

**IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE**

**&**

**HON'BLE MR. JUSTICE C. PRAVEEN KUMAR**

**WRIT APPEAL No.224 of 2021**

*(Taken up through video conferencing)*

The State Election Commission  
rep., by its Secretary, Krishna District,  
Vijayawada.

.. Appellant

Versus

Varla Ramayya, S/o Isaac,  
aged about 67 years, Hindu,  
Politburo member & General Secretary  
of Telugu Desam Party, R/o 1-3-174/8,  
Varla Yugandhar Marg, Vidhyadharapuram,  
Vijayawada- 12 and others

.. Respondents

Counsel for the appellant : Mr. C.V. Mohan Reddy, Senior counsel  
for Mr. S. Vivek Chandra Sekhar

Counsel for respondent No.1 : Mr. Vedula Venkata Ramana, Sr.Counsel  
for M/s. Bharadwaj Associates

Counsel for respondent Nos.2&3 : Mr. S. Sriram, Advocate General

**ORAL JUDGMENT**

**Dated: 07.04.2021**

*(per Arup Kumar Goswami, CJ)*

Heard Mr. C.V. Mohan Reddy, learned senior counsel assisted by  
Mr. S. Vivek Chandra Sekhar, learned counsel for the appellant. Also heard  
Mr. Vedula Venkata Ramana, learned senior counsel for respondent

No.1/writ petitioner and Mr. S. Sriram, learned Advocate General, for the State.

2. This writ appeal is preferred by the State Election Commission against an order dated 06.04.2021 in I.A.No.1 of 2021 in W.P.No.7778 of 2021.

3. In the writ petition, challenge was made to an Election Notification No.1503/SEC-B1/2021 dated 01.04.2021 issued by the State Election Commission proposing to conduct the elections for the Mandal Parishad Territorial Constituencies (for short, 'MPTCs') and Zilla Parishad Territorial Constituencies (for short, 'ZPTCs') in the State of Andhra Pradesh on 08.04.2021. By I.A.No.1 of 2021 filed in the writ petition, the writ petitioner had prayed for grant of stay of all further proceedings pursuant to the said Notification dated 01.04.2021.

4. Before proceeding further, it will be necessary to state that the challenge was primarily mounted on the aforesaid Notification dated 01.04.2021 on the ground that the said Notification was issued in violation of the order of the Hon'ble Supreme Court dated 18.03.2020 in W.P.(C).No.437 of 2020.

5. The State Election Commission had issued a Notification dated 07.03.2020 to hold elections for local bodies with the schedule as under:

**ELECTION SCHEDULE OF RURAL AND URBAN LOCAL BODIES – 2020**

<b>SL. No.</b>	<b>Activity</b>	<b>MPTC/ZPTC (One Phase)</b>	<b>MUNICIPAL BODIES (One Phase)</b>	<b>GRAM PANCHAYATS [Two Phases]</b>	
				<b>PHASE-I</b>	<b>PHASE-II</b>
1.	Issue of Election Notification by the	07.03.2020	09.03.2020	15.03.2020	17.03.2020

