

ITANAGAR BENCH

WP (C) 231 (AP) NO. 2018

1. *Shri Sangha Tagik,
S/O Late Sangha Tashi,
Vill:- Hashi,
P.O. & P.S. Koloriang,
Dist. Kurung Kurmey, Arunachal Pradesh.*

.....Petitioner

Advocates for the Petitioner:

1. *Mr. T.T.Tara,*
2. *Mr. K. Jini,*
3. *Mr. D. Loyi,*
4. *Mr. B. Picha,*
5. *Mr. J. Jini*
6. *G. Bam.*

-VERSUS-

1. *The State of Arunachal Pradesh represented by its Chief Secretary, Government of Arunachal Pradesh, Itanagar.*
2. *The Secretary, (Panchayat Raj) Government of Arunachal Pradesh, Itanagar.*
3. *The Secretary, State Election Commission, Arunachal Pradesh, Itanagar.*
4. *The Director, Panchayat Raj, Government of Arunachal Pradesh, Itanagar.*

.....Respondents

Advocates for the Respondents:

1. *Mr. N. Dutta, learned Advocate General.*
2. *Mr. K. Ete, learned Sr. Addl. Advocate General.*
3. *Mr A. Apang, learned Senior Standing Counsel.*

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing: 26.06.2018

Date of judgment: 19.07.2018

JUDGMENT & ORDER (CAV)

Heard Mr. T.T. Tara, learned counsel, assisted by Mr. K. Jini, Mr. D. Loyi, Mr. B. Picha, Mr. J. Jini and Mr. G. Bam, learned counsel for the petitioner. Also heard Mr. N.

Dutta, learned Advocate General assisted by Mr. K. Ete, learned Senior Addl. Advocate General, appearing for the State respondent Nos. 1, 2 and 4 as well as Mr. A. Apang, learned Senior Standing Counsel for the respondent No. 3/Secretary, State Election Commission, Arunachal Pradesh.

2. By preferring this petition under Article 226 of the Constitution of India, the petitioner is seeking a direction to the State respondents to conduct the Panchayati Raj Election, 2018 in Arunachal Pradesh, in compliance of the mandates of Articles 243 B and 243 E of the Constitution of India read with Arunachal Pradesh Panchayat Raj Act, 1997 (For short 'APPR Act') and rules framed thereunder as the tenure of the last Panchayati Raj Institution (For short 'PRI') has come to an end on 21.05.2018.

3. The petitioner is a Zila Parishad Member of the 5th Parsi Parlo Panchayat Segment of Kurung Kumey district, Arunachal Pradesh and he is intending to re-contest from the same Panchayat segment in the next general election of Panchayat to be held in 2018. Further, the petitioner is the Secretary General of All Arunachal Pradesh Panchayat Parishad (In short 'AAPPP'), which is affiliated to All India Panchayat Parishad (In short 'AIPP').

4. The petitioner's case, in a nut-shell, is that Arunachal Pradesh is a tribal state and its people manage their day to day affairs at the village and the community levels through the traditional village institutions by evolving their own customary laws and thus, the concept of Panchayati Raj is deep rooted in the tribal communities of the state. In pursuance of the mandate of Article 243 K of the Constitution of India, Arunachal Pradesh State Election Commission (For short 'SEC') came to be set up in 2001. The 3rd General Election of the three-tier Panchayat Election was held on 16.05.2013 for 177 Zilla Parishad Members for a tenure of 5 years and the said tenure came to an end on 21.05.2018. Before expiry of the said prescribed tenure of the Panchayati Raj bodies, on 21.05.2018, the SEC vide its letter, dated 31.01.2018, wrote to the respondent No. 1/the Chief Secretary to the Government of Arunachal Pradesh stating, *interalia*, that the current five year tenure of the three-tier Panchayati Raj bodies was expiring by May, 2018 and proposed the schedule to hold election on 14.05.2018, contending that as per the Constitutional provisions contained in Article

243 E (3)(a), it is mandatory that election to the Panchayats shall be completed before the expiry of its duration of five years and that there is no provision for extension of tenure beyond five years. The said letter further stated that as per the provisions of Rule 3 of the Arunachal Pradesh Panchayati Raj (Conduct of Election) Rules, 2001 (For short 'Rules, 2001'), the SEC, after consulting the State Government shall by notification appoint the date and time of polling for the elections. By the said letter, dated 31.01.2018, the SEC requested the State Government to convey its concurrence/comments on the proposal, latest by the first week of March, 2018, enabling the Commission to take further necessary action well in advance for ensuring free and fair elections. However, as the said letter was not responded, the SEC, with reference to its said previous letter, dated 31.01.2018, issued a reminder, dated 11.04.2018, addressed to the respondent No. 1/ the Chief Secretary to the Government of Arunachal Pradesh, requesting the State Government to convey its concurrence/comments on the proposed schedule for holding elections to the Panchayats and Municipalities, latest by the first week of March, 2018, enabling the Commission to take further necessary action, well in advance for ensuring free and fair election.

