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PANCHAYATI RAJ

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I INTRODUCTION

PANCHAYATS HAVE been the backbone of the Indian villages since a very long time. Mahatma Gandhi advocated panchayati raj as the foundation of India's political system. It is a decentralised form of government in which each village will be provided an opportunity to be responsible for its own affairs. The constituent assembly included panchayat system in part IV of the Constitution of India under directive principles of state policy. It stated that the state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.[1] However in 1992, by the 73rd amendment, it was formalised into a three-tier system with elected bodies.[2]

Panchayat or Panchayati Raj is a system of governance in which gram panchayats are the basic units of administration. It has three levels, at the village, block and district levels. Though the basic structure of the system is identical across the states of India, various nomenclatures are used in different states. It is known as a district panchayat or zilla parishad at the district level. Each district has one zilla parishad. Each block panchayat or panchayat samiti under a zilla panchayat elects members directly (depending on number of voters within it) to the zilla panchayat. Chairpersons of all the block panchayats are also ex-officio members of the zilla panchayat. In some states the member of legislative assembly (MLA) and Member of Parliament (MP) of the district/constituency are also ex-officio members.

Similarly block panchayats also known as taluka panchayat or panchayat samitis are constituted at the block level of the district. However, it is stated that Panchayat at this level may not be constituted in a state having a population not exceeding twenty lakhs.[3] Each gram panchayat under a block panchayat elects members directly to the block panchayat. chairpersons of gram panchayats are ex-officio members of the block panchayats.

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1 Constitution of India, 1950, art. 40.

2 The amendment inserted part IX "The Panchayats" in the Constitution.

3 *Supra* note 1, art. 243B.

After that comes the gram panchayat or village panchayat. A block may have several villages within it, but gram panchayats are not necessarily co terminus with each village. Depending on the size of population a gram (village) is defined under the law with a specific geographical area, which may consist of a single village or a cluster of adjoining villages. Gram panchayat is at the base of the system. It is the first executive tier having jurisdiction over a village or group of villages. The members of the gram panchayat are directly elected.

Gram sabha

In most of the states, each constituency of the members of the gram panchayat is called the gram sabha and all the voters of the same constituency are members of this body. The gram sabha is only a recommending body and hence it is not a tier of the panchayati system.

Functions of panchayats

As per the Constitution of India, panchayats in their respective areas would prepare plans for economic development and social justice and also execute them. To facilitate this, there are 29 subject matters listed down in part XI of the Constitution. The state government is supposed to devolve functions to panchayats.

Over the years, many legal issues pertaining to panchayats have come before the courts. The issues include power, function and responsibilities of various authorities in context to the panchayati raj system and other matters like employment, corruption, election and reservation issues *etc*. This survey includes a summary of the important judgments pertaining to panchayati raj given by the Supreme Court and the high courts in the year 2015.

II RIGHT TO ENTER INTO COMPROMISE IS GIVEN TO THE VILLAGE PANCHAYAT AND NOT EXCLUSIVELY TO THE SARPANCH

In *Ahmedabad Municipal Coprn.* v. *Rajubhai Somabhai Bharwad*,[4] the facts of the case were that the respondent was dismissed from his employment with the panchayat, due to a dispute raised before the labour court. A compromise was reached between the respondent and the sarpanch of the panchayat, reinstating the respondent's employment, and an award was passed by the labour court. The panchayat assailed the award before the high court and urged that in the absence of any resolution by the gram panchayat, the compromise and the consequent award were absolutely unsustainable and deserved to be axed in exercise of writ jurisdiction by the high court. The single judge of the high court opined that there was no mention in the writ petition that the said compromise was entered into by the village sarpanch on account of any fraud or misrepresentation or undue influence. On the other hand, the gram panchayat was made a party and the sarpanch was representing the said panchayat.

4 (2015)7 SCC 663.

Hence the sarpanch was entitled under section 55[5] of the Gujarat Panchayats Act, 1993 to sign the compromise. Since the sarpanch was also the chief officer, he was the employer of the workman as per sub-clause 2 to section 2(g) of the Industrial Disputes Act, 1947 and hence, the compromise executed between him and the workman was valid and legally enforceable and there was no illegality in the labour court's award. On appeal, the important question that was raised before the Supreme Court was whether the sarpanch while representing the concerned gram panchayat could have entered into a compromise on behalf of the gram panchayat without a proper resolution of the gram panchayat. The court held that as per section 55[6] of the Act, the sarpanch has been conferred certain executive functions but the said functions does not enable him to enter into a compromise. The said power has been specifically postulated in section 101[7] of the Act and it is significant to note that the said power has been conferred on the village panchayat. The purpose of referring to various provisions and rules is only to highlight the fact that conditions of service are controlled and governed by rules and certain powers are conferred on the sarpanch. As the provisions would show he has to act in accordance with the provisions of the Act and the resolutions passed by the village panchayat. The sarpanch had in this case by entering into a settlement has not only acted contrary to the provisions of the Act and but also the spirit of the responsibility cast on the local self-government. Hence the Supreme Court set aside the order passed by the single judge of the high court and remit the matter to the labour court for fresh adjudication.

5 Gujarat Panchayats Act, 1993, s. 55 provides for executive functions of sarpanch and upa-sarpanch. The provision says that

(1) Save as otherwise expressly provided by or under this Act, the executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a village panchayat shall vest in the Sarpanch thereof who shall be directly responsible for the due fulfilment of the duties imposed upon the panchayat by or under this Act. In the absence of the Sarpanch his powers and duties shall, save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch.

(2) Without prejudice to the generality of the foregoing provision:

(a) the Sarpanch shall-

(i) preside over and regulate the meetings of the panchayat;

(ii) exercise supervision and control over the acts done and actions taken by all officers and servants of the panchayat;

(iii) incur contingent expenditure upto fifty rupees at any one occasion;

(iv) operate on the fund of the panchayat including authorization of payment, issue of cheques and refunds;

(v) be responsible for the safe custody of the fund of the panchayat;

(vi) cause to prepare all statements and reports required by or under this Act;

(vii) exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder.

6 *Ibid.*

7 *Available at*: https://panchayat.gujarat.gov.in/panchayatvibhag/images/eng_panchayat_act1993_eng.pdf (last visited July 15, 2016).

III SETTING ADDITIONAL QUALIFICATION FOR CONTESTING ELECTIONS TO PANCHAYATS HOW FAR CONSTITUTIONAL

Setting educational qualification for candidature in panchayat elections

In *Rajbala* v. *State of Haryana*,[8] the important issue before the court was whether the imposition of additional eligibility on contesting election to panchayat such as (i) persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a primary agricultural cooperative society or district central cooperative bank or district primary agricultural rural development bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence cannot contest elections criteria by the Haryana Panchayati Raj (Amendment) Act, 2015 is constitutional or creates an artificial classification by introducing measures that bear no reasonable nexus between measures and object sought to be achieved. Clause (v) prescribes a minimum educational qualification of matriculation for anybody seeking to contest an election to any one of the offices mentioned in the opening clause of section 175(1). However, the minimum educational qualification is lowered insofar as candidates belonging to scheduled castes and women are concerned to that of "middle pass" whereas a further relaxation is granted in favour of the scheduled caste woman insofar as they seek to contest for the office of *panch.* The Supreme Court mentioned that they are not going to examine whether the legislation is arbitrary since to undertake such an examination would amount to virtually importing the doctrine of "substantive due process". On the allegation that it was a violation of article 14 of the constitution, the Supreme Court held that that every person who is entitled to be a voter under article 326 is not automatically entitled to contest in any of the elections referred to. Certain restrictions are imposed on a voter's right to contest elections. Thus the Haryana Amendment Act of 2015 created two classes of voters, those who are qualified by virtue of their educational accomplishment to contest the elections to the panchayats and those who are not. The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the panchayats. The object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and purpose of the Act, 2015 or the Constitution. Prescription of an educational qualification is not irrelevant for better administration of panchayats. Provisions of the Act, 2015 requiring a contestant to clear certain arrears do not prevent an aspirant from making an appropriate arrangement for clearance of the arrears and contesting elections.