	<i>State Election Commission</i>				
2.	<i>Election Notice by the Returning Officer / Election Officer</i>	<i>09.03.2020</i>	<i>11.03.2020</i>	<i>17.03.2020</i>	<i>19.03.2020</i>
3.	<i>Receipt of Nominations</i>	<i>09.03.2020 TO 11.03.2020</i>	<i>11.03.2020 TO 13.03.2020</i>	<i>17.03.2020 TO 19.03.2020</i>	<i>19.03.2020 TO 21.03.2020</i>
4.	<i>Scrutiny of Nominations</i>	<i>12.03.2020</i>	<i>14.03.2020</i>	<i>20.03.2020</i>	<i>22.03.2020</i>
5.	<i>Appeal against rejection of Nomination before the Revenue Divisional Officer / District Collector</i>	<i>13.03.2020</i>	<i>--</i>	<i>21.03.2020</i>	<i>23.03.2020</i>
6.	<i>Disposal of Appeals</i>	<i>14.03.2020 (Before 1 PM)</i>	<i>--</i>	<i>22.03.2020 (Before 1 PM)</i>	<i>24.03.2020 (Before 1 PM)</i>
7.	<i>Last date for Withdrawal of Candidatures</i>	<i>14.03.2020 (Before 3 PM)</i>	<i>16.03.2020 (Before 3 PM)</i>	<i>22.03.2020 (Before 3 PM)</i>	<i>24.03.2020 (Before 3 PM)</i>
8.	<i>Publication of Final List of Contesting Candidates</i>	<i>14.03.2020 (After 3 PM]</i>	<i>16.03.2020 (After 3 PM)</i>	<i>22.03.2020 (After 3 PM)</i>	<i>24.03.2020 (After 3 PM)</i>
9.	<i>Conduct of Poll, wherever necessary</i>	<i>21.03.2020 (7 AM to 5 PM]</i>	<i>23.03.2020 (7 AM to 5 PM)</i>	<i>27.03.2020 (7 AM to 1 PM)</i>	<i>29.03.2020 (7 AM to 1 PM)</i>
10.	<i>Counting of Votes and Declaration of Results</i>	<i>24.03.2020 (From 8 AM)</i>	<i>27.03.2020 (From 8 AM)</i>	<i>27.03.2020 (After 2 PM)</i>	<i>29.03.2020 (After 2 PM)</i>

### **INDIRECT ELECTIONS**

1. *Indirect elections to Members (Co-opted), Chairperson and Vice-Chairperson of Zilla Praja Parishads and Member (Co-opted), President and Vice-President of Mandal Praja Parishads will be held on 30.03.2020. The term of elected bodies will also commence from 30.03.2020.*

2. *Indirect elections to Mayor and Deputy Mayor of Municipal Corporations and Chairperson and Vice-Chairperson of Municipalities and Nagar Panchayats will be held on 31.03.2020. The term of elected bodies will also commence from 31.03.2020."*

6. Subsequently, by a Notification dated 15.03.2020, the election process in respect of MPTCs, ZPTCs, Municipal Corporations, Municipalities and Nagar Panchayats was stopped forthwith, indicating that election process of such local bodies would be continued after six weeks or after the threat of COVID-19 recedes, whichever is earlier. The schedule which

was announced for Gram Panchayat elections was kept in abeyance until further orders.

7. The aforesaid Notification was challenged by the State of Andhra Pradesh by filing Writ Petition (Civil) No.437 of 2020 before the Hon'ble Supreme Court and the said writ petition, as is noticed earlier, was disposed of on 18.03.2020.

8. Subsequently, a Notification dated 17.11.2020 was issued by the State Election Commission stating that the Commission had decided to hold elections to the Gram Panchayats in the month of February, 2021, and that actual schedule would be finalized after due consultation with the State Government and thereafter only, the election schedule would be notified. The Notification dated 17.11.2020 was put to challenge by the State of Andhra Pradesh by filing a writ petition before this Court, which was registered as W.P.No.22900 of 2020. The said writ petition was disposed of by an order dated 29.12.2020. It is not necessary for us to dilate on the order dated 29.12.2020 passed by this Court, save and except to state that the State Government was permitted to submit a written version of its case enclosing all relevant materials in respect of its pleas and the instructions/guidelines issued by the Union of India pertaining to Covid-19, for consideration of the State Election Commission and that the State Election Commission, after undertaking the consultation process and after giving opportunity to the concerned officials of the State, was to take final decision in the matter of holding elections.

9. Thereafter, an order dated 08.01.2021 was passed by the State Election Commissioner seeking to justify holding of elections to the Gram Panchayats contrary to the request made by the State Government for

postponement of the elections. A schedule for holding ordinary elections to the Gram Panchayats in four phases was published in terms of which Election Notification is to be issued for Phase-I on 23.01.2021, for phase-II on 27.01.2021, for Phase-III on 31.01.2021 and for Phase-IV on 04.02.2021. Conduct of poll, wherever necessary, was fixed on 05.02.2021, 09.02.2021, 13.02.2021 and 17.02.2021, for Phases I, II, III and IV, respectively.

