party would be in a position to defeat the wish of the majority of the population in a village. Secondly, the impugned G.R. would confer unrestricted and uncontrolled authority on the concerned Guardian Minister of the District to appoint any person of his choice as Administrator in respect of the village panchayats whose tenure has come to an end. The Guardian Minister will be in a position to appoint person of his choice and thereby effectively take control of the Gram Panchayat. Though under the impugned G.R., the CEO is empowered to appoint an administrator, but the step of seeking advice of the Guardian Minister would be counter productive to the object of free, fair and impartial elections.

9. Our attention is invited to the various provisions of the said Act and the rules framed thereunder in support of the contention that the State Government has no power to issue the G.R. providing for the CEO seeking advice of the Guardian Minister before appointing an administrator. Learned counsel also relied upon the relevant constitutional provisions in support of their contentions. Learned counsel relied upon the following decisions of the Hon'ble Supreme Court and this Court in support of their contentions :-

- i) A.R. Antulay vs. Ramdas Srinivas Nayak & anr. (1984) 2 SCC 500
- ii) State of Bihar vs. Upendra Narayan Singh & ors. (2009) 5 SCC 65
- iii) Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala & ors. (2006) 4 SCC 327
- iv) State of Punjab & anr. vs. Brijeshwar Singh Chahal & anr. (2016) 6 SCC 1
- v) Charan Sovinda Waghmare vs. Chairman and Works Committee, Zilla Parishad, Bhandara, Tahsil & District Bhandara. (2012) 4 Bombay CR 40
- v) State of Maharashtra vs. State Election Commission & ors. 2006(1) Mh.L.J. 131.
- vi) State of Tamil Nadu & ors. vs. K. Shyam Sunder & ors. (2011) 8 SCC 737

SUBMISSIONS OF LEARNED COUNSEL FOR STATE ELECTION COMMISSION :

10. Learned counsel for the SEC supported the stand of the petitioners that the Guardian Minister ought not to have a say in the matter of appointment of an administrator. He relied extensively on the decision of this Court in the case of State of Maharashtra vs. State Election Commission & ors. (supra).

SUBMISSIONS OF LEARNED ADVOCATE GENERAL ON BEHALF OF THE STATE GOVERNMENT :-

11. Learned Advocate General firstly made submissions as to the role of the SEC. The SEC is concerned with fairness and transparency in the elections. SEC is not concerned with the fairness and transparency of the administration of the Village Panchayats.

12. Section 10-A of the said Act is the only provision which deals with SEC. The role provided is of superintendence, direction and control of the preparation of the electoral rolls and for conducting all elections. Sub-section (4) of Section 10-A is a provision for issuing special or general orders or directions for fair and free election and it has nothing to do with the administration of the Village Panchayats.

13. Only because the legislative policy could have been better or another view is possible, is no ground to interfere. It is only when the action of the Government is dehors the provisions of the said Act or clearly unsustainable in the teeth of the constitutional provisions or law that the interference is warranted. Merely because the reasons are not assigned in the Notification or GR, will not make the Notification or GR bad. There is no requirement for the legislature to provide reasons while issuing a Notification and therefore any delegation made with condition is never supposed to contain reasons. The affidavit in reply filed on behalf of the State is not to supplant or supplement the reasons but it is only a justification or logic for issuance of the Notification/GR.

14. The Notification/G.R. was issued to overcome the unforeseen and unpleasant situation arising as a result of the Covid-19 pandemic and the present is only an interregnum stop gap arrangement which is temporary in nature. It is not as if the State Government is superseding the Village Panchayats for all times to come. The State Government had to make a temporary arrangement and appoint administrators over 15000 Gram Panchayats which is a mammoth task, therefore, the power of appointing administrator is delegated to the CEO of the respective Zilla Parishads. It is the CEO who regulates all the Village Panchayats. The role of the Guardian Minister in this context is to be appreciated. The G.R. only provides for a consultation/advice. The Guardian Minister is aware of the ground realities of the District and conversant with the affairs of the Village Panchayats and the problems faced by the people residing there. The Guardian Minister's role is not decisive. What is provided is a consultation 'before issuing the order' and not before 'selecting the person'. The advice is not decisive but it is only a nature of a consultation and cannot be read as concurrence. The advice is not binding on the CEO.