8 (2016) 2 SCC 445.

In the case of *Dulari Devi* v. *State of Rajasthan*,[9] a similar issue was raised by the petitioners when an ordinance promulgated by the governor amending section 19[10] of the Rajasthan Panchayati Raj Act, 1994 as void. The said amendment inserted certain qualifications which could be considered disqualifications to contest the elections. It was alleged that the ordinance was a colourable legislation since it was aimed to exclude a large section of the population residing in villages from the election process. It was stated that in the Census of India, 2011, literacy rates in the State of Rajasthan in rural areas was 62.30% and urban-rural gap was 18.38%, which included 52.70% female and 80.50% male. It is submitted that the impugned ordinance sought to eliminate 94.94% people of Rajasthan living in rural areas from representation in the panchayati raj institutions. The government was conscious of the fact that term of five years of the panchayati raj institutions in the Rajasthan was going to come an end in January, 2015 and introduction of disqualification for the first time, four days before issuing the election programme for panchayati raj elections, was with an oblique purpose. The counsel appearing for the state of Rajasthan defended the ordinance on the ground that the legislative powers of the Governor, exercised by him under article 213 of the Constitution of India, cannot be challenged on the ground that no such circumstances existed, which rendered it necessary to promulgate the ordinance and that the satisfaction of the Governor in such matters is not subject to judicial review. It was also mentioned that the right to contest the election is not a fundamental right. It is a statutory right, for which qualifications and disqualifications can be prescribed by the Legislature. He submits that deliberation was made over the subject and since there was not much time left, and the Legislative Assembly was not in session, it was decided to advise the Governor to promulgate the ordinance, failing which the state government could not have prescribed the qualifications for a period of five years, for which the elections are held. The ordinance was merely an election reform with the object to improve the working of the panchayati raj institutions. The high court mentioned that it is prima facie satisfied that in Rajasthan the rate of literacy and the opportunity of formal education was limited, the prescription of any disqualification on the ground of qualification for contesting elections in the Panchayati Raj Institutions, excluding the masses, who did not have an opportunity of formal education, is violative of the right of equality under article 14 of the Constitution of India. Village panchayats is a platform where the entire body of villagers are given rights to participate in the meetings of the Panchayat for inclusive self governance, self rule and self determination

9 MANU/RH/1371/2015.

10 Rajasthan Panchayati Raj Act, 1994, s. 19 provides that every person registered as a voter in the list of voters of a Panchayati Raj Institution, shall be qualified for election as a Panch, or as the case may be, a member of such Panchayati Raj Institution, unless such person, in case of a member of a Zila Parishad or a Panchayat Samiti, has passed the Secondary School Examination of the Board of Secondary Education Rajasthan, or of any equivalent Board, under newly inserted clause (r), and in case of a Sarpanch of a Panchayat in a Scheduled Area, has passed class V from a school under clause (s), and in case of a Sarpanch of a Panchayat other than in a Scheduled Area, has passed class VIII from a school under clause (t).

for social upliftment, which is not dependent on any educational qualification. The disqualification for membership, under article 243F of the Constitution, can be keeping in mind the material object to achieve, such as the character, integrity or morality of the person to represent. The poor, underprivileged and downtrodden, cannot be denied participation in a democracy merely on the ground that she does not have educational qualification for such inclusion. Any law which disqualifies a large section of rural population on the ground of non attaining the educational qualifications, is thus, prima facie, arbitrary, irrational and unreasonable. An ordinance promulgated in the legislative powers of the Governor is the law which can be tested on the touchstone of article 14 of the Constitution. If the disqualification prescribed by the ordinance deprives a large section of the society to participate in the democratic institution of panchayati raj and runs counter to the object of the 73rd Amendment, it may be declared as unconstitutional by the court of law.

The high court however on the principles laid down by Supreme Court, held that the courts should not ordinarily interfere with the election process, once it has started. An extension of the dates of nomination would, amount to interference in the election process. Since part IX of the Constitution, does not provide for any extension of the term of panchayats, and that the term of the panchayats in the state was ending in January, 2015, any interim order at this stage causing interference in the process of elections for constituting Panchayats under the Act of 1994, will lead to chaos and confusion, and will create a crisis for the state election commission in holding elections. Thus, keeping in view the constraint placed by the Constitution and the advise to exercise restraint in such matters by the Supreme Court in its various decisions, to be exercised by the courts, all the stay applications for the elections were rejected.

Setting the mandatory requirement of toilet in houses for eligibility for panchayat elections is constitutional.

In *Rajbala* case,[11] another important issue that was raised was whether the imposition of additional eligibility that persons not having a functional toilet at their place of residence cannot contest elections by the Haryana Panchayati Raj (Amendment) Act, 2015 is constitutional or not. The Supreme Court mentioned that the state of Haryana, that is, the respondent has provided for a number of years financial assistance to families to construct toilets in their homes. Of the approximately 8.5 lakh house holders classified as being below poverty line, approximately 7.2 lakh have availed the benefit of the scheme. Thus, if people still do not have a toilet it is not because of their poverty but because of their lacking the requisite will. One of the primary duties of any civic body is to maintain sanitation within its jurisdiction. Those who aspire to get elected to those civic bodies and administer them must set an example for others. If the legislature stipulates that those who are not following basic norms of hygiene are ineligible to become administrators of the civic body and disqualifies them as a class from seeking election to the civic body, such a policy can neither be

11 *Supra* note 8.

said to create a class based on unintelligible criteria nor can such classification be said to be unconnected with the object sought to be achieved by the Act.

In *Nayak Chuniben Chandubhai* v. *Chief Election Commissioner,*[12] the petitioners challenged before the High Court of Gujarat the order whereby the nomination papers of the petitioners to contest election as members of the gram panchayat came to be rejected. The opposite candidates raised objections against the nomination of the petitioners that the petitioners did not have toilets and the certificate given by the *Talati* of the village was false. Due to the allegation, the returning officer got the physical verification made at the residential places of the petitioners through the taluka development officer where it was revealed that the petitioners have toilets but with incomplete closet (cesspool) and hence the returning officer refused to accept the nomination of the petitioners. On the other hand, the petitioners argued that as per the report of taluka development officer, the petitioners were found to have toilets but only the cesspool were incomplete and hence the petitioners could be said to have satisfied the requirement to have facility of water closet or privy accommodation at their places of ordinary residence and therefore, the returning officer was not justified in rejecting the nominations of the petitioners. The court observed that as per clause (kk) in section 30[13] by Gujarat Act No. 23 of 2014, it is provided that if a person has no facility of water closet or privy accommodation at the place of his ordinary residence, he shall not be qualified to be member of the panchayat or continue as such. Such amendment by insertion of clause (kk) in section 30 provides for disqualification of a person to be member or to continue as such is with good purpose for betterment of the public health. Saying so, if it is enough to have only a construction of toilet though unusable or not possible to be operated in absence of facility of cesspool, the purpose of the provision would be rendered nugatory and otiose. The court held that it is a known fact that closed cesspool properly connected to toilet for flushing discharges' and films is must in the village where there is no gutter facility to drain filths or dirty water.

Birth of third child disqualifies a person from contesting panchayat elections

In *Abdul Jivabhai Khokhar* v. *District Development Officer,*[14] the fact of the case is that the taluka development officer held that the respondent incurred disqualification under section 30(1)(m) of the Gujarat Panchayat Act, 1993 on account of birth of third child after clause (m) was inserted by the Amendment Act of 2005. However the district development officer overturned the order of the taluka development officer in the appeal preferred on the ground that birth of third child in the family of respondent was after respondent was elected as member of the panchayat and not at the time when respondent filed nomination form or at the time when election took place and therefore, the respondent did not incur disqualification to continue as

12 AIR 2015 Guj 164.

13 Gujarat Local Authorities Law (Amendment) Act, 2014. See also, *supra* note 6.

14 AIR 2015 (NOC) 208 Guj.

member of the panchayat. The petitioner has challenged this order of the district development officer in the said case. The Gujarat High Court held that as per sections 30[15] and 32[16] and keeping in mind that respondent became father of third child after the amendment Act of 2005, the taluka development officer rightly held and declared that the respondent incurred disqualification to continue as member of the panchayat and committed no error in declaring his office as vacant. The district development officer has however interfered with the order made by the taluka development officer in appeal of the respondent by wrong reading and incorrect interpretation of section 30 of the Act. The district development officer interpreted that section 30 is only to prevent a person from contesting the election. The said provision not only mandates that no person shall be a member of the panchayat if he incurs any of disqualifications provided therein but even disables an elected member to continue as member if he incurs disqualification during his term of office.