10. The said Notification came to be challenged in W.P.No.1158 of 2021 and an interim order was passed by the learned single Judge on 11.01.2021 suspending the Notification dated 08.01.2021. The order of the learned single Judge came to be set aside by Division Bench by an order dated 21.01.2021 in W.A.No.24 of 2021. The order of the Division Bench was challenged before the Hon'ble Supreme Court in SLP (C).No.1520 of 2021 and the same was dismissed by an order dated 25.01.2021.

11. Accordingly, elections were conducted for Gram Panchayats in terms of the schedule notified earlier except treating the second phase as the first phase and the polling for the first phase, which was slated to be held on 05.02.2021, was conducted on 21.02.2021.

12. The State Election Commission had also issued a Notification No.581/SEC-F2/2021 dated 15.02.2021 for conduct of elections to Municipalities and Nagar Panchayats by resuming the paused election process in respect of 12 Municipal Corporations and 75 Municipalities/Nagar Panchayats. It was indicated that the Model Code of Conduct had come into force with immediate effect and that the same would remain in force till completion of elections. In connection with

holding of such elections, three Notifications dated 15.02.2021 were issued for giving election schedule for Municipal Corporations: One for Vizianagaram, Eluru, Machilipatnam, Guntur, Ongole, Tirupati, Chittoor, Kadapa, Kurnool and Ananthapur, one for Greater Visakhapatnam Municipal Corporation and one for Vijayawada Municipal Corporation. Another Notification dated 15.02.2021 was issued for conduct of ordinary elections to Municipalities and Nagar Panchayats. In terms of the said Notifications, the poll, wherever necessary, was fixed on 10.03.2021. Elections to the aforesaid Municipal Corporations and Municipalities were also conducted.

13. On 01.04.2021, Notification was issued for resumption of the paused election process of MPTCs and ZPTCs. By the said Notification, conduct of poll, wherever necessary, was fixed on 08.04.2021. A press note dated 01.04.2021 was also issued stating that Model Code of Conduct has come into force with immediate effect and that it shall remain in force till completion of the election process. It is relevant to state that before the elections were paused by the Notification dated 15.03.2020, on 14.03.2020, final lists of contesting candidates for MPTCs and ZPTCs were published.

14. Mr. C.V. Mohan Reddy, learned senior counsel for the appellant, submits that no rights of the writ petitioner, legal or fundamental, were infringed and, therefore, the writ petition in the nature of public interest litigation could not have been entertained by the learned single Judge. The learned senior counsel submits that the learned single Judge granted final relief to the writ petitioner by way of interim order, which is not permissible in law as the writ petition is yet to be adjudicated upon. It is also submitted by him that the order of the Hon'ble Supreme Court has to

be understood in the context in which the same was passed and the period of four weeks, as indicated in the order of the Hon'ble Supreme Court, was the maximum period for which the Model Code of Conduct could have been imposed by the State Election Commission. Drawing attention of the Court to the Notification dated 07.03.2020, he submits that the Model Code of conduct was not imposed by the State Election Commission for four weeks for any of the elections for the Local Bodies and so far as MPTCs and ZPTCs are concerned, it was imposed for a total period of two weeks. As the publication of final lists of candidates had already been made, the Model Code of Conduct was re-imposed for the period from the date of resumption of poll process on 01.04.2021 to 10.04.2021. In respect of Municipal Corporations and Municipalities also, the Model Code of Conduct was not imposed for four weeks by the Notification dated 15.02.2021 and the same was not questioned and accordingly, elections had been held. It is submitted that in any view of the matter, the learned single Judge ought not to have stayed the election process after the process had commenced. He further submits that full preparations have been made for the purpose of holding election tomorrow.