5. The petitioner has also contended that in response to the letters, dated 31.01.2018 and 11.04.2018, aforementioned, written by the commission, by an advisory letter, dated 13.04.2018, the i/c Chief Secretary to the Government of Arunachal Pradesh stated, *interalia*, that the 15th Session of the 6th Legislative Assembly has passed the Arunachal Pradesh Panchayat Raj (Amendment) Bill, 2018, whereby the existing three-tier Panchayat Raj system is being replaced by two-tier in the State and therefore, consequential changes/amendments are required to be incorporated in various subordinate legislations namely, Arunachal Pradesh Panchayat Raj (Preparation of Electoral Roll) Rule, 2002; the Arunachal Pradesh Panchayat Raj (Conduct of Election) Rules, 2002 and the Arunachal Pradesh Panchayat Raj (Delimitation of Constituencies and Reservation of Seats for Women) Rules, 2002, for which reason, it has been decided by the Government to hold the elections only after completing the aforesaid legal and other required processes. On receipt of the said reply, the Secretary to the SEC, by letter, dated 17.04.2018, requested the respondent No. 1/the Chief Secretary to the Government of Arunachal Pradesh informing that the

Commission was unaware of the amendment in the APPR Act, 1997 and requested to decide a fresh date for notification of elections to PRI and conveyed to the Commission at the earliest, enabling discharge of the constitutional obligations in this regard and to avert a situation of constitutional crisis due to undue delay in holding Panchayat election in the State.

6. According to the petitioner, thereafter, the respondent No. 2/ the Secretary (Panchayat Raj) to the Government of Arunachal Pradesh, by a letter, dated 24.04.2018, while reiterating the contentions made in the aforementioned letter, dated 13.04.2018, requested the SEC to hold the Panchayat elections, only after due procedures and processes undertaken are completed, due to introduction of new two-tier system of Panchayats in the state as per the provisions prescribed under the said Act and the Rules framed thereunder as well as the Constitution of India. Thereafter, the SEC, by a letter, dated 27.04.2018, called upon the Governor of Arunachal Pradesh to advise the State Government to indicate a time line, within which the entire process of changing the subordinate legislations etc., consequent upon the notification of the APPR (Amendment) Act, 2018 can be completed, because the Commission cannot wait for notification of general election to Panchayat bodies beyond the expiry date for an unlimited period. Further, by a WT message, dated 28.05.2018, transmitted by the respondent No. 2/the Secretary (Panchayat Raj) to the Government of Arunachal Pradesh, addressed to all the Deputy Commissioners of the state notified that there shall be no more PRI in Arunachal Pradesh, after expiry of the existing tenure of Panchayat Raj on 31.05.2018, and by Notification, dated 30.05.2018, constituted interim District and Gram Panchayat Level Committees till reconstitution of the new Zilla Parishads and the new Gram Panchayats, under the amended Act, 2018 to discharge the duties of implementation of various schemes and to protect the interests of public, during the intervening period.

7. Contesting the instant proceeding, the respondent Nos. 1,2 and 4 filed a joint affidavit-in-opposition and admitted therein to have received the letters of Request from the SEC to convey the concurrence/comments of the State of Arunachal Pradesh latest by the first week of March, 2018 for conducting the Panchayat Election, 2018, but due to amendment of APPR Act, 1997, as required under Article 243 B (1)(2) of

the Constitution of India, unavoidable delay has been caused in conducting the General Election to the PRIs in the State of Arunachal Pradesh. It has been stated that in conformity with this Article, the Government of Arunachal Pradesh has done away with the intermediate Panchayat/Anchal Samiti in Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018, because Arunachal Pradesh has total population of 13,83,727, as per 2011 census. Hence, the State Government requires sufficient time for completion of rule making and other formalities, and furthering program action plan that has been already prepared and being carried on. It is further stated that the monsoon season begins from the month of May, 2018 in the State of Arunachal Pradesh and during this season, the road connectivity usually remains cut-off due to landslide and devastating flood etc., for which, it is practically not possible for the polling officials to reach their respective polling stations, located in the far flung areas of the State. Having regard to these constraints, the State Government is contemplating to conduct the election to the PRIs, during the winter season for smooth and successful conduct of election and to overcome the interim period, the State Government has evolved an interim mechanism to discharge the functions of PRIs by forming District and Gram Panchayat Level Interim Committees. Hence, it is prayed to dismiss the petition.

