

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.7684 OF 2021

ORDER:

Bharatiya Janata Party, a registered political party, represented by its Authorized Signatory Pathuri Nagabhushanam, Vijayawada Krishna District, State of Andhra Pradesh and three others filed the present writ petition under Article 226 of the Constitution of India to issue Writ of Mandamus declaring the Notification No.68/SEC-B1/2020 dated 15.03.2020 and the consequential Notification dated 06.05.2020 of the first respondent to the extent of recommencement of election process of Mandal Praja Parishads Territorial Constituencies (MPTCs) and Zilla Praja Parishads Territorial Constituencies (ZPTCs) in State of Andhra Pradesh from the stage where it was stopped, depriving the Petitioners from filing nominations and contesting the elections to MPTCs and ZPTCs as illegal, irregular, arbitrary, unconstitutional unjustified, unsustainable and contrary to the A.P. Panchayat Raj Act and the Rules framed thereunder and set-aside the same directing the Respondents to issue fresh notification duly allowing the commencement of the election process for MPTCs and ZPTCs from the beginning.

The first petitioner is the authorized signatory of Bharatiya Janata Party. The second and fourth petitioners are residents of Jammalamadugu Mandal and are Registered Voter Ids bearing Nos.RGS1232735 at 85- Devagudi village and RGS1288034 in

131- Moragudi Village respectively. Similarly, the third Petitioner is a resident of Kolakaluru, Tenali Mandal with a Registered voter Id bearing NoNBT1810662 in Kolakaluru. The Petitioner Nos. 2 to 4 were born in the year 1999 and 2000 aged about 21 years as on the date of filing the writ petition i.e 31.03.2021. The Petitioners are aspiring to contest in the elections in their respective MPTCs and ZPTCs to work for the betterment of their town on attaining the age of 21 years which is the eligibility criteria to contest in elections for the office of MPTCs and ZPTCs in their respective districts.

It is specifically contended that, Article 40 of the Constitution of India, while laying down the directive principles of State Policy in its Part IV expected that the local bodies should be endowed with such powers and authority as may be necessary to enable them to function as units of the self government. Self governance of the local body by the democratically elected body is the avowed object. While Article 243-G expects the same in so far as Panchayats are concerned and Article 243-W relates to the Municipalities. Article 243-G contemplates that the Panchayats shall be endowed with such powers and authority as may be necessary to enable them to function as institutions as self government. Part IX of the Constitution contains the provisions relating to the Panchayats. According to Article 243 K (1), the superintendence direction and control of the preparation of Electoral Rolls and the conduct of all elections to the Panchayats is vested in the State Election Commission. As per Article 243-K read with Section 200 of Andhra Pradesh Panchayat Raj Act, 1994

(Hereinafter referred to as “the Act”), the State Election Commissioner is appointed by the Governor of the State. Part III of the Act, 1994 comprising of sections 148 to 176 deals with the constitution of Mandal Praja Parishads and election of members from territorial constituencies. Section 149 deals with the composition of Mandal Praja Parishads wherein as per clause (i) persons have to be elected from each territorial constituency under Section 151. Section 151 deals with election of members from territorial constituency by the method of secret ballot. Section 155 stipulates that voters having completed the age of 21 years are eligible to contest in the elections. Part IV of the Act, 1994 comprising of Sections 177 to 199 deals with the constitution of Zilla Praja Parishads and election of members from territorial constituencies. Section 177 deals with the composition of Zilla Praja Parishads, as per clause (i) persons have to be elected from each territorial constituency under Section 179. Section 179 deals with election of members from territorial constituency by the method of secret ballot. Section 183 stipulates that voters having completed the age of 21 years are eligible to contest in the elections.

