



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No.2002/2020

Guddi W/o Shri Kheta Ram Parihar, Aged About 32 Years, B/c Mali, R/o Parihar Krishi Farm, Tinwari, Tehsil Tinwari, District Jodhpur. Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Rural Development And Panchayati Raj, Secretariat, Jaipur, Rajasthan.
2. The Special Secretary And Director, Rural Development And Panchayati Raj, Secretariat, Jaipur, Rajasthan.
3. The Gram Sewak Cum Paden Sachiv (Administrator), Gram Panchayat Tinwri, Tehsil Tinwri, District Jodhpur, Rajasthan.
4. The Election Commission of Rajasthan, Secretariat Jaipur through its Chief Election Commissioner.

-----Respondents

Connected With

D.B. Civil Writ Petition No. 1887/2020

1. Neelam Sharma W/o Shri Promod Kumar Sharma, Aged About 31 Years, Resident Of Ward No. 10, Village Malwas, Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Kanjan, Panchayat Samiti Rajgarh, District Churu.
2. Amit Kumar S/o Shri Mangilal, Aged About 35 Years, Resident Of Village Rampura, Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Rampura, Panchayat Samiti Rajgarh, District Churu.
3. Sant Kumar S/o Shri Bhanwar Singh, Aged About 66 Years, Resident Of Village Lakhlan Badi, Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Lakhlan, Panchayat Samiti Rajgarh, District Churu.
4. Mahendra Singh S/o Shri Sohan Ram, Aged About 45 Years, Resident Of Village Suratpura, Ps Rajgarh Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Suratpura, Panchayat Samiti Rajgarh, District



Churu.

5. Nirmala Devi W/o Shri Naresh Kumar, Aged About 29 Years, Resident Of Village Birmi Khalsa, Ps Rajgarh, Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Birmi Khalsa, Panchayat Samiti Rajgarh, District Churu.
6. Banita Devi W/o Shri Mange Ram, Aged About 31 Years, Resident Of Village Paharsar, Ps Rajgarh, Tehsil Rajgarh, District Churu. At Present Sarpanch, Gram Panchayat Paharsar, Panchayat Samiti Rajgarh, District Churu.

-----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Jaipur.
2. Special Secretary To The Govt. And Director, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Jaipur.
3. District Collector, Churu.
4. Sub Divisional Officer, Rajgarh, District Churu.
5. Chief Executive Officer, Jila Parishad, Churu.
6. Vikas Adhikari, Panchayat Samiti, Rajgarh, District Churu.
7. Gram Sevak And Officiating Secretary, Gram Panchayat, Kanjan, Tehsil Rajgarh, District Churu.
8. Gram Sevak And Officiating Secretary, Gram Panchayat, Rampura, Tehsil Rajgarh, District Churu.
9. Gram Sevak And Officiating Secretary, Gram Panchayat, Lakhlan, Tehsil Rajgarh, District Churu.
10. Gram Sevak And Officiating Secretary, Gram Panchayat, Suratpura, Tehsil Rajgarh, District Churu.
11. Gram Sevak And Officiating Secretary, Gram Panchayat, Birmi Khalsa, Tehsil Rajgarh, District Churu.
12. Gram Sevak And Officiating Secretary, Gram Panchayat, Paharsar, Tehsil Rajgarh, District Churu.

-----Respondents

D.B. Civil Writ Petition No. 1973/2020

Babu Singh S/o Shri Sabal Singh, Aged About 55 Years, R/o Village Bastawa, Tehsil Balesar, Distt. Jodhpur (Raj.).



----Petitioner

Versus

1. State Of Rajasthan, Through Secretary To The Government, Rural Development And Panchayati Raj Department, Government Of Rajasthan, Jaipur.
2. The State Election Commission, Rajasthan, Jaipur Through Chief Election Commissioner.

----Respondents

D.B. Civil Writ Petition No. 2136/2020

1. Surendra Singh S/o Shri Rishal Singh, Aged About 36 Years, Resident Of Village Indrapura, Tehsil Rajgarh, District Churu, At Present Sarpanch, Gram Panchayat Binjawas, Panchayat Samiti Rajgarh, District Churu.
2. Ajit Kumar S/o Shri Sarjit Singh, Aged About 40 Years, Resident Of Village Harpalu Ramdhan, Tehsil Rajgarh, District Churu, At Present Sarpanch, Gram Panchayat Kalri, Panchayat Samiti Rajgarh, District Churu.