IV CORRUPTION IN PANCHAYATS

In *Kiran Chander Asri* v. *State of Haryana*,[17] the facts were that the director of development and panchayats, Haryana passed instructions to all the deputy commissioners that no auction of village fish ponds should be done without adequate advertisements as well as it is to be done under the supervision of the committee after following due procedure of reserved prices fixed by the fisheries department. The complainant met the appellant who was the block development and panchayat officer in 1995 with regard to auctioning of the fish-ponds to which the appellant said that if he wanted the auction of fish-ponds, he should have to pay 2000 rupees as bribe. Since the complainant was not intending to pay the bribe to the appellant, he went to Superintendent of Police of the State Vigilance Bureau, Karnal. The Superintendent of Police after receiving permission from government arranged the raid and on the raid, the appellant was nabbed and arrested under section 7 and 13 of the PCA. Both the trial court and the single bench of the high court found him guilty. The present case is a special leave petition (SLP) before the Supreme Court where again the apex court too held him guilty. However, the court keeping in mind that the incident was of 1995 and that the litigation has been pending for the last twenty years, that the appellant is now quite old and with ailments, that he has already lost his job, it reduced the term of punishment from two years to one year. The court further mentioned that when the offence was committed the minimum prescribed punishment was six months and year respectively hence the court can reduce the punishment to one year notwithstanding the amendment made to the said sections of PCA by the Act of 2014.

15 *Supra* note 6.

16 *Ibid*.

17 (2016)1 SCC 578.

V ELECTION ISSUES

Non-disclosure of criminal antecedents by a candidate mandatory for filing nominations in panchayat elections amounts to embezzlement

The Supreme Court in *Krishnamoorthy* v. *Sivakumar,*[18] held that that suppression or non-disclosure of information about serious crimes by a candidate at the time of filing nomination interferes with the voters' right to make an informed choice and the election of such a candidate is liable to be set aside In the instant case there was non -disclosure of full particulars of criminal cases pending against the appellant and he was elected as the President of Thekampatti Panchayat, Mettupalayam Taluk, Coimbatore district in the State of Tamil Nadu. The validity of the election was called in question on the ground that he had filed a false declaration suppressing the details of criminal cases. The election tribunal already declared the election null and void and the said decision was upheld by the High Court of Madras. Against the decision of the high court, the appellant appealed to the Supreme Court. In the instant case, the Tamil Nadu State Election Commission had issued a notification stipulating that every candidate desiring to contest an election to a local body had to furnish full and complete information in regard to five categories referred to in paragraph five of the preamble to the notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law. It was asserted in the petition that the appellant, who was the president of a cooperative society, was charged on allegations of criminal breach of trust, falsification of accounts under sections 120 -B, 406, 408 and 477 -A of the Indian Penal Code, 1860 (IPC). The appellant in his declaration did not mention the details of the charge-sheets filed against him which were pending trial. Hence, the election petition was filed to declare his election as null and void on the ground that he could not have contested the election and, in any case, the election was unsustainable. The Principal District Judge of Coimbatore came to hold that nomination papers filed by the first respondent to the election petition, deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election as null and void and ordered for re-election of the post of the president in question. The said order was challenged in revision before the high court. In revision, the high court dealt with the issue whether there was suppression by the elected candidate and in that context referred to the 'form' to be filled up by a candidate as per the notification by the state election commission opined that an element of sanctity and solemnity is attached to the said declaration, by the very fact that it is required to be in the form of an affidavit sworn and attested in a particular manner. The high court emphasised on the part of the verification containing the declaration that "nothing material has been concealed". On the aforesaid analysis, the high court held that the

18 (2015) 3 SCC 467.

elected candidate had not disclosed the full and complete information. Thereafter, the high court opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of 'undue influence' and consequently 'corrupt practice'. On further appeal, the Supreme Court held that disclosure of offences "especially pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative", and not doing so creates an impediment in the free exercise of electoral right by a voter. As a candidate has the special knowledge of the pending cases against him where cognizance has been taken or charges have been framed and there is non-disclosure on his part, it would amount to undue influence. Therefore, election is to be declared null and void by the election tribunal under section 100(1)(b) of the Representation of People's Act, 1951 Act. The Supreme Court also made it clear that disclosure of criminal antecedents by a candidate was a statutory obligation. The court held that factum of suppression of the cases relating to embezzlement has been established.

Countermanding elections on ground of improper rejection of nomination papers

In the case of *Satish Shivnarayan Rathore* v. *State Election Commission*,[19] the petitioners claimed that elections were notified under Madhya Pradesh Panchayat Nirvachan Niyam, 1995 and nomination forms for the seat of Sarpanch for Gram Panchayat were invited. The petitioner had objections to the inclusion of names of two respondents and after enquiry the names were deleted from the voter list by the order of the sub divisional officer and nomination paper of another respondent was rejected by the returning officer. The respondents challenged the order before the state election commission (who is also another respondent) who instead cancelled the elections. The issue that was taken up in the case by the court was that whether the commission was competent to cancel the election. Article 243-O (b) of the constitution specifically provides that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a state. Article 329(b) and article 243-O(b) has been enacted to prescribe manner in which and the stage in which this ground and other grounds which may be raised in law to call the election in question could be raised. In the current case, the ground which has been provided under section 122 of Panchyat Election Rules and Madhya Pradesh Panchayat (Election Petitions, Corrupt Practises and Disqualification for Membership) Rules, 1995 is improper rejection of nomination paper as ground to declare election void. However, rule 33(6) declares that the order accepting or rejecting the nomination paper passed by the returning officer shall be final. The scheme of article 243-O(b) read in the light of rule 33(6) is that the decision of the returning officer shall be final, subject to review only by the election tribunal in a duly filed election petition. The order passed

19 AIR 2015 MP 139.

by the returning officer accepting or rejecting the nomination paper is not susceptible to review at any other stage or by any other authority other than election tribunal. It is significant to note that the rules do not provide an appeal to the commission or revision *suo motu* or otherwise to the commission against the order of the returning officer. These circumstances make it clear that whatever be the amplitude of the power vested in the commission under article 243-K of the Constitution[20] as well as the Act does not take in the power of upsetting the final decision arrived at by the returning officer accepting or rejecting the nomination paper. The election commission has no jurisdiction to interfere at that stage in that matter. It was argued that rule 17(3) of the rules provides power to the commission to issue special or general orders or directions not inconsistent with the provisions of the act to ensure free and fair elections and it was contended that this power would take in the power to countermand elections on account of wrongful rejection of nomination papers. The court held that the intervention of the Election Commission of India on account of wrongful rejection or acceptance of nomination papers would throw the entire election machinery out of gear and is against the scheme of the provisions. The appellants presented a horrendous picture of large number of returning officers wrongfully rejecting or accepting nomination papers on account of political or other motives. The high court also showed an equally horrendous picture if election commission unnecessarily interfered and unsettled the entire process of election. Thus it was held that the commission had no jurisdiction to pass impugned order countermanding the election of the post of sarpanch.

Inspection of electronic voting machines during panchayat elections can be only done by the court competent to try election petition.