In exercise of the Rule making power under Section 268, the State Government framed the A.P Panchayat Raj (Conduct of Election) Rules, 2006 (for short ‘Rules’) to conduct election of members of Gram Panchayat, Mandal Parishad and Zilla Parishad. After the issuance of Election Notification by the first respondent, the Election Notice under Rule 4 shall be prepared and published by the Election Officer giving all the particulars and details of

election, the time gap between each stage of election, namely, filing of nominations, last day for nominations, scrutiny for nominations, withdrawal of nominations, publication of final list of candidates, the day for poll, day for counting and the declaration of results. The schedule given under the rules shall be strictly adhering to by all concerned. Rule 7 confers wide powers and deals with re-notification of Election Programme where the election process is interrupted or altered. Under the said Rule, the first respondent has the powers to re-notify the election programs commencing from the filing of the nominations. Rules 8 to 17 relate to the candidates for contest in the election, while Chapter III, IV and V of the Rules relates to the manner and method of voting on the prescribed poll day.

The main endeavour of the petitioners is that, when election Notification was issued initially on 07.03.2020 and fixed schedule for elections, the petitioners were not eligible and not enrolled as voters, as they were below 21 years. But, during interregnum period, they attained majority of 21 years age and enrolled as voters. However, due to covid-19 pandemic, elections were postponed indefinitely. Later, the matter was carried to the Supreme Court in W.P (Civil) No.437 of 2020 and the Apex Court by order dated 18.03.2020 was pleased to uphold the validity of the Notification dated 15.03.2020. Vide Notification dated 06.05.2020, the first respondent stopped the election process. Later, the first respondent vide Notification dated 01.04.2021 proposed to conduct elections for ZPTCs and MPTCs from the stage where it was stopped is without re-notifying the election, exercising

power under Rule 7 of the Rules. On account of issuing Notification dated 01.04.2021 proposing to resume the election process from the stage where they were stopped, deprived Petitioner Nos. 2 to 4 from casting their vote and to contest in the elections for MPTCs and ZPTCs, which is a constitutional right guaranteed under the Constitution of India. Despite, the demands made by these petitioners, the first respondent did not issue notification exercising power under Rule 7 of the Rules and such act of the first respondent is illegal, arbitrary and violative of Articles 14 & 19 of the Constitution of India, besides the provisions of Panchayat Raj Act and requested to issue a direction as stated above.

The first respondent/State Election Commission filed counter affidavit denying material allegations, while admitting issue of Notification dated 07.03.2020 for conduct of ordinary elections to MPTCs and ZPTCs, pausing the election process by the first respondent due to Covid Pandemic and carrying the matter to Supreme Court in W.P (Civil) No.437 of 2020, direction issued therein. The following are the specific grounds urged in the counter affidavit:

- a) In exercise of powers conferred under Article 243-K of the Constitution of India, Sections 151(1) and 179(1) of the Andhra Pradesh Panchayat Raj Act, 1994, issued a Notification No. 68/SEC-B1/2020 dated 07.03.2020, notifying the programme for conduct of elections to the MPTCs and ZPTCs in the State of Andhra Pradesh. Parallely, the Respondent also issued other notifications

notifying the schedule of elections to the Municipal Corporations, Municipalities and Nagar Panchayats.

- b) Thereafter, due to the unforeseen and unfortunate breakout of the Covid-19 Pandemic which ultimately resulted in a nation-wide lockdown, taking into account the fact that proceeding with the election schedule may be detrimental and harmful for the public health at large, exercised its plenary powers under Articles 243-K of the Constitution of India and Section 201 of Panchayat Raj Act read with Rule 7 of the Rules and issued a Notification No. 68/SEC-B1/2020 dated 15.03.2020 whereby further election process in connection with the conduct of elections to MPTCs and ZPTCs in pursuance of the Notification No.68/SEC-B1/2020 dated 07.03.2020 was postponed, forthwith. Vide the said Notification, the first respondent also stopped forthwith, all further election processes in connection with conduct of elections to Municipal Corporations, Municipalities and Nagar Panchayats in pursuance of the relevant Notification schedules. The first respondent, vide Notification dated 15.03.2020 categorically stated that the election process of MPTCs, ZPTCs and Urban Local Bodies will be “*continued*” from the stage at which they had stopped i.e. the stage of election process as on 14.03.2020.
- c) The validity of the Notification No. 68/SEC-B1/2020 dated 15.03.2020 whereby the first respondent paused the election process, on account of the Covid-19 Pandemic, with an intention to resume and continue the election process once

normalcy is restored, was considered by the Hon'ble Supreme Court in W.P.(C) No. 437 of 2020 and the Hon'ble Supreme Court, vide Order dated 18.03.2020 upheld the validity of the Notification No. 68/SEC-B1/2020 dated 15.03.2020.