----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Jaipur.
2. Special Secretary To The Govt. And Director, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Jaipur.
3. District Collector, Churu.
4. Sub Divisional Officer, Rajgarh, District Churu.
5. Chief Executive Officer, Zila Parishad, Churu.
6. Vikas Adhikari, Panchayat Samiti, Rajgarh, District Churu.
7. Gram Sevak And Officiating Secretary, Gram Panchayat Binjawas, Tehsil Rajgarh, District Churu.
8. Gram Sevak And Officiating Secretary, Gram Panchayat, Kalri, Tehsil Rajgarh, District Churu.

----Respondents

For Petitioner(s) : Mr. Manish Patel, Mr. Muktesh Maheshwari and Mr. Vikas Bijarnia

For Respondent(s) : Mr. Sunil Beniwal, Addl. Advocate



General,
Mr. Vikas Balia with Mr. Dinesh Pal
Singh

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 03/03/2020

Pronounced on 23/03/2020

Per : Dr. Pushpendra Singh Bhati, J.:

1. These writ petitions under Article 226 of the Constitution of India have been preferred claiming the following reliefs:

D.B. Civil Writ Petition No. 2002/2020:

"(i) That by an appropriate writ, order or direction, the Notification dated 30.01.2020 (Annex.7) may kindly be quashed and set aside.

(ii) That by an appropriate writ, order and direction, the Petitioner may kindly be permitted to continue as a Sarpanch of the Gram Panchayat Tinwri, Panchayat Samiti Tinwri, District Jodhpur.

(iii) Any other appropriate order or direction as may be deemed just and proper in the facts and circumstances of the case, be passed in favour of the Petitioner.

(iv) Writ petition filed by the Petitioner may kindly be allowed with costs."

D.B. Civil Writ Petition No. 1887/2020:

"a. Notification dated 30.01.2020 (Annex.1) may kindly be declared arbitrary, illegal, unjust and without jurisdiction and same may kindly be quashed and set aside;

b. respondents may kindly be directed to continue petitioner, the existing elected Sarpanchs of Gram



Panchayats to do day to day administration of the Gram Panchayats till the elections are held;

c. any other appropriate order which is deemed just and proper in the facts and circumstances of the case may kindly also be passed; and

d. the petitioners may kindly be allowed cost of writ petition."

D.B. Civil Writ Petition No. 1973/2020:

"1. quash and set aside the impugned notification dated 30.01.2020 (Annex.7) issued by the respondent Government.

2. The respondents may kindly be directed to let the petitioner discharge the duties of Pradhan, Balesar till the newly elected Pradhan takes over the post;

3. pass any other order, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

4. allow cost of the writ petition to the petitioners."

D.B. Civil Writ Petition No. 2136/2020:

"a. Notification dated 30.01.2020 (Annex.1) may kindly be declared arbitrary, illegal , unjust and without jurisdiction and same may kindly be quashed and set aside;

b. respondents may kindly be directed to continue petitioner, the existing elected Sarpanchs of Gram Panchayats to do day to day administration of the Gram panchayats till the elections are held;

c. any other appropriate order which is deemed just and proper in the facts and circumstances of the case may kindly also be passed; and

d. the petitioners may kindly be allowed the cost of writ petition."



2. Brief particulars, in relation to the present petitions, as noticed by this Court, are as follows:-

D.B. Civil Writ Petition No. 2002/2020:

I. District : Jodhpur

II. P.S. : Tinwri (Reconstituted 01.12.2019).

III. GP : Tinwri

IV : Prior to Delimitation : 26 Gram Panchayats

V. 15.11.2019 : 33 Gram Panchayats (7 Gram Panchayats newly created & 13 Gram Panchayats reconstituted).

VI. 02.12.2019: 1 Gram Panchayat reconstituted (Dholia Nagar)

Note : 1 Revenue Village namely Vishnunagar removed from PS-Tinwri and included in PS-Osian.

D.B. Civil Writ Petition No. 1887/2020:

I. District : Churu.

II. PS : Rajgarh.

III. GP : Kanjan, Rampura, Lakhlan, Suratpura (Reconstituted – 15.11.2019), Birmi Khalsa & Paharsar.

IV. Prior to Delimitation: 56 Gram Panchayats.

V. 15.11.2019: 65 Gram Panchayats.

VI. 01.12.2019: 68 Gram Panchayats.

VII. Newly created Gram Panchayats: 12 (9-15/11+3-01/12).

VIII. SC Candidates : 16.91%

Prior to delimitation: $16.91 \times 56 = 9$ @ 9.46

15.11.2019: $16.91 \times 65 = 11$ @ 10.99

02.12.2019: $32.06 \times 68 = 11$ @ 11.49

IX. OBC Candidates: 21%

Prior to delimitation: **$21 \times 56 = 12$ @ 11.76**

15.11.2019: **$21 \times 65 = 14$ @ 13.65**

02.12.2019: $21 \times 68 = 14$ @ 14.20.