In *Renjith* v. *State Election Commissioner,*[21] the question was can a candidate insist for the inspection of the Electronic Voting Machines (EVM) used for the poll in order to assure himself of the transparency of election otherwise than by an election petition? The brief facts of the case was that the petitioner contested from Kalady

20 Madhya Pradesh Panchayat (Election Petitions, Corrupt Practises and Disqualification for Membership) Rules, 1995, s. 243K Elections to the Panchayats reads: (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. (2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1) (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats

21 MANU/KE/2518/2015.

Grama Panchayat and lost the election to the local body by a sizable margin which he did not expect. The petitioner entertained a doubt that the EVM installed in two booths were defective and this paved the way for his ignominious defeat in the election. The state election commission filed a statement contending that the writ petition is not maintainable in view of the bar under article 243-O(b)[22] of the Constitution. The high court held that the petitioner not having filed an election petition in time cannot have the EVM re-checked in his presence. It is stated that the EVM or other records relating to the election cannot be produced or inspected by any authority except by an order of court and only the court competent to try the election petition wherein the election is called in question can pass such an order. The petitioner has however concededly failed to approach the correct authority.

Condition of re-counting of results of panchayat elections.

In the case of *Dhirendra Tiwary* v. *The State of Bihar,*[23] the appellant is the election agent of the wife of the person who was defeated by respondent for the office of Mukhiya, Nimej Gram Panchayat within Brahmpur, Buxar by a margin of one vote. It was alleged that there was corrupt practice conducted by the state officials not only while conducting the election but also at the time of counting votes and hence the appellant prayed for setting aside the results. The appellant claimed that the returning officer is required to conduct, supervise the panchayat election in the light of the instructions issued by the commission from time to time. article 243K of the Constitution[24] and section 123[25] of the Bihar Gram Panchayat Raj Act, 2006 make it

22 *Supra* note 1 art. 243-O(b) reads: Notwithstanding anything in this Constitution no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a state.

23 AIR 2015 Pat 193.

24 *Supra* note 1, art. 243K reads: The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor (2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1) (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats

25 Bihar Gram Panchayat Raj Act, 2006, s. 123 reads: There shall be a State Election Commission for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayat bodies in the State under this Act and the rules made thereunder. The Commission shall consist of a State Election Commissioner to be appointed by the Governor. (2) The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner

abundantly clear that the returning officer has to conduct the panchayat election subject to superintendence, direction and control of the commission. It was the commission's instructions that if the election is lost by a margin of less than nine votes, the returning officer had to undertake recounting. In case, returning officer was not inclined to undertake recounting then he was required to have given reasons for the same. On behalf of the commission it was submitted that the circular of the commission was issued on May 24, 2011 asking all the district magistrates to ensure recounting of votes at the request of the losing candidate but the facts will not apply to the present case as the counting of impugned election was held on May 18, 2011. The court however held that under article 243K of the Constitution and Section 123 of the Act the authority is vested not only to supervise the panchayat election but also to issue such direction as may be necessary for ensuring free and fair election. The purpose for which commission has been constituted is to ensure free and fair panchayat election. Fairness in the election can be ensured not only by ensuring free and fair poll but also by securing fair counting. To ensure fair counting the commission made public announcement reported by Dainik Jagran Patna edition on May 21, 2011 calling upon the District Magistrates to ensure recounting provided margin of victory is less than nine votes. Also there was no material on record to suggest that such announcement by the commission was not made prior to May 18, 2011. In the circumstances, it was incumbent upon the returning officer, respondent no. 5 to have considered the application on May 18, 2011. Had the officer considered the application on May 18, 2011 and rejected the same and then declared respondent victorious, then the court may have rejected the writ petition. The high court held that in its writ jurisdiction it is empowered to direct the statutory authority to discharge its statutory function in accordance with law. The returning officer chose not to exercise power vested in it. Hence the decision of the returning officer was liable to be set aside.

Age criteria for filing nomination in panchayat elections

In the case of *Neelam Devi* v. *State of Bihar,*[26] the appellant filed a petition before the Bihar Election Commission in November, 2011 with a prayer to declare the election of the respondent to the office of Mukhiya of Gram Panchayat in question, as void. The reason pleaded by her was that the respondent was below the age of 21 years on the date of filing of nominations. She pleaded that the respondent studied Bastania course in a Madarsa and, according to a certificate and mark-sheet issued by the Bihar State Madarsa Education Board, her date of birth is April 12, 1992 and, if

shall not be removed from his office except in like manner and on the like grounds as a Judge of the High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. (3) The Government shall, when so requested by the State Election Commission, make available to the State Election Commission such officers and staff as may be necessary for the discharge of the functions conferred on the State Election Commission under this Act.

26 MANU/BH/0573/2015.

the same was taken into account, the age of the respondent, when the elections to panchayats were held would be just 19 years. The respondent opposed the petition by raising several objections including maintainability of the suit. She pleaded that though at one stage, her date of birth was wrongly mentioned as April 12, 1992 in the certificates, it was later on corrected as April 12, 1982, and the certificates obtained by the appellant are not the correct ones. On behalf of the respondent, it was submitted that section 137 of the Bihar Panchayat Election rules, 2006 Act clearly mandates that the result of an election cannot be challenged except by way of filing an election petition and, in the instant case, the appellant has raised an objection at the stage of nominations. If, for any reason, such objection could not be taken, an election petition can be filed within the stipulated period of limitation, that is, 30 days from the date of declaration of results as laid down under in the afore-mentioned rules. The purpose of prescribing limitations for election petitions is to remove uncertainty in the matter. If no election petition is filed within that period, the elected candidate can devote his full attention to the duties attached to the office. While the election was held in March, 2011, it is only in the month of November, 2011 that the appellant filed a petition before the commission with a prayer to declare the election of the respondent as void. The high court held that the question as to whether an elected candidate was within the stipulated age limits was a pure question of fact. The appellants relied upon a certificate and mark-sheet issued by the Madarsa Board wherein the date of birth was mentioned as April 12, 1992. On the other hand, the respondent pleaded that her date of birth is 12-4-1982 and that it was wrongly mentioned as April 12, 1992. In proof of her contention, she has filed a certificate issued by the controller of examination on November 4, 2008. In addition to that, she stated that her marriage took place on January 19, 1999 and in support thereof, she filed a certificate issued by the Kazi. Her further contention was that her name was included in the electoral rolls of the village for the first time in 2003 and ever since then, as many as five revisions were effected, by the time the election was held in the year 2011. Admittedly, the certificate relied upon by the appellant was not even issued by any statutory Board which is conferred with the power to certify the date of birth. The Madarsa Board is said to have issued two certificates in the year 2011 showing the date of birth of respondent as April 12, 1992. The same authority is said to have issued certificate to the respondent in 2008 reflecting the date of birth as April 12, 1982. Even if an election petition were to have been filed, disputing the age of the respondent, it was obligatory on part of the appellant to have examined the officials who issued the certificate, particularly when the same officials are said to have issued certificates with conflicting versions. The commission felt it appropriate to call for a report from the special officer, and not from the Madarsa Board. The court held that although it is true that the age mentioned in the voters' list cannot constitute the basis for determination of the date of birth of a candidate, particularly when the age is reflected in the other material, such as school certificates. Dismissing the petition, the high court held that even if she was to be treated as aged 18 years in the year 2003, her age in 2011 would be at least 26 years, as against required age limit of 21 years.

In another case of *Dimpal* v. *Rajesh Baluni*,[27] the main allegation was that the respondent who was declared elected as member of Sherpur Ward, Zila Panchayat, Dehradun was disqualified for holding the post as not attaining the age of 21 years. The District Judge / Election Tribunal allowed the election petition of respondent and declared the election of the petitioner as void and respondent was declared elected for the said post. Aggrieved against the same, the present writ petition has been filed by the petitioner. On behalf of the petitioner, the certificate issued by the registrar, births and deaths to the petitioner was relied upon which was supposedly issued on August 15, 1992. The court observed that as per the decision of the Supreme Court, the date of birth as mentioned in high school certificate will have primacy over other documents. As per high school certificate the date of birth of the petitioner is May 5, 1995 and not May 5, 1992. The same date of birth was mentioned in her intermediate examination certificate. It was admitted to the petitioner before the election tribunal that when she filled up the form of registration of her marriage, her age was 18 years (as on June 7, 2013, the date of marriage and registration thereof on July 12, 2013). Therefore, the court held that learned the election tribunal has erred in declaring respondent as elected to the post of member of zila panchayat.