- d) The first respondent issued a Notification No. 68/SEC-B1/2020 dated 06.05.2020 pursuant to the Notification No. 68/SEC-B1/2020 dated 15.03.2020 and in consequence to the Order dated 18.03.2020 passed by the Hon'ble Supreme Court in WP (C) No. 427 of 2020. Vide the said Notification, the first Respondent categorically stated that the election process that was paused vide Notification dated 15.03.2020 would continue from where it was stopped, upon restoration of normalcy.
- e) Upon the receding of the effect of the Covid-19 Pandemic, the first Respondent issued a Notification No.578/SEC-F2/2021 dated 15.02.2021, stating therein that the first respondent, in review of the situation, had decided that the situation is conducive for resumption of the paused election process of Urban Local Bodies from the stage as on 14.03.2020. Similarly, the first Respondent, on the same day i.e. 15.02.2021, issued Notification No. 578/SEC-F1/2021-1 for conduct of ordinary elections to Municipal Corporations of Vizanagaram, Eluru, Machilipatnam, Guntur, Ongole, Tirupati, Chittoor, Kadapa, Kurnool and Ananthapur, Notification No. 579/SEC-F1/2020-1 for Greater Visakhapatnam Municipal Corporation and

Notification No. 580/SEC-F1/2021-2 for Vijayawada Municipal Corporation. The election process with respect to the bodies referred supra was resumed and continued from the stage where they had paused on 14.03.2020.

f) Challenging the Notifications issued on 15.02.2021, various persons approached this Court vide WP No. 4290 of 2021 and batch. In the said Writ Petitions, the decision of the first Respondent to resume the elections which were paused on 15.03.2020 on account of the Covid-19 Pandemic was challenged and the Petitioners therein prayed that the Notification be issued once again and the election process begin afresh mainly on the ground that a number of persons had become eligible between 15.03.2020 and 15.02.2021 to contest the elections. Along with the said Writ Petitions, the Petitioners also filed Interlocutory Applications seeking stay of all further proceedings pursuant to the Notifications issued on 15.02.2021. After an elaborate hearing on the Interlocutory Applications, the Learned Single Judge of this Court, vide common order dated 26.02.2021 dismissed the Interlocutory Applications.

g) The Petitioners therein filed WA No. 117 of 2021, WA No. 118 of 2021 and WA No. 120 of 2021 before the Division Bench of this Court, vide Order dated 02.03.2021 was not inclined to interfere with the Order passed by the Learned Single Judge and dismissed the Writ Appeals. Along with the Writ Appeals, a Public Interest Litigation W.P.(PIL)No.51 of 2021 was also instituted agitating issues similar to the one raised

in the Writ Appeals and the Division Bench vide Order dated 02.03.2021, dismissed the Public Interest Litigation filed therein as well.

h) The Division Bench, while passing its Orders on 02.03.2021, was pleased to observe as follows:

“We are of the considered opinion that the Notification, dated 15.03.2020, having been challenged before the Hon’ble Supreme Court and in view of the fact that the Hon’ble Supreme Court has declined to interfere with the Notification, dated 15.03.2020, the contentions of the learned Counsel for the appellants is without any merit. It cannot be countenanced that the Hon’ble Supreme Court had adverted only to the postponement of the election and not the subsequent part, where the Election Commissioner indicated that the election process in respect of MPTCs/ZPTCs and Urban Local Bodies would be continued from the stage where it is stopped.”

The validity of the Notification dated 15.03.2020 was tested before the Courts and failed in their attempt. But, the present petition is filed for identical relief for conducting MPTCs & ZPTCs elections. It is contended that this petition is liable to be dismissed by applying the same principle and requested to dismiss the writ petition.