D.B. Civil Writ Petition No. 1973/2020:

I. District : Jodhpur

II. PS : Balesar.

III. Prior to Delimitation : 26 Gram Panchayats

IV. 15.11.2019: 35 Gram Panchayats

V. 17.11.2019 : 38 Gram Panchayats

Note : 3 GPs namely Sinhada, Bhandu Charnan and Bhandu Jati included from PS-Shergarh.

D.B. Civil Writ Petition No. 2136/2020:

I. District : Churu.

II. PS: Rajgarh.

III. GP: Binjawas (Reconstituted – 15.11.2019, Kalri (Reconstituted -15.11.2019)

IV. Prior to Delimitation : 56 Gram Panchayats.

V. 15.11.2019 : 65 Gram Panchayats + 9.

VI. 01.12.2019 : 68 Gram Panchayats + 3.

VII. Newly created Gram Panchayats : 12 (9-15/11+3-01/12).

VIII. SC Candidates : 16.91%

Prior to delimitation: $16.91 \times 56 = 9 @ 9.46$

15.11.2019 : $16.91 \times 65 = 11 @ 10.99$

02.12.2019: $32.06 \times 68 = 11 @ 11.49$

IX. OBC Candidates: 21%

Prior to Delimitation: $21 \times 56 = 12 @ 11.76$

15.11.2019: $21 \times 65 = 14 @ 13.65$

02.12.2019: $21 \times 68 = 14 @ 14.20.$

3. Application No.01/2020 for impleadment of Election Commission as party respondent is allowed for the reasons mentioned therein. Amended cause title already filed is taken on record.

4. Mr. Muktesh Maheshwari, Mr. Vikas Bijarnia and Mr. Manish Patel, learned counsel appearing on behalf of the petitioners submitted that the ultimate relief being sought by the present petitioners is quashing of notification dated 30.01.2020 appointing administrators in place of the elected representatives, who have completed their tenure on their respective post(s) and the petitioners may be permitted to continue on their respective post till the regular elections are held.



5. For adjudicating the present controversy, particularly the main prayer made by the present petitioners, it is pertinent to note the constitutional provision having bearing on the present case, i.e. Article 243-E sub Article (3) clause (a) of the Constitution of India, which came into force on 24.04.1993 by the Constitution (Seventy-third Amendment) Act, 1992. Article 243-E, in its entirety, reads as under:-

"Article 243-E. Duration of Panchayats 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."

6. Learned counsel for the petitioners further submitted that since the administrator could not have been appointed on completion of the tenure of the elected representatives, therefore,



the petitioners should be permitted to continue to hold their respective post.

7. Learned counsel for the petitioners also submitted that Section 12 of the Rajasthan Panchayati Raj Act, 1994 (*hereinafter referred to as 'the Act of 1994'*) provides for composition of a Panchayat and Section 101 of the Act of 1994 provides for alteration of the limits of a Panchayati Raj Institution, and in the said Section 101, the power has been given to the State Government, after publishing a one month's notice in the Official Gazette, to declare the whole or a part of any local area included within the limits of a Municipality to be a Panchayat Circle; or include in a Panchayat Circle any local area or a part thereof, or as the case may be, any local area included within the limits of another Panchayat Circle; or otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or exclude the whole or a part of any local area from a Panchayat Circle.

8. Learned counsel for the petitioners further submitted that in the year 2014-15 elections of the Rajasthan Panchayati Raj Institutions were held, and thus, the petitioners' tenure on their respective posts had come to an end in 2020.

9. Learned counsel for the petitioners also submitted that the State Election Commission initiated the election process, but the same could not culminate into elections in time.

Learned counsel for the petitioners, thus, submitted that since the election process has not been completed in time, therefore, the respondents' act is arbitrary and contrary to the



constitutional mandate and thus, the administrator could not have been appointed under Section 101 of the Act of 1994.

10. Learned counsel for the petitioners also submitted that there was no direct delimitation in their constituencies and thus, the constitutional mandate of five years ought to have been strictly followed in those constituencies.

11. Learned counsel for the petitioners relied upon the judgment rendered by the Hon'ble Allahabad High Court in **Prem Lal Patel Vs. State of U.P., reported in 2000(3) AWC 2159**, relevant portion of which reads as under:-

"29. According to Article 243E, of the Constitution of India, the term of the panchayat is of a fixed tenure, i.e., five years from the date appointed for its first meeting and no longer unless sooner dissolved under any law for the time being in force. In case of dissolution of the panchayat, the election of the panchayat must be held before the expiration of period of six months from the date of its dissolution, provided that where remainder for the period for which dissolution of panchayat would be constituted, is less than 6 months, it shall not be necessary to hold any elections under that Article for constituting the panchayat.

