

**PBBJ:**  
06.07.2020

Through V.C.  
Reserved on 01.07.2020  
Pronounced on 06.07.2020

**ORDERS ON INTERIM RELIEF**  
**IN**  
**WRIT PETITION No.8298/2020(LB-RES)**

In the instant petition, petitioners grievances are two fold:

- (i) Challenge to the notification dated 17.06.2020 issued by the 2<sup>nd</sup> respondent whereby directing the Deputy Commissioners of Karnataka State to appoint Administrators to the Village Panchayats where tenure of 5 years has been completed, which is pursuant to the Cabinet decision dated 11.06.2020.
- (ii) For a direction to the 3<sup>rd</sup> respondent to issue calendar of events to hold election to Grama Panchayat.

2. On 29.05.2015, elections were held to various Village Panchayats and results were declared on 05.06.2015. Petitioner No.1 was elected as a President

of Yelagodu Village Panchayat, Petitioner No.2 is the member, Petitioner No.4 is the President of Kelegere Village Panchayat and Petitioner Nos.3, 5 to 19 are Presidents of Village Panchayath i.e., Isamudra, Baramasagara, Manehalli, Vanahalli, Lakshmisagara, Dhayanahalli, Muddapura, Halagatti, Halagawadi, Sirigere, Chikkabennur, Turuvanur, Gonuru, Chollaghatta, Byalahala and Koogunde. Petitioners would be completing 5 years as on 28.05.2020/04.06.2020.

3. Elections postponed due to the out break of Covid-19 (Coronavirus disease) span the globe. Both Central and State Governments issued various guidelines in terms of the Disaster Management Act, 2005 (Hereinafter referred to as 'Act, 2005' for short). Lockdown Guidelines are that social, political, sports, entertainment, academic, cultural, religious functions and other gatherings remained prohibited across the country. Process of elections to Village Panchayaths could be examined if Covid-19 threat is receded.

Recently, Supreme Court upheld postponement of Andhra Pradesh Local Body Polls due to the Corona Virus pandemic in the case of **THE STATE OF ANDHRA PRADESH vs THE ANDHRA PRADESH STATE ELECTION COMMISSION** in Writ Petition (s) (Civil) No.(s).437/2020 decided on 18<sup>th</sup> March, 2020. In this backdrop, 2<sup>nd</sup> respondent – State Election Commission issued a Press Notification on 28.05.2020 in which it is notified that all the Grama Panchayat General Election is tentatively postponed due to spreading of Covid-19 Virus pandemic while referring to Article 243-K of the Constitution of India. The Cabinet took a decision to appoint Administrators to the Village Panchayat, wherever elected members have completed 5 years as on 11.06.2020 and thereafter, on 17.06.2020 2<sup>nd</sup> respondent has communicated the decision of the Cabinet and directed all the Deputy Commissioners to appoint Administrators to such of those Village Panchayats where the office of the President, members etc. (Annexure – A).

4. Petitioners feeling aggrieved by the issuance of communication dated 17.06.2020, presented this petition.

5. Sri Jayakumar S Patil, Learned Senior Counsel for the petitioners contended that Section 8 of the Karnataka Panchayat Grama Swaraj & Panchayat Raj Act, 1993 (Hereinafter referred to as KGPR Act, 1993 for short) is not attracted so also Section 321 of KGPR Act, 1993 cannot be invoked for the purpose of appointment of administrators in the respective Grama panchayats where the tenure of the President/Vice President/Members are completed. It was further contended that Article 243E(3 and 2) of the Constitution is taken into consideration, the impugned communication of the State Government to all the Deputy Commissioners to undertake appointment of Administrators to Grama Panchayats wherever the tenure is completed is impermissible.

6. Learned Senior counsel for the petitioners while citing decision in the case of **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008(PIL) submitted that this Court has interpreted Section 509 of the Karnataka Municipal Corporation Act, 1976 which is parametria to Section 321 of KGPR Act, 1993. Hence, decision in **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008(PIL) is aptly applicable to the petitioners case.