Though, Bharatiya Janata Party is the first petitioner, it did not raise any specific contention about infringement of right of the political party to claim *writ of mandamus*, except making certain allegations by petitioner Nos. 2 to 4 about depriving their right to vote and contest in the elections.

During hearing, Ms. Sodum Anvesha, learned counsel for the petitioners reiterated the contentions urged in the affidavit, while submitting that, due to failure of the first respondent, the petitioners were deprived of their right to elect and contest in the elections, which is a constitutional right guaranteed under the

constitution to a voter. Apart from that, by the date of notification for elections for Urban Local Bodies, ZPTCs and MPTCs, the petitioners were not eligible to register themselves as voters. However, elections for local bodies such as panchayats and municipal bodies was postponed by Notification dated 15.03.2020 for a period of six weeks or any other date on the ground of spread of Covid-19; stopped vide Notification dated 06.05.2020 and later resumed the process of election vide Notification dated 01.04.2021. In the interregnum period, the petitioners attained age of 21 years and they became eligible for registration of voters. But, on account of issue of notification, the petitioners became ineligible to elect representatives of their choice and vote in the election of ZPTCs and MPTCs. Therefore, they were deprived of their constitutional right and the entire process of election has to be stopped and requested to issue a direction as stated supra.

Sri C.V. Mohan Reddy, learned Senior Counsel appearing for the first respondent opposed the petition on the ground that the issue involved in this writ petition is no more *res integra*, in view of the order passed by the learned Single Judge in I.A.No.1 of 2021 in W.P.No.7778 of 2021 dated 06.04.2021 and affirmed by the Division Bench of this Court in W.A.No.224 of 2021 07.04.2021 and no further adjudication is required based on the same judgment.

Considering rival contentions, perusing the material available on record, the sole point that arises for consideration is”

“Whether the petitioners who were not voters as on the date of Initial Notification dated 07.03.2020 are entitled to claim relief of cancellation of Notification dated 15.03.2020 and consequential Notification dated 06.05.2020 and whether a direction to re-notify the election process for MPTCs & ZPTCs be given. If so, whether this Court can issue Writ of Mandamus, as claimed by these petitioners?”

P O I N T:

Admittedly, the petitioners were not registered voters as on the date of Notification dated 07.03.2020, as they did not attain 21 years of age. It is also equally not in dispute that, after finalization of list of contesting candidates and publication of the same in the notice board, the first respondent took a decision to pause the election process, exercising power under Article 243-K of the Constitution of India, vide Notification dated 15.03.2020. Later, the matter was carried to the Supreme Court in W.P (Civil) No.437 of 2020 and the Apex Court by order dated 18.03.2020 was pleased to uphold the validity of the Notification dated 15.03.2020. Vide Notification dated 06.05.2020, the first respondent stopped the election process. Thereafter, as the pandemic Covid-19 has resumed, vide Notification dated 01.04.2021, decision was taken to continue the process of election from the stage where it was stopped and resumed the elections for MPTCs and ZPTCs fixing the date of polling as 08.04.2021.

In view of the specific contentions raised by the learned counsel for the petitioners that the petitioners became eligible during interregnum period and they were deprived of their right to exercise vote and elect their representative, which is a right

guaranteed under the Constitution of India, it is necessary to advert to the relevant provisions of the Constitution of India, the Andhra Pradesh Panchayat Raj Act, 1994 and Rules framed thereunder.

Elections to the house of people and to the legislative assemblies of the State and public bodies like ZPTC, MPTC, Urban Local Bodies etc is based on “Adult Suffrage”, as enunciated under Article 326 of the Constitution of India. According to it, Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; but is to say, every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Therefore, the person who is enrolled himself as a voter, is entitled to vote and contest in the elections as on the date of notification, as per the statute if any, fixing the date.