30. The State Government has been vested with a power under Entry 5 of List II, to issue Ordinance or enact the Government Laws regarding the Constitution and powers of Municipal Corporation and Local Authorities for the purpose of local self Government or village administration. But whether it can do so by trampling down the edict of the Constitutional provision contained in Article 243E and 243K, which vest plenary powers to the State Election Commission, consisting of State Election Commissioner regarding superintendence, direction and control of preparation of electoral rolls and conduct of all elections to the panchayats.



31. The constitutional flat contained in Article 243E is to the extent that every panchayat unless 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. The mandate is absolute. No panchayat can function for more than a period of five years. The words "shall and no longer" are of paramount importance. Article 243E, leaves no option, by providing that an election to constitute the next panchayat shall be completed before the expiry of his duration specified in clause (1). A perusal of the said Article shows that word "shall" has been used, meaning thereby : that election must be held before the expiration of the term of the panchayat as specified in clause (1). The words "no longer" unequivocally mandates that fresh elections to constitute the next panchayat at any cost must be completed before expiry of the duration of five years of ongoing panchayat.

32. In view of the constitutional mandate neither the Governor of U. P. State nor the State Legislature possesses any legislative competence to enact any provisions or issue an Ordinance which amounts to circumventing or nullifying the mandate of Article 243E, of the Constitution of India in any manner, whatsoever.

33. Article 13(2), of the Constitution provides that State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall to the extent of the contravention, be void. Thus, any law made by any Legislature or any other authority after the commencement of Constitution which contravenes any of the fundamental rights indicated in Part-III of the Constitution shall, to the extent of contravention, be void. Besides this, under Article 246(3), power of Legislature is subject to the provisions of the Constitution, as such power of Legislature is subject to Part IX of the Constitution. If any law is repugnant to the Constitution. It will be void to the extent of repugnancy to such a law, as the Constitution of India is supreme law and any law



which is not consistent with the provisions of the Constitution would be deemed to be ultra vires.

34. The State cannot claim any superior power in respect of the matters mentioned in Entry 5, of List II, which the Constitution does not permit. The exercise of the powers under Entry of List II, shall be subject to the provisions of Part IX, of the Constitution. After the constitutional amendments were made and Chapter IX, was substituted, the powers of the State Legislature has been circumscribed in respect of the matters falling under Chapter IX. The State Legislature cannot trench upon the field of Article 243E or Article 243K, of the Constitution by deferring the elections of the panchayat beyond five years and usurping the power of State Election Commissioner.

35. The learned Advocate General tried vainly to salvage the defect in the Ordinance by asserting that Article 243E, does not envisage as to what should be done when the elections of the panchayat cannot take place before the expiry of its duration specified in clause (1) of Article 243. A contingency may arise, when the elections cannot be held on account of earthquake, flood or cyclone, riot or any act of God.

36. What we have understood from the argument of learned Advocate General, is that as the Constitution remained silent with regard to unforeseen situations in which the elections cannot be held, the State Legislature which is vested with the power to make a law under Article 243C, of the Constitution, to compose the panchayat, can fill up the gap by either issuing an Ordinance to defer the election. We are of the view that the contention is misconceived inasmuch as. Section 3, of the impugned Ordinance which seeks to substitute sub-section (3), in Section 12BB, of the U. P. Panchayat Raj Act, not only trench upon the field of Article 243K, of the Constitution but also more or less nullify the powers of the State Election Commission. Under Article 243K(1) of the Constitution, superintendence, direction and control of the preparation of electoral rolls and the conduction of all elections all to the panchayats is vested in the State





Election Commission consisting of State Election Commissioner to be appointed by the Governor. Matters regarding issuance of the notification for the election appointing date or dates of the general election or by-election of the Pradhan or Up-Pradhan or members of the Gram Panchayat falls within the scope and ambit of the superintendence, directions and control of the State Election Commissioner, who is appointed by the Governor of the State under Article 243K(1) , of the Constitution. By means of the substitution of clause (3), in Section 12BB of the U. P. Panchayat Raj Act, the State Government has taken upon itself, the task of issuing notification for the election appointing date or dates for the general election or by-election of the Pradhan or Up-Pradhan, or members of the Gram Panchayat with the consultation of the Election Commissioner. The edict of, is unambiguous and clear. All such powers are vested to the State Election Commissioner. The State Government cannot enact a law, which is inconsistent with any provisions of the Constitution much less Article 243K, which encroaches upon the field, which is occupied by the State Election Commissioner.