15. The administrators have been appointed in as many as 4000 Gram Panchayats and there is not a single instance pointed out as to the interference of the Guardian Minister. The petitioner has only expressed an apprehension that there is possibility of political interference. The Courts will not interfere only on an apprehension. The apprehension cannot make the Section, Notification or G.R. illegal or bad and it can at the highest make the action taken thereunder vulnerable. The whole idea is to keep the Guardian Minister posted about the appointments made.

16. The consultation provided with the Guardian Minister cannot said to be arbitrary or illegal. The State Government can delegate its power to the CEO. Once the State Government has a power to delegate, it follows that the State

Government can prescribe the manner in which the delegate is to exercise the power and in these circumstances, if a consultation with the Guardian Minister is provided, the same cannot be said to be arbitrary or illegal.

CONSIDERATIONS :-

17. The concept of Gram Sabha is introduced by virtue of Article 243-A of the Constitution of India. Article 243-B provides for constitution of Panchayat/s in every State at the village, intermediate and district level in accordance with the provisions of Part -IX. Article 243-C, provides for composition of Panchayat based on the population of the local area and all seats in a Panchayat are to be elected by the persons chosen by direct election from territorial constituency in the Panchayat area.

18. Article 243-E provides for duration of Panchayat and that every Panchayat shall continue to function for 5 years from the date appointed for its first meeting and no longer. Article 243-E reads thus :-

"243-E (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed -

(a) before the expiry of its duration specified in clause (1) ;

(b) before the expiration of a period of six months from the date of its dissolution : Provided that where the remainder of the period of which the dissolved Panchayat would have continued as less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved."

19. Article 243-F provides for various disqualifications for being a member of the Panchayat. Article 243-K provides for elections to the Panchayat and power to conduct such elections as directed by the State Election Commission.

20. So far as the provisions of the said Act are concerned, Section 3(9) of the said Act defines the term 'Gram Sabha'. The term 'Panchayat' is defined in Section 3 (14). Section 7 provides for an elaborate procedure for meetings of Gram Sabha and the various powers and duties of Gram Sabha are prescribed by Section 8A. Section 10 provides for constitution of Panchayat. Section 11

provides for election of a Panchayat and it mandates that a election must be conducted before the expiry of duration of 5 years prescribed in sub-section (1) of Section 27. Section 38 provides for executive power of Panchayat to be vested in the Sarpanch who shall be directly responsible for the due fulfilment of the duties empowered upon the Panchayat and in his absence the powers are to be exercised by Upa Sarpanch.

21. Section 151 provides for performance of powers and duties of Panchayat not validly constituted by the person appointed by the State Government. It would be material to quote Section 151 as the controversy of the present case revolves around the amendment made to Section 151. Section 151 as it stood before the issuance of the ordinance reads thus :-

"Section 151 (1) (a) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if at any time it appears to the State Government that a panchayat has not been validly constituted under this Act, the State Government may, by notification in the Official Gazette, dissolve such panchayat and by the same notification or like notification cause all or any of the powers and duties performed by such person or persons, in such manner and for such period and subject to such conditions as it may think fit :

Provided that, on the reconstitution of the panchayat under sub-section (2), such notification shall cease to have effect from the date on which the first meeting of the panchayat so reconstituted is held under section 28.

(2) On the issue of such notification all the members of the panchayat shall be deemed to have vacated their office as members and the panchayat shall be reconstituted in the manner provided in this Act.