15. Mr. Vedula Venkata Ramana, learned senior counsel appearing for the respondent/writ petitioner, submits that the order of the Hon'ble Supreme Court being categorical that the State Election Commission shall re-impose Model Code of Conduct four weeks prior to the date of the election, there is no escape from the conclusion that the Notification issued by the State Election Commission imposing Model Code of Conduct for only a period of 10 days in respect of MPTCs and ZPTCs falls foul with the order of the Hon'ble Supreme Court and, therefore, the order of the

learned single Judge cannot be faulted with. When the order of the Hon'ble Supreme Court is clear and categorical, the submission advanced by Mr. C.V. Mohan Reddy that it was the understanding of the State Election Commission that the period of four weeks as indicated by the Hon'ble Supreme Court was the maximum period for which the Model Code of Conduct could be imposed, is without any basis. So far as the plea of *locus standi* is concerned, learned senior counsel submits that every citizen has a right to demand a free and fair election and for enforcement of the order of the Hon'ble Supreme Court and, therefore, the plea of *locus standi* raised by Mr. C.V. Mohan Reddy is misconceived.

16. Mr. S. Sriram, learned Advocate General, submits that though it is recorded in the order of the learned single Judge that he had endorsed the argument of the learned senior counsel for the State Election Commission, the material placed by him before the learned single Judge was not considered. It is submitted by him that the writ petitioner, apart from enclosing the Press Note dated 01.04.2021 and Notification dated 01.04.2021 issued by the State Election Commission, did not enclose the previous election schedules issued by the State Election Commission and, therefore, he has placed the same on record by uploading the earlier Notifications relating to the election schedules of Panchayats and Municipalities, to demonstrate that in those election schedules, Model Code of Conduct for a period four weeks was not imposed. He submits that even in respect of Gram Panchayat elections, the Model Code of Conduct was not in force for a full period of four weeks as the Notification was stayed for a period of 11 days from 11.01.2021 to 21.01.2021. He submits that grievance that was expressed before the Hon'ble Supreme Court was that when the postponement of elections had taken place,



there could not have been any justification for continuing with the Model Code of Conduct, as it would have seriously impacted various social welfare activities that the State was undertaking. It was in the above backdrop, the Hon'ble Supreme Court had directed imposition of Model Code of Conduct four weeks prior to the date of polling. He submits that when the said order is examined in the light of the backdrop in which the grievance was expressed and when the original Notification was not issued imposing Model Code of Conduct, which has no statutory basis, for a period of four weeks, it has to be understood that the Model Code of Conduct, at the maximum, could have been imposed by the State Election Commission for a period of four weeks. He has also reiterated the submission of Mr. C.V. Mohan Reddy that the learned single Judge ought not to have interfered with the election process.

17. We have considered the submissions made by the learned counsel for the parties.

18. The order dated 18.03.2020 passed by the Hon'ble Supreme Court in W.P.(C).No.437 of 2020 reads as under:

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

*We do not see any reason why this Court should interfere with the decision of the respondent - Election*

*Commission to postpone the elections particularly since the postponement is due to possible outbreak of Corona virus (COVID 19) epidemic in the country. We therefore decline to interfere with the said decision of the Election Commission.*

*However, it appears that one of the grievances raised by the petitioner – State needs to be addressed. According to Mr. ANS Nadkarni, learned Additional Solicitor General appearing for the State, a large number of developmental activities have been suspended due to the imposition of the Model Code of Conduct for the aforesaid Elections in the State of Andhra Pradesh.*

*Mr. Nadkarni, learned Additional Solicitor General, submits that the imposition of the Model Code of Conduct would not be justified if the Elections are postponed.*

*We see much substance in the above submissions of the learned Additional Solicitor General. We therefore direct that the Election Commission shall impose the Model Code of Conduct four weeks before the notified date of polling.*

*Mr. Shekhar Naphade, learned Senior Counsel appearing for the respondent – Election Commission, submits that the State of Andhra Pradesh is not entitled to move this Court by way of filing writ petition under Article 32 of the Constitution of India.*

*We are not inclined to go into this question in the present writ petition due to the emergent circumstances in which the same is filed. The said question is left open for determination in an appropriate case.*

*Mr. Nadkarni, learned Additional Solicitor General for the petitioner – State, submits that the Election Commission was not entitled to postpone the elections without appropriate consultation with the State Government. He relies upon the decision of this Court in Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and Others – (2006) 8 SCC 352.*