37. In effect, the entire Ordinance suffers from repugnancy to the Constitutional provisions contained in Articles 243E and 243K of the Constitution. Any attempt on the part of the State Government to nullify the effect of any provision of the Constitution deserves depreciation. If the State Government does not abide by the Constitutional mandate, by issuing an Ordinance, which is not in consonance with any provision of the Constitution of India, the State Government is to be squarely blamed for the delay, if any, in holding the election. We are definitely of the view that the entire Ordinance is ultra vires to the provision of Articles 243E and 243K, of the Constitution of India. The view which we have taken is fortified by the pronouncement of a Division Bench of Karnataka High Court in Professor B. K. Chandra-shekhar and another v. State of Karnataka. AIR 1999 Karn 461.



38. In view of what has been indicated hereinabove, the writ petition succeeds and is allowed. The entire Ordinance No. 10 of 2000, by means of which provisions of U. P. Panchayat Raj Act, were amended are declared unconstitutional and ultra vires to the Constitution of India. Respondents including the State Election Commissioner is directed to hold the election of panchayat before the expiry of five years in accordance with the provisions of Article 243E(3)(a), of the Constitution of India. Respondents, including the State Election Commissioner and other officers are directed to issue notifications for holding the election, indicating therein the entire programme of the election, positively within three days, from the date of production of a certified copy of this order. The State Government shall make available to the State Election Commission such staff and funds as may be necessary for the discharge of the functions conferred on the State Election Commissioner, as well as provide to the Commission, all the help and assistance in that regard."

12. Mr. Sunil Beniwal, learned Additional Advocate General and Mr. Vikas Balia with Mr. Dinesh Pal Singh, learned counsel for the respondents however, submitted that the notifications issued by the State Government were challenged before this Court, which culminated into a judgment by the Division Bench of this Hon'ble Court in **Jai Singh Vs. State of Rajasthan & Ors. [D.B. Civil Writ Petition No.17993/2019]** decided on 13.12.2019, relevant portion of which reads as under:

"53. Heard learned counsel for the parties as well as perused the record of the case, alongwith the precedent laws cited at the Bar.

54. In the changed circumstances, while the original challenge was only to the final notification dated 15-16.11.2019, the Court, on submissions and affidavit



having been filed on its query, has to now adjudicate upon the notifications post 15-16.11.2019.

55. This Court takes note of the fact that the delimitation exercise was initiated vide notification dated 12.06.2019, while exercising the powers under Sections 9, 10 and 101 of the Act of 1994.

56. This Court further takes note of the fact that the exercise was having a time schedule, which included raising of proposals by the District Collectors, inviting of objections, hearing upon the objections and the recommendations to be made by the District Collectors from 15.06.2019 to 02.09.2019. Thereafter, the recommendations alongwith all the representations were placed before a Sub Committee comprising of Six Ministers constituted by the Government of Rajasthan vide order dated 18.09.2019, whereafter the Sub Committee in its deliberations has considered about 5,000 proposals, and out of which about 1500 proposals were accepted.

57. This Court has already noted above the issues raised by various counsels for the petitioners, but broadly, the issues can be classified in two categories; firstly, the grievances arising out of the delimitation exercise prior to 15-16.11.2019 and the grievances arising out of delimitation exercise continuing after 15-16.11.2019 upto 01-02/12/2019.

58. The individual lawyers explained the territorial, geographical, population, distance, logic, practicability and other issues involved in the delimitation upto date of 15-16/11/2019, which does not require any consideration on merits as the iron curtain with the strength of Article 243-O of the Constitution and Sections 101 and 117 of the Act of 1994 has been drawn on 15/16.11.2019.

59. The issues pertaining to the factual matrix of the guidelines and the representations /recommendations/ consideration made by the Sub Committee are of factual matrix, and by virtue of Article 243-O of the Constitution read with Section 101 of the Act of 1994, there is a bar in the interference by this Court, after the result of the delimitation was notified. Admittedly, in all the present



writ petitions under adjudication before this Court, the final notification had been issued on 15/16.11.2019.

60. This Court also finds that the bar under Article 243-O of the Constitution of India is completely fortified by the precedent law of **State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)** and **Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra)**.

61. In light of the aforesaid judgments, this Court is not inclined to travel beyond the bar created under Article 243-O of the Constitution of India, and while maintaining the sanctity of the same, deems it appropriate to uphold all the proceedings upto the notification dated 15/16.11.2019.