Part-III and Part-IV of the A.P. Panchayat Raj Act, 1994, deals with Constitution and Incorporation, Composition, Powers, and Functions of Mandal Praja Parishads and Zilla Praja Parishads respectively. Section 151 deals with Election of members from

territorial constituencies. - (1) One member shall be elected to the Mandal Praja Parishad from each territorial constituency specified in Section 150 by the method of secret ballot by the persons who are registered voters in the territorial constituency concerned; Provided that a registered voter in the Mandal Praja Parishad shall be entitled to contest from any territorial constituency of the Mandal Praja Parishad. (2) For purpose of preparation and publication of the electoral roll for the elections to the office of member under this Section, the provisions of Sections 11 and 12 shall, mutatis mutandis apply, subject to such rules as may be made in this behalf. Thus, the relevant date for publication of electoral roll is specified in Sections 11 & 12 of the A.P. Panchayat Raj Act, 1994.

Section 11 of the A.P. Panchayat Raj Act, 1994, deals with Preparation and Publication of electoral roll for a Gram Panchayat. According to subsection (1), the electoral roll for Gram Panchayat shall be prepared by the person authorised by the Andhra Pradesh Election Commissioner for Local Bodies in such manner by reference to such qualifying date as may be prescribed and the electoral roll for the Gram Panchayat shall come into force immediately upon its publication in accordance with the rules made by the Government in this behalf. The electoral roll for the Gram Panchayat shall consist of such part of the electoral roll for the Assembly Constituency published under the Representation of the People Act, 1950 (Central Act 43 of 1950) as revised or amended under the said Act, upto the qualifying date, as relates to the village or any portion thereof; Provided that any amendment,

transposition or deletion of any entries in the electoral roll, or any inclusion of names in the electoral roll of the Assembly Constituencies concerned, made by the Electoral Registration Officer under Section 22 or Section 23, as the case may be, of the Representation of the People Act, 1950, up to the date of election notification, for any election held under this Act, shall be carried out in the electoral roll of the Gram Panchayat and any such names included shall be added to the part relating to the last ward. The explanation thereto specified that, where in the case of any Assembly Constituency there is no distinct part of the electoral roll relating to the village, all persons whose names are entered in such roll under the registration area comprising the village and whose addresses as entered are situated in the village shall be entitled to be included in the electoral roll for the Gram Panchayat prepared for the purposes of this Act.

Subsection (2) of Section 11 deal with electoral roll for a Gram Panchayat; Subsection (3) deals with publication and Subsection (4) deals the electoral roll for the gram panchayat. A similar provision is contained in Part-IV of the A.P. Panchayat Raj Act, 1994 i.e. Constitution and Incorporation, Composition, Powers, and Functions of Zilla Praja Parishads. Therefore, one must be a registered voter on the electoral rolls as on the date specified by the Election Commissioner and as on the date of issue of notification for conducting elections.

As admitted by these petitioners, Petitioner Nos. 2 to 4 were not eligible for their enrolment as voters, as they were below 21

years by the date of notification. Therefore, by the date of notification dated 07.03.2020, these petitioners were not eligible for their enrolment as voters in the voters list, apparently they are ineligible either to vote to elect a representative or contest in the elections for MPTCs and ZPTCs as on the date of notification.

A.P. Panchayat Raj (Conduct of Elections) Rules, 2006 were formed in exercise of powers conferred under Section 268 of the Andhra Pradesh Panchayat Raj Act, 1994.

Rule 4 of the Rules deals with issue of election notification by the State Election Commission for fixing the schedule for election. Rule 5 deals with display of voters list and Rule 6 deals with issue of election notice by the Returning Officer. Rule 7 is an important Rule which deals with Special Election Programme. According to Rule 7, Notwithstanding anything contained in these rules, where the election process is interrupted or the election programme has to be altered on account of the orders of any court of law or for other valid reasons to be recorded in writing, it shall be competent for the State Election Commission either generally or in respect of specified Gram Panchayat or Mandal Praja Parishad or Zilla Praja Parishad, as the case may be, to alter the election programme notified under sub-rule (2) of Rule 4 and re-notify the election programme as it deems fit in the circumstances of the case without having regard to the guidelines mentioned in sub-rule (3) of Rule 4 and the Returning Officer shall give effect to the same; provided that where the election programme is re-notified under this rule commencing from the making of nominations, the

nominations already made shall be disregarded and the deposits, if any, made under Rule 10 shall be refunded.