8. The respondent No. 3/the State Election Commission in its affidavit-in-opposition stated that the Commission has taken all the preparatory steps including the Electoral Roll Revision and is prepared to hold the Panchayat Raj elections. Accordingly election schedule was prepared and forwarded to the State Government for its concurrence/comments as required under Rule 3 of APPR (Conduct of Election) Rules, 2001, latest by the first week of March, 2018 for issuing notification of election schedule. The Commission needs at least 2 (two) months time before notification of election for various preparatory steps to ensure smooth conduct of election. It has been further stated that besides the support and co-operation of the State Government in terms of providing budgetary support to the tune of Rs. 21.27 crores for both Panchayat Raj and ULB elections and manpower etc. are required for the purpose.

9. Advancing strenuous argument, Mr. T.T.Tara, learned counsel for the petitioner submitted that the State/respondents have violated the mandate of Article 243 E (a) of the Constitution of India by not conveying its concurrence/comments on the proposed schedule for holding the general elections to the Panchayat, to the SEC. According to Mr. Tara the government is duty bound to comply with the mandate of the Constitution of India provided under Article 243 E(3), wherein the election to constitute a Panchayat shall be completed before the expiry of its duration of five years. Mr. Tara also submitted that Section 104 (1) of Chapter-VI of the APPR Act, 1997 provides that the superintendence, direction and control of the preparations of the electoral rolls for the purpose of holding of elections to the Panchayat bodies are vested in the SEC and it is the duty of the State Government, under Section 104 (3) of the APPR Act, to provide to the SEC required staff, but the State Government has not discharged its duties and obligations under the Act. The aforesaid grounds cited by the State Government for its inability to hold the election as per the mandate of the Constitution, Mr. Tara, learned counsel for the petitioner, submitted are not sustainable in law in view of the catena of judgments rendered by the Hon'ble Supreme Court and this Court holding to the effect that the State cannot dilute mandatory requirement of compliance of the mandate of the Constitution of India provided under Article 243 E by making an endeavor to amend the provisions of Section 10 (3) and Section 86 (1) of the APPR Act, 1997 by means of administrative decision. Mr. Tara further submitted that the State Government being committed to the welfare of the people of Arunachal Pradesh must act fairly and reasonably and as such, withholding of election to the Panchayat bodies is clearly violative of the Articles 14, 19(1) (g), 21, 243 B and 243 E of the Constitution of India. Mr. Tara contended that Articles 40 and 243 to 243 O show that the framers of the Constitution had envisaged Village Panchayat to be the foundation of the country's political democracy- a decentralized form of Government, where each village is to be responsible for its own affairs. Further, by enacting the Constitution (Seventy-third Amendment) Act, Parliament has made an attempt to remedy the defects and remove the deficiencies of the system evolved after independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the people at the grass-root level, through the institution of

Panchayats at different levels. Therefore, Mr. Tara, learned counsel for the petitioner, vehemently submitted that the decision of the State Government by deciding not to hold Panchayat Election within the constitutionally mandated period is illegal *per se* and tantamounts to subversion of the objectives of the 73rd Constitutional Amendment Act, 1992 as well as thereby created the history of constitutional crisis as the people of rural Arunachal Pradesh are deprived indefinitely of their right of self-governance, through the PRI. In the backdrop of the facts stated in the instant writ petition, Mr. T.T. Tara, learned counsel for the petitioner, has relied upon the following judgments:-

1. *The Pub Magaldai Anchalik Panchayat and Anr -Vs- The State of Assam and 3 Ors*, reported in WP (C) No. 1455/2018.
2. *Uttar Dhenaji Gaon Panchayat & Ors -Vs- State of Assam and Ors*, reported in 2007 (3) GLT 899.
3. *Jatan Kumar Thaosen & Anr -Vs-State of Assam and 3 Ors*, reported in 2007 (3)GLT 42.
4. *Muna Thapa and Anr -Vs-State of Manipur and Ors*, reported in 2010 (5) GLT 648.
5. *Prof. B. K. Chandrashekar and Another, etc. -Vs- The State of Karnataka*, reported in AIR 1999 Karnataka 461.
6. *Gujarat Election Matter*, reported in (2002) 8 SCC 237.

10. Per contra, Mr. N. Dutta, learned Advocate General, Arunachal Pradesh, submitted that the Constitution (73rd Amendment) Act, 1992 heralded a new era in the federal democratic set-up of the country by way of providing constitutional status to the PRIs to ensure self-governance of the village populace. Mr. Dutta contended that one of the Directive Principles of State Policy as enshrined in Article 40 of the Constitution of India is that the States shall take steps to constitute village Panchayats and appropriately empower them with authority as deemed necessary to enable them to function as units of self-Government. After the Supreme Court made some reservations in the judgment in ***Prakasam District Sarpanchas Association & anr vs. Govt. of A.P. & ors.***, reported in (2001) 1 ANDH-LD, 143, Mr. Dutta submitted that the Government of Arunachal Pradesh amended the Arunachal Pradesh Panchayat Raj Act, 1997 by the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018 replacing the three-tier Panchayati Raj System by two-tier system in view of the provisions provided under Article 243 B (1)(2) of the Constitution of India, which was