62. In **State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)**, the Hon'ble Supreme Court has already held that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including questioning of the validity of any law relating to delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the question of the validity of the delimitation of the constituencies and also the allotment of seats to them, cannot be gone into.

63. However, this Court is perturbed to see that the sanctity of the constitutional provision of Section 243-O of the Constitution of India read with Section 101 of the Act of 1994 has been breached by the State in an arbitrary, rash and negligent manner, and it is not palpable that number of notifications could be made for continuing the delimitation exercise regarding gram panchayats and panchayat samitis beyond the iron curtain of the final notification issued on 15-16.11.2019.

64. This Court further finds that the changes in the notification can be accepted only to the extent that it is in the shape of corrigendum to deal with the typographical errors, but making fresh consideration/reconsideration/changing of the notification





dated 15/16.11.2019 substantially by changing the recommendations and making fresh delimitation, amounts to crossing the constitutionally religious bar of Article 243-O of the Constitution of India.

65. Section 101 of the Act of 1994, on a careful examination, gives power to the State Government for making alteration in the limits of a Panchayati Raj Institution, after one month's notice to be published in the prescribed manner, either on its own motion, or at the request made on its behalf, and in this case, adequate opportunity of hearing and the first notice were in place for the final notification on 15-16.11.2019. But thereafter, the State could not have carried on the delimitation as a continuing process by issuing further notifications.

66. This Court further finds that since the first notice dated 12.06.2019 an exhaustive exercise was conducted, which resulted into a notification in the official gazette on 15/16.11.2019, and thus, the proceedings under Section 101 of the Act of 1994 came to an end. The mandate of Section 101 of the Act of 1994 does not permit the State Government to have multiple delimitation exercises in a continued form after the final notification is issued.

67. As noted above, on 23.11.2019, notification No.3085 and 3086 were issued making corrections in the error which were purely in the shape of a corrigendum. Thereafter, notifications Number 3095 to 3116 were issued on 01.12.2019/02.12.2019 making amendments in the earlier notification of 15-16.11.2019. On 01.12.2019 itself, the State Government again issued notifications Number 3117 including Gram Panchayats which were left out in the original notification of 15-16.11.2019 and also on the same date issued notification No.3118 whereby the original notification of 15-16.11.2019 was altered and left out Panchayat Samitis were also included. Thus, the subsequent notifications, except the one issued for rectification of typographical error, are required to be quashed.

68. The legislative intention behind the constitutional mandate under Articles 243-O, 243-K read





with the statutory mandate of Sections 101 and 117 of the Act of 1994 was the reason why this Court is inclined not to permit the State of Rajasthan to itself breach the forbidden area of delimitation after the final notification was issued on 15-16.11.2019.

69. This Court is of the opinion that Section 15 of the Rajasthan General Clauses Act is merely a power to the State to revise its own orders, and such revision as a normal administrative exercise should be acceptable; but Section 15 itself carves out an exception whereby if there is a provision to the contrary, that means, if there is a bar to revision, the same cannot be taken shelter of by the State to demolish the constitutional and statutory bar. Here the exercise is governed by the Constitution and the Act of 1994, and once a clear bar and procedure have been laid down for judicial review, the violation thereof, in the name of revision, could not be permitted.

70. The State has been unable to answer the repeated queries of the Court as to how on one hand, they are pressing upon that the sanctity of the notification dated 15/16.11.2019 which is a culmination of the delimitation exercise after issuance of notice on 12.06.2019, which cannot be gone into in exercise of the judicial review in light of Article 243-O, and on the other hand, the State itself has breached the sanctity of the notification culminating arising out of Section 101 of the Act of 1994 after one month's notice by issuing subsequent notifications, and amending/recreating and conducting continuous exercise of delimitation in respect of number of gram panchayats and panchayat samitis.

71. In view of the aforesaid observations, while dismissing all the issues pertaining to non-consideration of representations/non-consideration of recommendations/changes made in recommendations/changes made by the Sub Committee/changes not considered by the Sub Committee/not considered in the proposals/not considered by the District Collectors are held to be not maintainable, as this Court draws a strict line while adhering to the precedent laws of **State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)** and **Bhupendra**





Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra). This Court is conscious that it cannot cross the golden line, which reflects the mandate of the Constitution of India itself, as laid down under Article 243-O. Thus, the petitions are dismissed as far as the pre-proceedings to the notification dated 15/16.11.2019 are concerned. However, at the same time, this Court is of the considered opinion that such golden line prescribed by the Constitution of India read with Section 101 of the Act of 1994 cannot be crossed by the State as it will amount to abuse of process of law, as the delimitation exercise cannot be an ever continuing exercise, and the same has to be completed in one procedure, spanning between the initial notice which in this case was dated 12.06.2019 to the final notification which was 15/16.11.2019 and has to be brought to an end then and there. It cannot be an ever continuing exercise, as it shall jeopardize the sanctity of the mandate of the Constitution, and thus, all the notifications subsequent to the notification dated 15/16.11.2019, pertaining to the issue in question, stand quashed and set aside, except for the notifications which are purely rectifying the typographical errors.