Physical verification of invalid votes needed before declaring sarpanch elections void

In the case of *Bibi Rukhsana Khatoon* v. *The State Election Commission*[28] the election to the post of Mukhiya, Gram Panchayat Raj, Begusarai was held on May 3, 2011 in which the petitioner was declared elected. An election petition was filed on grounds that 75 votes polled at booth no.102 was invalid and thus the result in favour of the writ petitioner was materially affected. The candidate being aggrieved filed this petition. The writ petitioner submitted that the election to the post of Mukhiya was held on May 3, 2011 and the counting was carried out on May 23, 2011 in which the writ petitioner was declared elected by a margin of 53 votes. He submits that the election was free and fair and at no stage the election petitioner raised any objection as to the illegal reception of votes. He thus submits that in absence of any objection filed by the election petitioner on the issue of improper reception of votes, the election petition itself was not maintainable on the principles of waiver. He submitted that unless the election tribunal recorded satisfaction that the entire election had been materially affected by such improper reception of votes, there was no occasion to declare the election void. In absence of any charge of corrupt practice against the returned candidate, a mere reception of improper votes at a particular booth on its own would not be sufficient to declare the entire election void. The court observed that there is no charge by the election petitioner that the returned candidate had indulged in corrupt practice or has facilitated casting of invalid votes nor any evidence was led by him. On the contrary the evidence on record makes it manifestly clear that these 75 voters have forced their way into casting of votes and the poling officials facilitated the same. There is also no evidence regarding unfair poling on any other booth which

27 AIR 2016 Utr 17.
28 AIR 2015 Pat 167.

meant that it was exclusively the poling at booth no.102 which is the centre of attention on the issue raised. Although the election tribunal has proceeded well in course for deciding the issue raised by the election petitioner but unfortunately the tribunal has missed to take the contest to its last step regarding physical verification of the 75 votes so as to confirm as to how many of these invalid votes were cast in favour of the returned candidate and the election petitioner and whether if these votes are taken out from the vote count of the returned candidate and the election petitioner, the result would be otherwise. unless there is evidence of improper reception of invalid votes or rejection of valid votes at each of the poling booths; that there are evidence to support that the returned candidate has indulged into corrupt practice to garner votes and that these invalid votes or rejection of valid votes have contributed to the success of the returned candidate, an election cannot be set aside under section 139(1)(d)(iii) of the Act. The court held that in the circumstances discussed the tribunal should carry out a physical verification of the 75 invalid votes cast at booth no.102 and thereafter record its finding whether the election petitioner as well as the returned candidate are beneficiary of these invalid votes and that if these invalid votes are taken out from the respective total vote count of the two contesting candidates, it would materially affect the result of the election.

Non interference by court once the election process for panchayat has been set in motion

In the case of *Arun Yadav* v. *M.P. Rajya Nirvachan Ayog*,[29] questions relating to elections in Panchayats were taken up. The grievance by the petitioner was that the manner in which the election programme has been notified by the Madhya Pradesh State Election Commission in the matter of electing members of the janpad panchayat and zila panchayat in the State of Madhya Pradesh in three phases on different dates would disturb the secrecy of the elections. The counting agents and other media persons who would be present at the time of counting will know the results to election of janpad panchayat and zila panchayat members of the first phase and hence during the second and third phase of polling it would adversely affect the elections for the remaining janpad and zila panchayat members. The Madhya Pradesh High Court held that if the principle of law laid down in previous cases is applied in the facts and circumstances of the case, there is no iota of doubt that once the election process is in and part of election process has been completed, interference by the court is uncalled for. Hence the court held that it cannot stay the election process or the counting process for the simple reason that under the Madhya Pradesh Panchayat (Election Petitions, Corrupt Practises and Disqualification of Membership) Rules, 1999 conduct of an election by non compliance of the Act or Rules framed there under is a ground to declare the election as void by the Election Tribunal in an Election petition under section 12 of the Madhya Pradesh Panchyat Raj Avam Gram Swaraj Adhiniyam, 1993. Thus the matter has to be taken in an election petition and the court shall not interfere in the matter.

29 AIR 2015 MP 46.

Onus on district authorities to conduct elections immediately when a post in panchayat gets vacated due to death or other reasons

In the case of *Amandeep* v. *State of Punjab*,[30] the writ petition has been filed under articles 226/227 of the Constitution of India for issuance of direction to respondents to hold fresh election to fill up the vacancy of sarpanch occurred on account of death of the earlier sarpanch. The facts of the case is that the election for the post of sarpanch of village Lakhe Ke Musahib, Block Jalalabad (W), District Fazilka was held on July 3, 2013 and Ram Piari was elected as Sarpanch. Piari expired on March 30, 2014. As a result thereof, post of Sarpanch fell vacant. The petitioner had given representations to the Director, Rural Development and Panchayats, Punjab and Chief Election Commissioner, Punjab respectively for holding elections. After the receipt of representation State Election Commission, Punjab addressed communication to the Director, Rural Development and Panchayati Raj and Deputy Commissioner, Fazilka for holding the election. Even, District Development and Panchayat Officer, Fazilka was also made aware of the situation by the Gram Panchayat, Lakhe Ke Musahib. In spite of moving such representations/letters and even after expiry of six months from the date of the death of the previous sarpanch, the election has not been held. section 22 of the Act refers to the filling of casual vacancy of a Sarpanch or a Panch. It provides that whenever vacancy of a sarpanch or a panch occurs by death, resignation, removal or otherwise, the same shall be filled up by way of election. It also provides that a person elected to the casual vacancy under sub-section (1) shall be elected for the remainder period of his predecessor's term of office. It also provides that if term of office of sarpanch or panch is to expire in less than six months, no election is required to be held. Admittedly, no election has been held till date. Part IX - 'The Panchayats' of the Constitution of India containing articles 243 to 243-G clearly envisages that election of Gram Panchayat shall be held immediately. It is the duty of the competent authority including the deputy commissioner and director, rural development and panchayats to look into this aspect. It cannot be believed that once the matter is brought to the notice of the director, rural development and panchayats and the deputy commissioner by the state election commissioner, they will not proceed in that direction. After the death of Ram Piari, a period of more than ten months has elapsed till date but the election has not been held. Unnecessary delay appears to have been caused by the authorities. Hence the court directed the respondents specifically the Deputy Commissioner, Fazilka, Director, Rural Development and Panchayats, Punjab and the state election commission to hold the election of gram panchayat within two months from the date of the instant decision.

Defection among panchayats members

In *K.M. Joseph* v. *Babychan Mulangasseri*,[31] the appellant and respondents were the elected members of Manimala Grama Panchayat in Kottayam District, who were

30 MANU/PH/2187/2015.

31 MANU/KE/1813/2014.

all members of the political party Indian National Congress (INC), which is part of the coalition of United Democratic front (UDF). On November 8, 2010, with the support of all the elected members of INC as well as other elected members forming part of the coalition UDF, the appellant was elected to the post of the President of Manimala Grama Panchayat. Subsequently, the respondents with the support of other elected members of the coalition moved a no-confidence motion against the appellant. The respondents voted in favour of the no-confidence motion and ousted the appellant from the post of the President. The reason cited was that while holding the post of the President of Manimala Grama Panchayat the appellant acted against the interest of the people of the Gram Panchayat. Both the Parliamentary Party and UDF directed the appellant to resign from that post. But the appellant disobeyed the said decision and continued as President. On the other hand after getting ousted, the appellant filed the petition seeking a declaration that respondents have become subject to disqualification on the ground of defection as provided by section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The finding of the state election commission is that, the respondents moved the no-confidence motion against their own party without the knowledge and consent of Congress party or DCC President and their above conduct would abundantly prove that they have voluntarily given up their membership of the party. On appeal, the single judge held that the respondents moved the no-confidence motion against their own party is not based on any reliable materials on record and the election commission proceeded to consider irrelevant materials to draw such an inference. The high court agreed with the aforesaid decision of the single judge and held that there is also no material on record to prove that congress members are bound, as per the bye laws of that political party, to obey the instructions of DCC President. It has come out in evidence that respondents met the representatives of their political party on the previous day and had discussions on the no-confidence motion. What constitute defection is deserting the political party and not deserting the leader of that political party. The provisions under the tenth schedule of the Constitution and that under the Kerala Local Authorities (Prohibition of Defection) Act, 1999 are intended to curb unprincipled and unethical political defection. The fact that a member has voluntarily given up membership of the political party for all intent and purpose so as to incur disqualification is to be determined on appreciation of materials on record. In the absence of any such proof, the finding that respondents moved the no-confidence motion against their own party without the knowledge and consent of the Congress Party or the DCC President and their above conduct would amount to voluntarily giving up their membership of the party, is *per se* arbitrary and perverse. Thus the high court held that the learned single judge rightly set aside the order passed by the state election commission.