7. Learned counsel for the petitioners relied on the following decisions:

(1) **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008 (PIL)

(2) **MADEVA UPENDRA SINAI AND OTHERS vs UNION OF INDIA AND OTHERS** reported in (1975)3 SCC 765 (Para.39)

8. Per contra, learned Advocate General submitted that grievance of the petitioners is for

quashing of Annexure – A communication issued by the State Government to appoint Administrators in the respective Grama Panchayats where the tenure of the elected members is completed and further, sought for a direction to hold elections. It was contended that it is highly impracticable to hold elections for 6025 Grama Panchayats due to out-break of Covid-19 pandemic. Therefore, State Government invoked Section 321 of KGPR Act, 1993. The Cabinet decision was taken on 11.06.2020. Thereafter, a communication has been made to respective Deputy Commissioners to appoint administrators in the Grama Panchayats. The State Election Commission postponed the election while issuing Press Notification on 28.05.2020 citing outbreak of Covid-19 pandemic.

9. The petitioners second grievance relates to issue of directions to the Election Commission to hold elections is the subject matter in Writ Petition No.7987/2020 (PIL). On 17.06.2020, an interim direction was issued to the State Election Commission

to find out the feasibility of holding election before the next date of hearing. It was further submitted that Article 243E of the Constitution wherein it is stipulated that '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'. Therefore, at any stretch of imagination, elected members of the Village Panchayat who have been elected are not entitled to continue beyond 5 years. Therefore, the State has invoked Section 321 of the KGPR Act, 1993.

10. Learned Advocate General also relied on the decision in **P.R.RAMESH** (supra) in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008 (PIL) and in view of later decision in the case of **P.R.RAMESH AND OTHERS vs STATE OF KARNATAKA AND OTHERS** reported in 2011 SCC ONLINE Kar 4075 (para.44), would overcome the cited decision on behalf of the petitioner. That apart, the impugned communication dated 17.06.2020 is only an

interim arrangement due to out-break of Covid-19 pandemic. If the elections are conducted, there may be so many hurdles including maintaining social distancing so also making arrangement of State Government officials/employees. Thus, petitioners have not made out prima facie case to stay the notification dated 17.06.2020 and further, no interim direction could be issued to continue the petitioners as President/Members/Vice President.

11. The Learned Advocate General relied on Apex Court decision in **MADEVA UPENDRA SINAI** (supra) at Para.39 to support the contention of invoking Section 321 of KGPR Act, 1993.

12. Heard the learned counsel for the parties.

13. “Whether State Government invoking Section 321 of KGPR Act, 1993 in appointing administrator to the various Grama Panchayats wherever tenure of elected members were completed is in order or not? and further, whether petitioners are entitled to continue as



President/Members of Grama Panchayat beyond 5 years or not”?

14. Undisputedly, there is no provision under the KGPR Act, 1993 where a situation has arisen in postponing the elections like the present situation of Covid-19 pandemic. Prima facie, it is impracticable to hold election. In the absence of any specific provision, State Government has invoked Section 321 of KGPR Act, 1993. The cited decision on behalf of the petitioners do not assist in view of Article 243E of the Constitution wherein it is provided ‘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’. Article 243E reads as under:

**243E. Duration of Panchyats, etc.-(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 for which the dissolved Panchayat would have continued is 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.

Section 321 of KGPR Act, 1993 reads as under:

**Removal of difficulties.**-If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the official Gazette as the occasion may require do anything which appears to it to be necessary to remove the difficulty

Section 509 of Karnataka Municipal Corporation Act, 1976 reads as under:

**Removal of difficulties.**- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette as the occasion may require do anything which appears to it to be necessary to remove the difficulty.

15. Learned counsel for the petitioners submitted that this Court interpreted Section 509 of Karnataka Municipal Corporation Act, 1976 which is parametria to Section 321 of KGPR Act, 1993. Hence, the cited decision is applicable in the present case. There is clear bar under Article 243E to continue elected members beyond 5 years. Therefore, there is hurdle for the State to invoke Section 321 of KGPR Act, 1993. Article 243E

prohibits elected members to continue beyond tenure. Section 321 of KGPR Act, 1993 is a general provision, State has invoked the said provision to overcome the current scenario. Even though, specific situation is not stated under Section 8 in appointing Administrator, however, to overcome such a situation, State Government invoked Section 321 of KGPR Act, 1993. Similar provision interpreted by this Court in the case of **P.R.RAMESH AND OTHERS vs STATE OF KARNATAKA AND OTHERS** reported in 2011 SCC ONLINE Kar 4075 and Paragraph 44 is extracted hereunder:

44. From the admitted sequence of facts narrated herein above, it is apparent, that the tenure of the existing Councilors of the BMP (including petitioners 1 and 2 hereinabove) naturally expired on the completion of the term of the said Corporation on 22-11-2006. In compliance of the directions issued by this Court, the process of elections to the BBMP was conducted during 2009/2010. On the completion of the aforesaid election process, 198 Councilors came to constitute the new BBMP. In our considered view, neither Section 99 nor Section 100 of the Municipal Corporations Act had been invoked for the dissolution of the earlier BMP on 22-11-2006. In this behalf, reference may be made

to the three contingencies recorded by us in paragraph 32, wherein Section 99 of the Municipal Corporations Act can be invoked for the dissolution of under Section 100 of the Municipal Corporations Act, were the basis for the conclusion of the term of office of the Councilors of the BMP on 22-11-2006. In fact, the tenure of the elected Councilors of the BMP naturally expired on 22-11-2006. In the aforesaid view of the matter, it is not possible for us to conclude, that the appointment of the Administrator in the present case can be stated to have emerged from the authority exercisable by the State Government either under Section 99 or under Section 100 of the Municipal Corporations Act. The contingency in which the Administrator was appointed after the expiry of the tenure of the existing Councilors of the BMP on 22-11-2006 has not been expressly provided for under any express provision, of the Municipal Corporations Act. The period during which elected Councilors were not functioning, to run the affairs of the BBMP, an Administrator had necessarily to be appointed. For the situation in hand since recourse could not be made to Sections 99 and 100 of the Municipal Corporations Act (for the appointment of an Administrator) the State Government, had necessarily to take recourse to Section 509 of the Municipal Corporations Act, as has been suggested by the learned Counsel for the respondents. If the submission advanced at the hands of the learned Counsel for the petitioners is to be accepted by literally applying the provision(s) relied upon by the petitioners, the functioning of the Corporation would stop after the Administrator had been in office for a period of six months. It is difficult to

countenance to this. A valid interpretation of a legal provision, can never lead to an unacceptable or impracticable conclusion. We are satisfied, that in the absence of duly elected Councillors, the only manner in which the affairs of the BBMP could be administered, was by the appointment of an Administrator. That having been done during the course of the period during which circumstances were beyond anybody's control, the same should flow from a statutory provision. Since we have already concluded, the Sections 99 and 100 of the Municipal Corporations Act are inapplicable to the facts and circumstances of this case, and since, no other provision, which can be stated to be applicable has been brought to our notice, we are satisfied, that reference made to Section 509 of the Municipal Corporations Act, has to be accepted as the only source of refuge in the facts of the present case. We therefore, hereby, accept the contention advanced at the hands of the learned Counsel representing respondents 2 to 4. In the aforesaid view of the matter it is not necessary to examine the remaining contentions advanced on behalf of the learned Counsel for the rival parties (insofar as the first contention is concerned). For the reasons recorded herein above, we find no merit in the first contention submitted at the hands of the learned Counsel for the petitioners.

In view of the above position, there is no error in invoking Section 8(1)(b) and (ii) read with Section 321 of KGPR Act, 1993 in propose to appoint Administrators.

16. The second grievance of the petitioner relates to direction to the second respondent – Election Commission to hold election is concerned and matter is pending consideration in Writ Petition No.7987/2020 (PIL).

17. Constitution Bench of the Apex Court in the case of **KISHANSINGH TOMAR vs MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD & OTHERS** reported in **(2006)8 SCC 352** held as under:

“21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no (sic other) circumstance would the Election Commission would be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall

not be necessary to hold any elections for constituting of municipality for such period.”

18. In fact, this Court in the case of **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008(PIL) has taken note of the decision of the Constitution Bench decision in **KISHANSINGH TOMAR**'s case cited supra and referred to Paragraphs 12 and 13. Factual aspects of the matters are to be taken and assessed in **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008(PIL) Election was postponed in **P.R.RAMESH's case** other than the ground of natural calamities. Case in hand relates to natural calamity. Therefore, **P.R. RAMESH vs STATE OF KARNATAKA** decided in Writ Petition No.15482/2006 c/w Writ Petition No.16836/2006 dated 02.07.2008(PIL) has no assistance to the petitioners.



19. In view of the above facts and circumstances, petitioners have not made out prima facie case for granting interim relief of staying the operation of notification dated 17.06.2020 issued by the 2<sup>nd</sup> respondent and further, seeking interim direction to continue the petitioners as elected members of the respective Grama Panchayats beyond 5 years. Petitioners are not entitled to get extension or given the role of a care-taker as they are demanding. Hence, interim relief sought in the present petition stands rejected.

Sd/-

**JUDGE**

Brn