72. All the cases stand disposed of accordingly. All pending applications also stand disposed of."

13. Learned counsel for the respondents further submitted that in view of the aforequoted judgment having been challenged before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No.30471/2019, the election exercise could not be conducted in time; however, since there cannot be a vacuum in the election law, therefore, the administrators have rightly been appointed, in consonance with the provisions of Section 101 of the Act of 1994.

14. Learned counsel for the respondents have pointed out that while adjudicating upon the aforementioned S.L.P. challenging



the judgment rendered in **Jai Singh (supra)**, the Hon'ble Supreme Court passed the following orders:

Order dated 08.01.2020:

"Permission to file SLPs is granted.

Issue notice.

Until further orders, the operation of the impugned judgment and final order dated 13.12.2019 passed by the High Court of Judicature, Rajasthan at Jodhpur shall remain stayed."

Order dated 24.01.2020:

"For the reasons, interlocutory application for impleadment being I.A. No.12824 of 2020, is allowed and the applicant is impleaded as party respondent.

We have heard learned Senior Counsel appearing for the parties and perused the interlocutory application being I.A. No.10689 of 2020, for directions filed by the petitioners-State.

Mr. K.V. Vishwanathan, learned Senior Counsel appearing for the newly added respondent- State Election Commission, states that the elections will be held in accordance with the notifications dated 15/16.11.2019, 23.11.2019, 01/02.12.2019 and 12.12.2019. He further states that the elections will be held according to law in the second half of April, 2020.

Order accordingly.

Hence, I.A. No.10689 of 2020 stands disposed of in the above terms."

Order dated 04.02.2020:

"Learned counsel for the Election Commission reiterates that the elections will be held as per order dated 24.01.2020 in accordance with law.

Interim orders dated 08.01.2020 and 24.01.2020 are hereby confirmed.

The special leave petition is disposed of in terms of the above order.

All applications stand disposed of accordingly."



15. Learned counsel for the respondents thus submitted that they are bound by the aforementioned directions issued by the Hon'ble Supreme Court, and accordingly, the elections for Panchayati Raj Institutions in the State shall be completed in the second half of April, 2020, and therefore, no cause of action at this stage is made out. Learned counsel for the respondents further tried to make out that situation of vacuum in the election law cannot exist, and thus, appointment of administrator is justified, in accordance with the provisions of Section 101 of the Act of 1994. The said Section 101 reads as under:

"101. Alteration in the limits of a Panchayati Raj Institution.- (1) The State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request made in this behalf, and by notification in the Official Gazette-(a) declare the whole or a part of any local area included within the limits of a Municipality to be a Panchayat Circle; or

(b) include in a Panchayat Circle and such local area or a part thereof, or as the case may be, any local area included within the limits of another Panchayat Circle; or

(c) otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or

(d) exclude the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) Upon any action being taken under Sub-sec. (1), the State Government shall, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette, make provision for the following, namely:-



(a) that in a case falling under Clause (a) of that Sub-section, a Panchayat shall be established for the local area declared to be a Panchayat Circle; or

(b) that, in case falling under Clause (b) of that Sub-section, the election of the members for additional local are shall be held; or

(c) that, in a case falling under Clause (c) of that Sub-sec. the existing Panchayats shall stand dissolved and new Panchayats shall be constituted – in accordance with the provisions of this Act within a period of six months from the appointed day; or

(d) that, in a case falling under Clause (d), the Panchayat shall stand dissolved or, as the case may be, the members who, in the opinion of the State Government, represent the local area excluded from the Panchayat Circle shall stand removed.

Provided that for so long as a Panchayat or a new Panchayat is not established under Clause (a), or the case may be, under Clause (c), all powers and duties of the Panchayat shall be exercised and performed by such administrator as the State Government may appoint in this behalf :

Provided further that no act of a Panchayat shall be deemed invalid by reason of any vacancy of the members referred to in Clause (b).