32 AIR 2015 MP 171.

VI RESERVATION ISSUES IN PANCHAYATS

Reservation for OBC (women) constituency by rotation.

In *Prahlad Singh Raghuvanshi* v. *State of MP*,[32] the petitioner challenged an order passed by the Collector, District Vidisha which reserved the post of President, Janpad Panchayat, Basoda for other backward class (OBC) woman category. It was alleged that rule 3(6) of the Madhya Pradesh Panchayat (upsarpanch, president and vice president) Nirvachan Niyam, 1995 which provided that the seat reserved in the previous election shall not be included in the drawing lots for reservation of a particular category till all remaining panchayats are not exhausted has been violated. It was further contended that instead of drawing lot from all janpad panchayats, lot was drawn out of two janpad panchayats, Vidisha and Basoda. On behalf of the state it was argued that for the first time in the year 1994, Janpad Panchayat, Basoda was reserved for OBC category and thereafter by rotation, all the other janpad panchayats have been reserved for OBC category and on each subsequent draw of lots, panchayats already reserved for OBC category were excluded. In the current election, out of the seven janpad panchayats, two were required to be reserved for OBC category, and since the same was done by drawing lot between Vidisha and Basoda as for the first time in the year 1994, Basoda and Vidisha were earmarked for OBC category. Accordingly, Basoda was reserved for OBC (woman) category. It is submitted that there is no illegality in the matter of reserving Basoda for OBC category and the provision of rule 3(6) of the 1995 Rules; a regulatory measure has all along been followed for reservation of seats for the OBC category by rotation. The high court held that some of the leading judgments of the Supreme Court in context to article 329[33] of the Constitution and that they would squarely apply to matters under article 243-O.[34]

The court in particular cited that no significance should be attached to anything which does not affect the "election"; and if any irregularities were committed while it is in progress and would have vitiated the "election" and enable the person effected to call it in question, they should be brought so before a special tribunal by means of

33 *Supra* note 1, art. 329 reads: Bar to interference by court in electoral matters. Notwithstanding anything in this Constitution (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court; (b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court; (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State

34 *Id*., art. 243-O.

35 *N.P. Ponnuswami* v. *Returning Officer*, AIR 1952 SC 64.

an election petition being and not be made the subject of a dispute before any court while the election is in progress.[35] In the light of constitutional limitation coupled with the fact that the impugned notification was issued on November 7, 2014 and the election programme announced and notified on December 15, 2014 and thereafter, the present writ petition has been filed on December 15, 2014, in the opinion of this court, at this stage no interference is warranted. Provision for reservation of seats for the scheduled castes and scheduled tribes are made in the light of article 243D[36] of the Constitution and the legislature of the state under article 243D(6)[37] of the Constitution is empowered for making provision of reservation of seats in any class of citizens. A careful reading of the aforesaid provision suggests; (panchayat or offices of chairpersons in the panchayats at any level in favour of backward i) that all the panchayats have to be reserved for particular category by rotation; (ii) if panchayat/ panchayats is/are reserved for OBC in a given election such panchayat/panchayats shall be excluded from drawing lots for a particular category (OBC) and (iii) till all remaining panchayats are not reserved for OBC. Therefore, the provision contemplates reservation of all panchayats by rotation and unless all Panchayats are reserved for OBC by rotation, panchayat already reserved for OBC should not be included in drawing of lots. In the instant case, there is no dispute that all the panchayats by

36 *Supra* note 1, art. 243D reads: Reservation of seats. (1) Seats shall be reserved for (a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. (2) Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging, to the Scheduled Castes or, as the case may be, the Scheduled Tribes (3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334 (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens

37 *Ibid*.

rotation have been reserved for OBC category except Nateran which has been reserved for OBC in the instant election. Therefore, the decision of the respondent with reference to the reservation made in the year 1994 for the first time, regulating the reservation by drawing lots between those two panchayats; Basoda, and Vidisha and regard being had to concept of rotation; a regulatory measure, reserved Basoda constituency for OBC woman category, in the opinion of this court, cannot be said to be arbitrary or in violation of rule 3(6) of the 1995 Rules for the reasons stated herein above.

Caste certificate of respective state is mandatory for seeking reservation in panchayat elections

In *Rani* v. *State of M.P,*[38] it was alleged that the returning officer has improperly rejected the nomination form of the petitioner who claimed to belong to Dhobi caste and the same is of scheduled caste category as reflected from the caste certificate issued from District Jalon, Uttar Pradesh. The contested seat of sarpanch is reserved for scheduled caste and hence the petitioner's nomination could not have been rejected. The respondents/election commission, raised a preliminary issue that the instant writ petition challenging rejection of nomination paper is misconceived as the election process has already commenced and there is an alternative, efficacious, statutory remedy of filing election petition. The court held that there is no doubt that Dhobi caste in Datia, Madhya Pradesh (MP) is of OBC and not SC category. The seat of sarpanch is reserved for scheduled caste category. The court held merely because the caste certificate is issued to the petitioner from Jalon (Uttar Pradesh) showing her of Dhobi caste belonging to scheduled caste will not make her entitled to contest the election of sarpanch from a reserved constituency for scheduled caste category in the State of Madhya Pradesh.

In *Lalita* v. *The State Election Commission,*[39] the petitioner challenged the order of the returning officer pointing out that nomination sought by the respondent to a seat reserved for scheduled tribe (women category) in village Mangnali, Taluka Dharmabad, Nanded claiming that she comes from said tribe 'Mannervarlu' is wrong as she does not belong to the tribe. A copy of decision rendered by the scrutiny committee wherein it has been declared that respondent does not belong to 'Mannervarlu' tribe, having regard to her failure to establish affinity, traditions as well as her relationship with the persons belonging to said tribe was produced. The state election commission submits that there is no dispute about the factual position of invalidation of tribe claim of the respondent. However, supporting the returning officer the commission cited that while scrutiny of nomination was going on at 11.20 a.m, no such objection had ever been taken by petitioner and it is sometime after completion of scrutiny around 11.50 a.m, objection was raised. The returning officer accordingly became *functus officio* after 11.40 when scrutiny of nomination got over. The court held that in the face of this situation, the objection raised on behalf of the petitioner to candidature of respondent ought to have been given its due weightage which had strong foundation of law and facts. When such glaring aspects involved in

38 MANU/MP/0647/2015.

39 MANU/MH/2294/2015.

the matter have been brought to the notice, it would not be proper to let the matter travel further culminating into election and then to have the remedy of election petition as is sought to be argued by respondents. The high court thus quashed and set aside the order of returning officer accepting nomination of respondent.

VII ROLE OF THE COLLECTOR WHEN A NO-CONFIDENCE MOTION AGAINST PRAMUKH OF KSHETRA PANCHAYAT IS PRESENTED.