(3) All the powers and duties of the panchayat exercised and performed bona fide till the date of the notification referred to in sub-section (1) by the persons who constituted such panchayat shall be deemed to be and always to have been validly exercised and performed by the said persons ; and no acts done by the said persons shall be deemed to be invalid or be called in question on the ground merely that the persons were not members of a validly constituted panchayat and the said person shall be deemed to have been indemnified and discharged from liability in respect of such acts."

22. Section 176 provides for framing of various rules. Section 176(2)(xlvii) reads thus :-

"Section 176(2)(xlvii) For any other matter for which rules are required to be made under this Act, or generally for carrying out the purposes thereof."

Section 182 provides for delegation of powers by the State Government to the Commissioner or any other officer. Section 182 reads thus :

182. Delegation of powers. - (1) The State Government may, by notification in the Official Gazette, authorise the Commissioner or any other officer to exercise [*

* * *] any of the powers which may be exercised by the State Government under this Act [* *].

[*****]

(4) Subject to the general or special orders of the State Government, the Commissioner or Collector may delegate to an officer not below the rank of Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari, powers exercised by the Commissioner, or as the case may be, the Collector under this Act.

[(5) Subject to the general or special orders of the State Government, the Chief Executive Officer may delegate to any officer working under a Zilla Parishad all or any of the powers exercisable by him under this Act.]

23. By virtue of the Ordinance, Section 151 of the said Act came to be amended. In sub-section (1), in clause (a), after the proviso, the following proviso was added "

"Provided further that, if due to natural calamity or emergency or war or financial emergency or administrative difficulties or epidemic disease, the panchayat elections could not be held by the State Election Commission as per the schedule, then, the State Government may, by notification in the Official Gazette appoint a suitable person as the administrator on such panchayat."

24. By issuance of the impugned G.R. dated 13th July, 2020, the State Government delegated its power for appointing a suitable person as an administrator to the CEO of the district. The impugned G.R. provides that the CEO has to appoint a suitable person upon seeking advice of the Guardian Minister of the district.

25. When this group of Petitions was heard on the earlier occasion, there was much controversy over who is a 'suitable person'. Learned Advocate General on instructions of the State Government had then fairly submitted that only Government servants of a particular category as far as possible would be appointed as administrator. However, the contention of the petitioners that while appointing such Government servant as administrator, advice of the Guardian Minister should be dispensed with, was not acceptable to the State Government. This issue therefore came to be contested in the present Petition.

26. The question for consideration in this Petition is narrowed down to deciding whether the CEO's seeking advice of the Guardian Minister before appointing an administrator is arbitrary and illegal and would come in the way of free, fair and impartial elections. Thus the petitioners do not presently challenge the ordinance amending Section 151 of the said Act. The petitioners also do not have any objection to the delegation of the power to the CEO to appoint an administrator.

27. By virtue of the Ordinance, after the proviso to Section 151, a further proviso was added empowering the State Government to appoint suitable person as an administrator of such Panchayat. The G.R. provides that the CEO can appoint

administrator with the advice of the Guardian Minister.

28. A reference to the Division Bench decision of this Court in the case of *State of Maharashtra vs. State Election Commission & ors.* (supra) would prove to be useful in deciding the present controversy. This Court considered the scope of powers of the Election Commission under the said Act. It is held that the powers of the Election Commission extend to the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Panchayats. The provisions of Article 243-K are *pari materia* to those of Article 324 of the Constitution which have been interpreted in several judgments of the Supreme Court. Article 243-K operates in areas left unoccupied by the legislation. The words 'superintendence, direction and control' are indicative of the broad sweep of the Constitutional provision. This is amplified by the expression "conduct of elections" in respect whereof the Election Commission exercises superintendence and control. In *Mohinder Singh Gill vs. Chief Election Commission*, the Supreme Court emphasised that Article 324 of the Constitution is a plenary provision vesting the whole responsibility for the conduct of elections in the Election Commission. The Election Commission may be called upon to answer unforeseen eventualities not contemplated by existing legislation and its power of achieving the object of free and fair elections cannot be stultified. In this context, the following observations of the Supreme Court are significant :

"Even so, situations may arise which enacted law has not provided for, Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor *mala fide*, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify, less is insufficient to leave unsaid. Art 324, in our view operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections', are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election."