(3) Upon the exclusion of any local area of a Municipality and its declaration as or, as the case may be, inclusion in, a Panchayat Circle under Sub-sec. (1) -

(a) such area shall cease to be a Municipality;

(b) the members of the Board representing the area of the Municipality so declared or included in a Panchayat Circle shall vacate their respective offices but without prejudice to their eligibility for election to the Panchayat to be constituted for such area or, as the case may be, the Panchayat, in the area whereof, such area is included;

(c) the whole of the assets testing in, and of the liabilities subsisting against the Municipality so declared to be a Panchayat or, in case where only a part of a Municipality is included in, or declared to be a Panchayat, such portion of the said assets and liabilities as the State Government may





direct, shall develop upon the Panchayat declared for such area or upon the Panchayat in which such area of the Municipality is included;

(d) until new rules, notifications, orders and bye-laws are made or issued under this Act and unless the State Government otherwise directs, all rules, notifications orders and bye-laws applicable :-

(i) to the Panchayat in which such area is included; and

(ii) where the whole or a part of a Municipality is declared to be a Panchayat to the area of the Panchayat Samiti which shall, by reason of the concerned area falling in the block of such Panchayat Samiti, have jurisdiction on the area so declared to be a Panchayat,

shall continue to apply to the area so included or declared;

(e) the Panchayat so established by inclusion of any area of Municipality thereon or by the declaration of a Municipality as a Panchayat shall levy or continue to levy such of the taxes as are lawfully imposed under this Act;

(f) any such area shall cease to be subject to all rules, notifications, orders and bye-laws made under the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of 1959); and

(g) the Panchayat in which such area is included or the Panchayat which is declared for such area and the Panchayat Samiti and Zila Parishad respectively of the Block and District, in which the area so included or declared falls, shall exercise jurisdiction over such area and the Municipality in which such area was included or, as the case may be, the Municipality which was established for such area shall cease of function therein.

(4) When any local area ceases to be a Panchayat and is included within the local limits of the jurisdiction of some other local authority, the Panchayat Fund and other property and rights vesting in the Panchayat shall vest in such other local authority and the liabilities of the Panchayat shall be the liabilities of such other local authority.

(5) When any local area is excluded from a Panchayat Circle and included in another Panchayat Circle, such portion of the Panchayat Fund and other property vested in





the Panchayat of the first mentioned Circle shall vest in, and such portion of the liabilities thereof shall be the liabilities of the other Panchayat as the State Government may, after consulting both the Panchayats, declare by notification in the Official Gazette:

Provided that the provisions of this Sub-section shall not apply in any case where the circumstances, in the opinion of the State Government, render undesirable that transfer of any opinion of the Panchayat Fund or properties or liabilities.

(5A) When it is considered necessary so to do, whether as a consequence of an action taken under Sub-sec. (1) or otherwise, the State Government may alter the limits of a Panchayat Samiti or a Zila Parishad area and to every such case of alteration the provisions contained in the foregoing Sub-section shall mutatis mutandis apply.

(6) The State Government may, for the purpose of the foregoing sub-section, make such orders and give such directions as it may consider necessary.

(7) Save as otherwise provided in this section its provisions shall have effect, notwithstanding anything contained in this Act or the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of 1959) or any other law for the time being in force."

16. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent laws cited at the Bar, this Court finds that the final relief, as claimed by the petitioners herein, pertains to continuation of the petitioners on the post as occupied by them, inspite of the fact that their tenure on the said post has already come to an end.

17. This Court is bound by the constitutional mandate of Article 243-E of the Constitution of India, as quoted hereinabove, wherein duration of Panchayats is prescribed and thus, final relief in the present petitions in relation to increasing or extending the



tenure of the present petitioners, beyond the duration prescribed, cannot be granted by this Court.

18. Furthermore, this Court is of the firm opinion that once the Hon'ble Apex Court, vide the aforequoted orders, has finally decided the controversy pertaining to elections of the Panchayati Raj Institutions by accepting the State Election Commission's undertaking that they shall complete the elections in the second half of April, 2020, strictly in accordance with law, then any relief, if granted to the present petitioners, would be overreaching the orders of the Hon'ble Supreme Court.

19. The judgment rendered by the Hon'ble Allahabad High Court cited and quoted above shall not have any bearing in the present case, as the provision of Section 101 of the Act of 1994 empowering the appointment of administrator is not under challenge in these writ petitions. The relief of continuation of the petitioners on their respective post, beyond the stipulated tenure, as sought by them, shall amount to breach of the constitutional provisions of Article 243-E of the Constitution of India.

20. In light of the aforesaid observations, no case for making any interference in the present writ petitions is made out, and the same are accordingly dismissed. All pending applications also stand dismissed.

(DR. PUSHPENDRA SINGH BHATI),J

(INDRAJIT MAHANTY),CJ

SKant/-