In *Sheela Devi* v. *State of UP*,[40] a reference to full bench to the high court was made relating to the construction of the provisions of the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, more particularly section 15[41] which relates to motion of no confidence against a Pramukh of a Kshettra Panchayat. A Kshettra Panchayat is an elected body at the intermediate level. The issue before the full bench is about the role and power of the collector when a written notice of an intention to move a motion of no confidence purportedly signed by at least half of the total number of elected members of the Kshettra Panchayat has been delivered to him. The question was whether upon the delivery of such a notice, the collector has some element of duty to verify whether the conditions prescribed in sub-section (2) of section 15 have been fulfilled and if so, the nature of the proceeding before the collector. The court held that where a notice is delivered to the collector under sub-section (2) of section 15, the collector has the discretion to determine whether the notice fulfills the essential requirements of a valid notice under sub-section (2). However, consistent with the stipulation of time enunciated in sub-section (3) of Section 15 of convening a meeting no later than thirty days from the date of delivery of the notice and of issuing at least a fifteen days' notice to all the elected members of

40 MANU/UP/0129/2015.

41 Sub-s. (1) of section 15 makes it clear that the making and the manner in which a motion can be proceeded with, must accord with the procedure which is laid down in the Section. Sub-section (2) of Section 15 makes provision for the stage up to the submission of a motion to the Collector having jurisdiction over the Kshettra Panchayat. Sub-section (2) sets down the following conditions:(i) There has to be a written notice in the form prescribed; (ii) The written notice must evince an intention to make the motion of no confidence in the Pramukh of the Kshettra Panchayat; (iii) The written notice must bear the signatures of at least half of the total number of elected members of the Kshettra Panchayat for the time being; (iv) A written notice, which complies with the aforesaid requirements, together with a copy of the proposed motion must be delivered in person to the Collector; and (v) The person delivering the notice and the proposed motion must be a member of the Kshettra Panchayat and, in addition, must also be a signatory to the notice. Once such a notice has been delivered to the Collector, sub-section (3) requires the Collector to comply with the requirements: firstly of convening a meeting of the Kshettra Panchayat for consideration of the motion at the office of the Kshettra Panchayat on a date to be appointed; and secondly of furnishing of a notice to every elected member of the Kshettra Panchayat. Sub-section (3) of Section 15 makes a reference to two periods of time. Clause (i) provides that the Collector must convene a meeting no later than within thirty days from the date on which the notice under sub-section (2) has been delivered to him. Clause (ii) provides for an individual notice to every elected member of the Kshettra Panchayat of not less than fifteen days of such a meeting which is convened.

the Kshettra Panchayat, it is not open to the collector to launch a detailed evidentiary enquiry into the validity of the signatures which are appended to the notice. where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of section 15. The collector does not exercise the powers of a court upon receipt of a notice and when he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However in earlier decisions[42] it has been held that it is open to the collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of section 15 have been fulfilled. The proceeding before the collector under sub-section (2) of Section 15 of the Act of 1961 is more in the nature of a summary proceeding. The collector for the purpose of section 15 does not have the trappings of a court exercising jurisdiction on the basis of evidence adduced at a trial of a judicial proceeding. Whether in a given case, the collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge under article 226 of the Constitution. The court gave an exhaustive enumeration or list of circumstances in which the collector can determine the validity of the notice furnished under sub-section (2) in each case and it is for the collector in the first instance and for the court in the exercise of its power of judicial review, if it is moved, to determine as to whether the limits on the power of the collector have been duly observed.

VIII NOTIFICATION IS OF PARAMOUNT IMPORTANCE IN DECLARING A GRAM PANCHAYAT AS A TRANSITIONAL AREA OR FOR BIFURCATION OF VILLAGE

In *Gram Panchayat, Khatwani* v. *State of Maharashtra*,[43] general election to Gram Panchayat Khatwani was held in the month of June, 2011 under supervision and control of the state election commission. On declaration of result, the sarpanch and up-sarpanch were elected for a tenure of five years. It is contended by the petitioner that the state, without following the procedure prescribed under section 4[44] of the

42 *Mathura Prasad Tewari* v. *Assistant District Panchayat Officer, Faizabad,* 1966 ALJ 612

43 MANU/MH/3092/2015.

44 S.4. Declaration of village.- (1) Every village specified in the notification issued under clause (g) of Article 243 of the Constitution of India shall be known by the name of that village specified in that notification. Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is (specified in that notification) to be a village, the village shall be known by the name of the revenue Village, hamlet or as the case may be, administrative unit or part thereof, having the largest population. (2) Where the circumstances so require to include or exclude any local area from the local area of a village to or alter the limits of a village or that a local area shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and the panchayat concerned, at any time, may provide

Village Panchayat Act proceeded to direct division of Village Panchayat Khatwani into two villages. Village Khatwani after its division consists of Jamli and Kubhar Khan hamlets whereas newly constituted village panchayat is named British Ankushvihir and it consists of another hamlet namely Khadke. The petitioner complained that there was no proposal forwarded by the state declaring its intention to divide village Khatwani into two villages nor there was any proper consultation with the village panchayat or the Panchayat Samiti and standing committee of the Zilla Parishad as mandated under section 4 of the Act. Also it was stated that a village in a scheduled area which shall ordinarily consist of habitation or group of habitation or hamlet or group of hamlets comprising a community and managing its affairs in accordance with its traditions and customs. It is contended that the villages formed after bifurcation are not a homogeneous units and the said villages do not consist of members comprising a community and managing its affairs in accordance with its traditions and customs. It is contended that so far as village Khatwani is concerned, bifurcation made is in violation of the Act since one of the hamlets consist of a totally different tribal group and the said tribal group cannot assimilate with the other tribal community and as a result of bifurcation the village community is not in a position to preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. The state on the other hand contended that gram sabha was held in each of the villages and the announcement of holding of gram sabha was previously declared by beat of drums on three occasions in each of the villages. The sarpanch of the respective villages held monthly meeting of the panchayat and unanimously passed resolution in favour of division of village panchayat. The gram sabha was also held in each of the villages and a resolution in respect of division of gram panchayat was adopted unanimously in the gram sabha and no objections have been raised in that regard. The court while deciding the matter held that the law does not contemplate individual notice of hearing to every villager nor there is requirement of providing for an opportunity to make oral submissions before rendering any decision. It is required to be noticed that there was a demand by the villagers themselves and post demand, there is a decision by the concerned gram sabha in favour of division of village panchayat. The decision of the village panchayat has also been approved in the meeting of the concerned gram panchayat and the said decision which was forwarded later on to the panchayat samiti and the standing committee and has also received approval of both the local authorities. Thus, there is substantial compliance of provisions of section 4(2)[45] of the Act.

to — 5 (a) include within, or exclude from any village, any local area or otherwise alter the limits of any village, or (b) declare that any local area shall cease to be a village; and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village.

45 *Ibid.*

In another case of *Ashok Khetoliya* v. *State of Rajasthan,*[46] the petitioner is resident of village Roopbas and is also an ex-sarpanch of that village. He challenged the notification on August 12, 2014 declaring Gram Panchayat Roopbas as Municipal Board as illegal because the same has been issued in utter violation of article 243Q(2) of the Constitution. Article 243Q it is clear that the state shall constitute a nagar panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from rural to an urban area; Municipal council for a smaller urban area; and a municipal corporation for a larger urban area, in accordance with the provisions of Part IXA. Article 243Q(2) defines these three areas to mean such areas as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as the Governor may deem fit, specify by public notification for the purposes of Part IXA. Section 2(lxv) of the Rajasthan Municipalities Act, 2009 (defines "a transitional area", "a smaller urban area" or "a larger urban area" to mean an area specified under article 243Q of the Constitution. Meaning thereby, "a transitional area", "a smaller urban area" or "a larger urban area" shall be an area specified by public notification under article 243Q (2) of the Constitution. The court held that no public notification as contemplated under article 243Q(2) of the Constitution has been produced before it specifying Gram Panchayat Roop was as "a transitional area" having regard to its population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or any other factor which the government deemed fit. Therefore, in the absence of such notification issued under signature of Governor of the state, Gram Panchayat Roopwas cannot be treated as "a transitional area". And when Roopwas cannot be treated as "a transitional area", it cannot be declared as municipal board. Hence the high court quashed the notification on August 12, 2014 declaring Gram Panchayat Roopwas, District Bharatpur, as a Municipal Board.