29. This Court further held that a constitutional vacuum is not contemplated in the affairs of the State. The Election Commission has ensured that a vacuum is obviated by making arrangements for the interregnum until the new panchayats are constituted. Since the provisions of Section 151(1)(a) do not empower the Government to appoint administrators beyond the expiry of the constitutional term of five years, it was for the Election Commission to step in, in the exercise of its powers under Article 243-K. That is what the Election Commission has done.

30. This Court held that the holding of free and fair elections in a democracy is of paramount importance. The importance which the Constitution ascribes to free and fair elections is evident from the role and position of the Election Commission and the conferment of wide powers upon the Commission that would achieve this significant constitutional goal in a democratic society. Administrative

exigencies cannot be allowed to override the constitutional prescription of free and fair elections. The State Government must and shall do everything that is necessary to cooperate with the mandate of the State Election Commission.

31. The Division Bench of this Court was dealing with the case where the State Government had in exercise of the powers conferred by Section 151(1)(a) of the said Act, directed that the existing members of the Panchayats in 13 Districts shall, under the Chairmanship of each Sarpanch, be retained to constitute a Board of Administrators. The SEC objected to the appointment of the original members of the Grampanchayat including of the Sarpanch as Administrators, stating that what could not be achieved directly could not be done indirectly. The Election Commission held that continuance of the erstwhile members of the Village Panchayats would affect the conduct of elections in a fearless, impartial and clean environment and the appointment of ex-Sarpanchs and Members whose tenure had expired would obstruct the electoral process. The Commission, therefore, called upon the State Government to dismiss the Boards of Administrators and to appoint Government Officers or, as the case may be, employees as Administrators.

32. No doubt in the present case the fact situation is different. The State Government has now introduced the ordinance amending Section 151 adding new proviso and issued the impugned circular. By virtue of the amendment to Section 151, the State Government is now empowered to appoint a suitable person as administrator on such Panchayat by a Notification in the official gazette. By GR dated 13th July, 2020 the State Government delegated its powers under Section 151 (1) to the CEO to appoint an administrator of the respective District. Section 182 permits such a delegation. Section 182(1) empowers the State Government to authorise the commissioner or any other officer to exercise any powers which may be exercised by the State Government under this Act. Accordingly, by GR dated 13th July, 2020 the CEO was authorised to exercise the powers of the State Government as regards appointment of an administrator. The State Government by issuing the GR dated 13th July, 2020, apart from delegating the powers to the CEO directed the CEO, to exercise the power to appoint administrator after seeking advice of the Guardian Minister.

33. It is trite that once the process of election commences in respect of the village panchayats whose term is come to an end, it is then for the SEC to ensure a free and fair election. An unprecedented situation has arisen in the present case where due to Covid-19 pandemic the elections had to be postponed. This Court in the case of *State of Maharashtra vs. State Election Commission & ors.* (supra) which we have referred to extensively, observed that holding of free and fair elections in a democracy is of paramount importance. The amendment to Section 151 empowered the State Government to appoint a suitable person as an administrator. These Petitions came to be filed challenging the said ordinance as according to the petitioners appointing a suitable person as an administrator would confer, unfettered and unguided powers upon the State Government to

appoint the person of their choice as an administrator. As earlier indicated, in all fairness the learned Advocate General made a statement on instructions of the State Government that for the ensuing elections the Government servants of a particular category as far as possible will be appointed as administrator.