*According to Mr. Naphade, learned Senior Counsel for the respondent – Election Commission, the decision in Kishansing Tomar (Supra) does not require prior consultation.*

*This is also not a controversy which we consider appropriate for decision in this case in view of the order we propose to pass.*

*We direct that since the Election Commission has already taken the decision to postpone the Elections, there shall be a post decisional consultation with the State of Andhra Pradesh before the next date is notified by the Election Commission. The Model Code of Conduct for the elections shall be reimposed four weeks before the date of polling.*

*We further direct that the present development activities which have already been undertaken shall not be interrupted till the Model Code of Conduct is reimposed.*

*However, if the State Government wishes to undertake any fresh developmental activities, they shall do so only with the prior permission of the respondent – Election Commission.*

*In no circumstance, the State Government shall be prevented from taking necessary steps to curb the menace of Corona Virus (COVID 19) epidemic.*

*The instant writ petition is disposed of in the above terms.*

*Pending interlocutory applications, if any, stand disposed of.”*

19. The learned single Judge held that the State Election Commission had not followed the direction of the Hon'ble Supreme Court in W.P.(C).No.437 of 2020 with regard to imposition of Model Code of Conduct in letter and spirit and, therefore, the deviation thereto cannot be accepted. In view of the deviation noticed, the learned single Judge observed that at the interlocutory stage, the contention advanced by the learned counsel for the State Election Commission regarding locus standi of the writ petitioner pales into insignificance. The learned single Judge, on consideration of various authorities, as indicated in the order, had observed that generally, the Courts will not interfere or adjudicate upon an election matter by exercising powers under Article 226 of the Constitution of India, particularly, when the election process begins, but also noted that the Court can certainly intervene in certain circumstances. The learned single Judge thought it fit that it was one of such matters where Court can step in and stay the election process. Taking that view, the learned single Judge stayed all further proceedings pursuant to the Notification No.1503/SEC-B1/2021 dated 01.04.2021 until further orders. Opportunity was granted to the State Election Commission to file an affidavit on 15.04.2021 mentioning clearly that the State Election

Commission would issue a fresh election notification by scrupulously following the directions of the Hon'ble Supreme Court in W.P.(C).No.437 of 2020. Accordingly, the matter was directed to be listed on 15.04.2021.

20. The writ petition was filed on 03.04.2021 as house motion and the appellant, having regard to the urgency of the matter, could file only a preliminary affidavit.

21. A perusal of the impugned order of the learned single Judge would go to show that the learned single Judge, in effect, while granting the interim order, had virtually allowed the writ petition, though the writ petition is still pending disposal. That the order has a ring of finality is apparent in view of the direction to the State Election Commission to issue a fresh notification. Furthermore, the learned single Judge, during the course of the order, did not consider the aspect relating to elections held after the order of the Hon'ble Supreme Court in respect of Gram Panchayats, Municipalities and Municipal Corporations, for which the Model Code of Conduct was not imposed for a period of four weeks. The learned single Judge also did not specifically decide the issue of *locus standi* of the writ petitioner.

22. We are of the considered opinion that there are contentious issues to be adjudicated in the writ petition. Considering the matter in its entirety, we set aside the order of the learned single Judge. Balancing the competing equities, we direct that the poll can be conducted on 08.04.2021. We, however, direct that counting of votes shall not take place and consequently, result of elections shall also not be declared till disposal of the writ petition.

23. We dispose of this appeal in terms of the above directions. As the learned single Judge had fixed the writ petition for consideration on 15.04.2021, Registry will list the writ petition, as directed by the learned single Judge, on that date.

24. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

**ARUP KUMAR GOSWAMI, CJ**

**C. PRAVEEN KUMAR, J**

IBL/NN/MRR

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE**  
**&**  
**HON'BLE MR. JUSTICE C. PRAVEEN KUMAR**

**WRIT APPEAL No.224 of 2021**

(Per Arup Kumar Goswami, CJ)

Dt: 07.04.2021

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