This power is vested with the State Election Commissioner to resume or notify the election process which was stopped by exercising power under Section 201 of the A.P. Panchayat Raj Act, 1994 and Article 243-K of the Constitution of India read with Rule 7 of the A.P. Panchayat Raj (Conduct of Elections) Rules, 2006, State Election Commission can exercise such power to resume the election process notified under Sub-rule (2) of Rule 4 of the Rules and re-notify the election programme, if it is necessary.

It is an undisputed fact in the present case that the election Notification dated 07.03.2020 was issued fixing the election schedule for Urban Local Bodies, ZPTCs and MPTCs. But, the elections were paused vide Notification dated 15.03.2020 due to Covid-19 pandemic. Thereafter, the matter was carried to the Supreme Court by the State Government in W.P (Civil) No.437 of 2020m where the Supreme Court issued the following direction:

“The petitioner – State of Andhra Pradesh has filed this writ petition challenging the action of the respondent – Andhra Pradesh State Election Commission (for short, the ‘Election Commission’) in issuing a Notification dated 15.03.2020 postponing the elections for the local bodies such as Panchayats and Municipal Bodies by six weeks or any other date on the ground of spread of Corona virus (COVID 19).

We do not see any reason why this Court should interfere with the decision of the respondent - Election Commission to postpone the elections particularly since the postponement is due to possible outbreak of Corona virus (COVID 19) epidemic in the country. We therefore decline to interfere with the said decision of the Election Commission. However, it appears that one of the grievances raised by the petitioner – State needs to be addressed. According to Mr. ANS Nadkarni, learned Additional Solicitor General appearing for the State, a large number of developmental activities have been suspended due to the imposition of the MCC for the aforesaid Elections in the State of Andhra Pradesh.

Mr. Nadkarni, learned Additional Solicitor General, submits that the imposition of the MCC would not be justified if the Elections are postponed. We see much substance in the above submissions of the learned Additional Solicitor General. We therefore direct that the Election Commission shall impose the MCC four weeks before the notified date of polling. Mr. Shekhar Naphade, learned Senior Counsel appearing for the respondent – Election Commission, submits that the State of Andhra Pradesh is not entitled to move this Court by way of filing writ petition under Article 32 of the Constitution of India. We are not inclined to go into this question in the present writ petition due to the emergent circumstances in which the same is filed. The said question is left open for determination in an appropriate case. Mr. Nadkarni, learned Additional Solicitor General for the petitioner – State, submits that the Election Commission was not entitled to postpone the elections without appropriate consultation with the State Government. He relies upon the decision of this Court in *Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and Others* – (2006) 8 SCC 352. According to Mr. Naphade, learned Senior Counsel for the respondent – Election Commission, the decision in *Kishansing Tomar* (Supra) does not require prior consultation. This is also not a controversy which we consider appropriate for decision in this case in view of the order we propose to pass.

We direct that since the Election Commission has already taken the decision to postpone the Elections, there shall be a post decisional consultation with the State of Andhra Pradesh before the next date is notified by the Election Commission. The MCC for the elections shall be reimposed four weeks before the date of polling. We further direct that the present development activities which have already been undertaken shall not be interrupted till the MCC is reimposed. However, if the State Government wishes to undertake any fresh developmental activities, they shall do so only with the prior permission of the respondent – Election Commission. In no circumstance, the State Government shall be prevented from taking necessary steps to curb the menace of Corona Virus (COVID 19) epidemic. The instant writ petition is disposed of in the above terms.”