34. The petitioners as well as the SEC are satisfied with this stand of the State Government. However, the stand of the State Government that the said appointment of administrator has to be with the advice of the Guardian Minister of the District is objected to even by the SEC. It is a specific stand of the SEC that to ensure a free and fair election it is imperative that the CEO independently exercises his power to appoint an administrator without seeking advice of the Guardian Minister.

35. As discussed earlier, this Court in the case of *State of Maharashtra vs. State Election Commission & ors.* (supra) has observed that the State Government must and shall do everything that is necessary to cooperate with the mandate of the SEC. If in these circumstances it is the stand of the SEC that the advice of the Guardian Minister ought not to be taken by the CEO before appointing an administrator, the same deserves acceptance as the holding of free and fair elections in a democracy is of paramount importance. If in the opinion of the SEC the role of the Guardian Minister in the matter of appointment of an administrator should be completely done away with, we do not find the stand to be unreasonable or without merit. No doubt, the power of the State Government to appoint a suitable person as an administrator is delegated to the CEO and this delegation of power can be conditional, but if the conditions imposed are such that they come in the way of free and fair elections, then the same necessarily have to be struck down as it hits at the very edifice of the constitutional scheme of ensuring impartiality in the election process.

36. Under Sub-section 4 of Sub-section 10(a) of the said Act, the SEC has a power to issue special or general orders or directions for fair and free election. Learned Advocate General submitted that this power has nothing to do with the administration of the village panchayat. We are not in agreement with the learned Advocate General. The process of appointing an administrator during the interregnum when the term of the earlier body has expired and till the new body takes over is a power to be exercised in support of and for furtherance of the object of a free and fair election.

37. The argument of learned Advocate General that 'what is provided by the G.R. is only seeking advice of the Guardian Minister which is not binding on the CEO of the Zilla Parishad and therefore the apprehension expressed that the Guardian Minister will interfere in the matter of appointment of administrators is without any basis', appears to be attractive at the first blush. However, the concept of seeking advice and the impact of the advice of the Guardian Minister on the decision to be taken by the CEO to appoint administrator will necessarily have to be considered in the context of the role and responsibilities assigned to the Guardian Minister of the particular District. The Guardian Ministers are from the

ruling dispensation. They are appointed for every district. The constitutional scheme envisaged the Panchayat Raj and high degree of autonomy to the Gram Panchayats. The sheer magnitude of large number of Gram Panchayats and their importance in a democratic set up is a good reason why any political dispensation would be eager to gain control and extend its hold over the Gram Panchayats.

38. To appreciate the role of the Guardian Minister it would be necessary to refer to some of the provisions of the Maharashtra District Planning Committees (Constitution and Functions) Act, 1998 (hereinafter referred to as 'the DPC Act' for short). The DPC Act has been enacted to provide for constituting at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole; and to provide for matters connected therewith or incidental thereto.

39. "Constituency" as per Section 2(a-i) means a constituency for election to a District Planning Committee and shall consist of the rural area constituency, transitional area constituency, smaller urban area constituency and the larger urban area constituency, comprising the area of Zilla Parishad, Nagar Panchayats, Municipal Councils and Municipal Corporations, respectively in the respective District.

As per Section 2(g) "Panchayat" means a Panchayat at District level (Zilla Parishad) constituted under section 9 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961.

Rural area as per Section 2(j) means the area comprising all Panchayats in a district.

The Minister-in-charge of the district is the ex-officio member of the DPC in terms of Section 3(I). The CEO of the Zilla Parishad also constitutes to be a member of the DPC as a special invitee.

Section 10 provides for the functions of the DPC which are as under :-

"10. The State Government shall, by order, from the date specified in such order entrust to the District Planning Committee all or any of the functions mentioned below-

(a) to consider and consolidate the District Annual Plans prepared by the Panchayats and Municipalities in the district and to prepare draft Development plan for the district as a whole;

(b) to consider the Five-Year Plan and perspective plans prepared Panchayats and the Municipalities and co-ordinate and prepare draft Five Year Plan and perspective development plan for the entire district;

(c) to review and monitor the progress of District Annual Plan and suggest reappropriation of approved provision of the District Annual Plan in accordance

with the guidelines issued by the State Government;

(d) to recommend through the Chairperson the approved draft development plan to the State Government; and

(e) to ensure compliance of the provisions of clause (3) of article 243-ZD of the Constitution."