IX DISTRICT MAGISTRATE'S POWER IS *FUNCTUS OFFICIO* ONCE IT IS EXERCISED TO FILL A TEMPORARY VACANCY IN THE KSHETRA PANCHAYAT PRAMUKH OFFICE

In *Afroz Jahan* v. *State of UP,*[47] section 147, 148, 149 and 302 of the IPC was instituted against the Pramukh who was elected in Kshetra Panchayat Dilari, Moradabad and was subsequently arrested and sent to jail. A temporary vacancy occurred in the office of the Pramukh. As per section 9-A of the Uttar Pradesh Kshetra Panchayat and zila panchayat Adhiniyam, 1961, the District Magistrate issued an order dated appointing the petitioner, who is an elected member of the Kshetra panchayat as the officiating pramukh. Some complaint were made by certain members against the petitioner and, based on this complaint, the district magistrate passed a

46 AIR 2015 Raj 177.
47 AIR 2015 (NOC) 1024 All.

fresh order removing the petitioner from the post of officiating pramukh and appointed the sub-divisional magistrate as the officiating Pramukh. Subsequently, by another order, the district magistrate modified its order and appointed Sazida Begum another respondent as the officiating Pramukh. The petitioner, being aggrieved by the action of the district magistrate in removing the petitioner and appointing first the sub divisional magistrate and then Begum as officiating Pramukh has filed the present writ petition. The high court held that it is apparently clear that where the Pramukh is unable to discharge his functions owing to absence, illness or any other cause, the district magistrate would make such arrangement as he thinks fit for the discharge of the functions of the Pramukh until the date on which the Pramukh resumes his duty. The said provision makes it apparently clear and explicit without any room for doubt that the district magistrate has been conferred the power only when a temporary vacancy on the post of Pramukh arises and that such power cannot be exercised where such temporary vacancy is not available. In the instant case, the Pramukh was arrested and sent to jail and hence a temporary vacancy aroused. The petitioner appointed by the district magistrate was discharging his duties as officiating Pramukh. There was no occasion for the district magistrate to exercise further powers under section 9-A of the Act of 1961 since no temporary vacancy had occurred. Merely because some members had made a complaint against the petitioner will not allow or justify the district magistrate to pass a fresh order under section 9-A of the Act. For removal of the Pramukh including an officiating Pramukh, the procedure to be followed would be by bringing a motion of no confidence under section 15 of the Act. Consequently, the court held that the district magistrate is denuded of his powers for removal of an officiating Pramukh appointed by him under section 9-A of the Act and it becomes *functuc officio* the moment an order is passed under section 9-A of the Act and that the district magistrate can exercise his powers afresh when another temporary vacancy occurs.

X PRESENCE OF MLA DURING THE MEETING FOR ELECTION OF PRESIDENT AND VICE-PRESIDENT OF TALUKA PANCHAYAT IS AGAINST FREE AND FAIR ELECTIONS.

In the case of *Karshanbhai Jesingbhai Diya* v. *State of Gujarat*,[48] the important issue was whether the local MLA can participate in the meeting held for election of president and vice president of taluka panchayat. The taluka panchayat is of five years. However, by issuing notification, the state government has provided for the term of president and vice-president of two and half years. In the present case, at the end of first term of the elected president and vice-president, the taluka panchayat had to hold fresh elections for such positions. A meeting of the taluka panchayat for such purpose was convened. The petitioners filed nomination for the post of president and vice-president. After scrutiny their nominations were found valid. The meeting was held at 12pm on the appointed on September 22, 2015. Along with all members, local

48 AIR 2016 Guj 43.

MLA also remained present. The petitioners objected to his presence during such meeting contending that only elected members can attend the meeting. They alleged that presence of MLA was to pressurise the Panchayat members into voting in a particular manner. Despite objections from the petitioners, the mamlatdar permitted the presence of local MLA as well as the police officials, eight members of the taluka panchayat staged walkout and did not any further participate in the meeting. Remaining nine members participated in the meeting and the mamlatdar conducted the elections declaring respondent as the president and one Raiben as the vice-president. The court held that in terms of sub-section (6) of section 10 of the Gujarat Panchayat Act, 1993, it is clear that a member of the state legislative assembly elected from any constituency of the taluka, would be a permanent invitee to such taluka panchayat. He would hold such apposition as long as he continues to be a member of the legislative assembly. The reason was that as the elected member of the state legislative assembly from the same region, he would be acutely concerned with the developmental issues of the area. He would be able to guide the taluka panchayat regarding government's development schemes and also have the wherewithal to take up the developmental issues of the taluka in the state assembly or before the government as the case may be. His presence would therefore, on one hand guide the elected members of the taluka panchayat and at the same time facilitate the development of taluka by taking up the issues with the central authorities. However, as a person who is not elected into the taluka panchayat, he does not have a right to vote at any of its meetings. In a meeting which is convened for the purpose of election of president and vice-president of the taluka panchayat would permit no other agenda and no business other than the business of election to' the said two posts would be transacted. Surely, the presence of a local MLA during the meeting of taluka panchayat is not envisaged for the orderly conduct of business of the taluka panchayat which is principally the task of the district administration and it could be achieved through necessary government machinery, if any unruly scenes are anticipated. Any presence of a local MLA during the meeting for election to the post' of president and vice president of the taluka panchayat would be wholly redundant and serve none of the purposes. The court held that taluka panchayat is important for governance and hence the elections have to be free and fair. Presence of a local MLA during such election would raise serious concerns of outside influence and pressures.

XI CONCLUSION

The survey included judgments of all the leading cases on panchayati raj in 2015. It can be discerned that issues on various aspects of panchayati raj has come before the courts. The cases ranged from powers and functions of sarpanch[49] to the role and responsibilities of district and other authorities to panchayats.[50] In the judgment of *Karshanbhai Jesingbhai Diya* v. *State of Gujarat*,[51] the court strictly prohibited

49 *Supra* note 40.

50 *Supra* note 40. Also see, *supra* note 47.

51 *Supra* note 48.

MLAs to come to meeting which is exclusively conducted to appoint the president and vice-president of a panchayat. The court mentioned that MLAs are members only for the reason that he would be acutely concerned with the development issues of the area and hence will be in a position to guide the panchayat regarding development schemes. But presence of MLA in such meetings will interfere with free and fair elections.

A good many cases on matters pertaining to elections to panchayats came up before the court. Two interesting judgments were delivered where recounting of votes was ordered as the party lost by a margin of less than nine votes[52]and physical verification of invalid votes[53] were ordered before declaring the final panchayat results.

The debatable judgments on panchayati raj during 2015 were with regard to additional qualifications for contesting panchayat elections. The question essentially arose on the sensibility of the legislations which imposed (i) educational qualification and (ii) hygiene conditions like mandatory toilets at home for contesting elections. Talking of true democracy, it is important to state that it cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. Imposing educational qualifications and depriving a large segment of the population is therefore questionable. Would it not be injustice that the state who has failed to carry out the mandate under article 21-A to provide right to education disqualifies a candidate for not meeting the education criteria?[54] Moreover taking Baxi's[55] argument that adult suffrage is a constitutional and not a statutory right and hence cannot be taken away except by a constitutional amendment, the distinction drawn between right to vote as constitutional right and right to contest as statutory right is wrong.[56] Moreover in the case of *Rajbala* v. *State of Haryana*, the Supreme Court mentioned that the state of Haryana for a number of years has provided financial assistance to families to construct toilets in their homes. Of the approximately 8.5 lakh house holders classified as being below poverty line, approximately 7.2 lakh have availed the benefit of the scheme. That makes it more debatable that if a lot can be changed without legislative disqualification, is there a need at all to exclude the remaining 1.3 lakhs households from contesting elections.

52 *Supra* note 23.

53 *Supra* note 28.

54 Rajinder Sachar, "Most undemocratic Act" 14(7) *South Asia Politics* 9-10 (Nov. 2015). The author further states that: The exclusion of those who did not have an opportunityof formal education being victims of state callousness could not have been denied participation in democratic institutions...nor on the ground that they being poor could not afford education on their own and do not have educational qualifications-this would be arbitrary, irrational and unreasonable.

55 Upendra Baxi, "Supreme Error" The Indian Express, Dec. 24, 2015, *available at*: http://indianexpress.com/article/opinion/columns/supreme-error/ (last visited on July 20, 2016).

56 *Ibid*. Baxi further argues that "True, constitutional rights, like fundamental rights, are subject to reasonable restrictions. But the regulation has to be "reasonable" as not being arbitrary under Article 14 (the new substantive due process test) or under the old criterion of reasonable classification"