In view of the orders passed by the Hon’ble Apex Court, the State Election Commissioner is required to resume the election process from where it was paused by re-imposing four weeks Model Code of Conduct prior to the notified date of polling. Therefore, the State Election Commissioner is under obligation to resume the election process from the stage where it was stopped and re-impose Model Code of Conduct for completion of the process of election for MPTCs and ZPTCs along with other public bodies. When such direction was issued by the Full Bench of the Apex Court, the first respondent cannot exercise power under Rule 7 of the Rules and re-notify the election process to accommodate

these petitioners to contest in the elections or to vote or to elect their representative. If, such request is accepted, it amounts to violation of the directions issued by the Full Bench of the Apex Court and therefore, such process cannot be permitted. If, the request made by the petitioner Nos. 2 to 4 is accepted, holding elections is a difficult task for anyone, since it is an unending process, for the reason that, many persons may attain 21 years of age and become eligible between the date of notification till date of polling, thereby, it will be impossible to hold elections to public bodies by the State Election Commission. Therefore, by exercising power under Rule 7 of the Rules, the first respondent is not expected to re-notify the elections for ZPTCs and MPTCs on account of attaining age of 21 years by these petitioners during interregnum period i.e. from the date of cancelling Notification dated 15.03.2020 till the date of filing this petition.

As per the provisions of A.P. Panchayat Raj Act, referred above, more particularly, Sections 11 & 12 of the A.P. Panchayat Raj Act, 1994 and Part-III and Part-IV of the A.P. Panchayat Raj Act, the registered voters who enrolled in the electoral rolls specified in Sections 11 & 12 of the A.P. Panchayat Raj Act are alone eligible to contest or to elect their representative, but not on the date of polling. In the present case, notification was issued fixing schedule for both rural and urban local bodies, including MPTCs and ZPTCs. However, it was stopped due to unforeseen reasons. The Supreme Court only directed to resume the process of election and re-impose Model Code of Conduct for four weeks prior to notified date of poll. In such circumstances, the Court cannot

compel the first respondent to re-notify the election process afresh, enabling petitioner Nos. 2 to 4 to contest in the election and to elect their representative in free and fair elections.

Right to vote and right to elect a representative of their own choice in free and fair election is a fundamental right guaranteed under the Constitution, as held by the Apex Court in ***Rajabala & others v. State of Haryana***¹, where the Supreme Court held that, the right to vote and right to contest at an election to a PANCHAYAT are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate Legislature directly. Parliament can indirectly curtail only the right to contest by prescribing disqualifications for membership of the Legislature of a State.

Thus, the petitioners are entitled to claim a right under the Constitution to vote and contest in the elections. But, that right must be a right accrued to Petitioner Nos. 2 to 4, as on the date of election notification. They were admittedly not eligible for enrolling their names in electoral rolls, as they were below 21 years, as on the date of Notification dated 07.03.2020. Therefore, the petitioners ineligible by the date of notification and they are not entitled to exercise the constitutional right, as held by the Apex Court in ***Rajabala & others v. State of Haryana*** (referred supra). Therefore, the petitioners who were enrolled in the electoral rolls, who became eligible subsequent to notification, hereby the

¹ (2016) 2 SCC 445

question of infringement or invasion of legal right as on the date of notification does not arise. Hence, the petitioners are disentitled to claim writ of mandamus for cancellation of Notifications dated 07.03.2020 and 06.05.2020, as the petitioners did not possess any constitutional right as on that date and its infringement and invasion does not arise. Hence, the petitioners are not entitled to claim writ of mandamus and the issue involved in this matter is no more *res integra*, in view of the law declared by the Division Bench of this Court in W.A.No.224 of 2021. Of course, that is in respect of municipalities and municipal corporations. However, the principle laid down therein is squarely applicable to the present facts of the case. Hence, by applying the principles laid down in the above judgment and in view of judgment of Apex Court in W.P. (Civil) No.437 of 2020 and relevant provisions of Act and Rules, the petitioners claim cannot be accepted while holding that the petitioners did not acquire any right to vote and right to contest in the elections as on the date of notifications and no constitutional right by Petitioner Nos.2 to 4 is infringed. Consequently, the writ petition is liable to be dismissed.

In the result, writ petition is dismissed. No costs.

Consequently, miscellaneous petitions pending if any, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:21.05.2021

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.7684 OF 2021

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DATE 21.05.2021

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