The Guardian Minister is the ex-*ofcio* chairperson of the District Planning Committee (DPC), which has to be constituted in every district as per the law. In Maharashtra, the Guardian Minister is appointed as the DPC Head.

40. The DPC has to tackle matters of common interest between panchayats and municipalities, including spatial planning, sharing of water and other physical and natural resources, integrated development of infrastructure and environmental conservation and the extent and type of available resources, both financial or otherwise. The DPC is also expected to consult institutions and organisations, as may be specified, to achieve set objectives. The Guardian Minister is expected to look into municipal matters and the urban rural interface to assist the DPC in planning for local resource sharing, area planning, solid waste and sea disposal, and other such matters which call for close coordination between panchayats and municipalities.

41. The Guardian Minister is expected to oversee the combined budget of all local civic bodies in the jurisdiction of a district and ensure the passing of a common draft budget for it. The Minister is also expected to review budget implementation in every quarter and ensure effective implementation of the sanctioned funds by the Union and State Government for various schemes. Apart from the DPC, the Guardian Minister acts as the head of canal committee meeting that discusses water management from the available storage in the dams supplying water to district with priority in the sequence of drinking, agriculture and industry. The Guardian Minister also coordinates to resolve garbage disposal issues. The minister has to facilitate land acquisition for the mega-projects, like garbage processing plants, construction of highways, airports, industrial area, water supply and sewage treatment projects.

42. The CEO is appointed by the State Government under Section 94 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. Considering the role and responsibility of the Guardian Minister for a particular district and his significance, being an integral part of the ruling dispensation, it is but obvious that the CEO will give utmost importance to the 'advice' of the Guardian Minister. Such advice which has the effect of partaking the character of an 'order' would defeat the constitutional scheme of free and fair elections. The entire object of appointing an independent administrator is to ensure impartiality in the election process. The CEO, though appointed by the State Government, is a statutory authority and is duty bound to discharge his duties in consonance with the provisions of the Zilla Parishad Act and the rules framed thereunder and the GRs issued from time to time. The object of setting up of the Election Commission is

to conduct free and fair elections ruling out any possibility of political interference in conduct of the elections. It is therefore necessary that the CEO should have a free hand in the appointment of an administrator without a semblance of any political influence in the matter of appointment of an administrator.

43. We do not for a moment suggest that in every case the Guardian Minister would influence the decision of the CEO in the matter of appointment of an administrator. Any possibility of appointing an administrator who is likely to act in furtherance of the political agenda and thereby aid the ruling dispensation to get an unfair advantage in the elections needs to be avoided. In order to ensure impartiality and fairness of the elections the possibility of political influence has to be ruled out. It is for this reason that the CEO being a statutory authority be given a free hand in the matter of appointment of an administrator to ensure the sanctity and purity of the election process. In any case, the CEO is appointed by the State Government, if the power is delegated to him being a nominee of the State Government, then there was no requirement for incorporating a further condition of advise of the Guardian Minister. It is therefore imperative that procedure envisaged by the GR of seeking advice of the Guardian Minister before appointing an administrator calls for interference.

44. It would be pertinent to also mention that now even the elections have already been held in many of the Gram Panchayats.

45. The Petitions therefore succeed. The impugned G.R. dated 13th July, 2020 to the extent of seeking advice of the Guardian Minister in the matter of appointment of an administrator is quashed and set aside.

46. The Petitions are partly allowed and disposed of in the above terms.

47. In view of the disposal of the Writ Petitions, nothing survive for consideration in the applications, if any. The applications stand disposed of accordingly.