notified in the Arunachal Pradesh Gazette in its extraordinary issue, dated 21.04.2018. According to Mr. Dutta, the learned Advocate General, by the said new enactment, section 142 of the Principal Act has been amended by taking away the intermediate Anchal Samiti as the population of the State is less than twenty lakhs, that is, 13, 83,727, as per 2011 census report and this has necessitated undertaking a wide ranging and time consuming exercise of legal formalities, keeping in mind the pattern of population distribution in the State, peculiar geographical conditions and other incidental unavoidable exercises. Therefore, the question of malafide action behind not holding of the Panchayat election, before expiry of the tenure of the last PRI, on 21.05.2018, under the Act of 1997, on the part of the State Government does not arise. Referring to Article 243-C (2), Mr. Dutta contended that as per its mandate, the Government of Arunachal Pradesh is duty bound to rearrange the territorial constituencies of each Panchayat area taking into consideration of the population of each such constituency and the number of seats allotted to it and the State Legislature to make suitable provisions, by law, in the matters of elections to the Panchayats as required by Article 243 K(4) and further, the validity of law relating to delimitation of the Panchayat constituencies, or the allotment of seats to such constituencies, made under Article 243 K cannot be called in question in any court under Article 243 O of the Constitution of India, though subject to judicial review, based on the test of distinctive basic features of the Constitution.

11. Mr. Dutta, learned Advocate General for Arunachal Pradesh, referring to the contents of the letter, dated 31.01.2018, addressed to the Chief Secretary by the SEC, submitted that in view of necessity to hold the General Election to the PRIs and Municipalities of Itanagar and Pashighat, 2018, in Arunachal Pradesh, the commission had proposed a schedule of election, 2018 for PRIs under the Arunachal Pradesh Panchayati Raj Act, 1997, which stood amended by the new Arunachal Pradesh Panchayati Raj (Amendment) Act, 2018 and came into force, on 21.04.2018. Thus, the said proposal, dated 31.01.2018, was, in fact, infructuous being submitted for holding of election for the old three-tier system and further, by conveying another letter, dated 11.04.2018 stated that the aforesaid proposed schedule for issue of notification by the Commission was to expire on 13.04.2018. Therefore, by letter, dated 13.04.2018, the i/c Chief Secretary to the Government of Arunachal Pradesh advised the SEC to hold

the election of the two-tier PRIs as per the schedule proposed by the Commission and wait till completion of the process undertaken to amend the subordinate legislations, consequent to the amendment of the Arunachal Pradesh Panchayat Raj Act, 1997, which has not been challenged by the petitioner in the instant writ petition. The Commission in response to the said letter requested the Government to decide a fresh date for notification of election and convey to the Commission at the earliest. Mr. Dutta further submitted that a similar request was made by the Commission to the State Government by the letter, dated 11.04.2018. The requirement of sufficient time for effectively working out on reservation and rotation of seats for women in Gram Panchayat and Zilla Parishads as per provisions of Section 12 and Section 88 (3) of the Arunachal Pradesh Panchayat Raj Act, 1997 is needed, followed by notifications before the schedule of election is notified.

12. Mr. N. Dutta, learned Advocate General further submitted that the judgment passed by this Court in ***Uttar Dhemaji Gaon Panchayat Case*** (*supra*), was being in conflict with the mandate of Article 243-E of the Constitution of India, it was set corrected later on by this court in the judgment passed in ***Pub-Magaldai Anchalik Panchayat Case*** (*supra*). Mr. Dutta submitted that as after completion of tenure of five years, the Panchayati Raj elected bodies cannot continue till new bodies are formed by holding general elections to the PRIs, temporary arrangement has been made to discharge the functions of the Panchayati Raj, through District Level and Gram Panchayat Level Interim Committees, comprised of wide ranging government and non-government representatives as stated in the affidavit-in-opposition itself.

13. In the context of the various judgments cited by the petitioner's side, Mr. Dutta submitted that those were rendered before the law was settled by the Hon'ble Supreme Court in ***State of West Bengal & Ors. -Vs- Pranoy Roy & Ors.***, reported in (2015) 16 SCC 237, and in the fact situation in issue in the instant petition, before holding of election, the Government will be required to undertake various exercises/steps to suitably amend the subordinate legislations to give effect to the amended provisions of the Panchayat Raj Act, 1997, keeping in mind the adoption of two-tier Panchayati Raj system in the State. Mr. Dutta, learned Advocate General for the State of Arunachal Pradesh, vehemently submitted that the Government is not opposed to

holding of general election to the PRIs and committed to complete the process in the State within 28.02.2019 deadline.

14. Mr. Kardak Ete, learned Senior Additional Advocate General representing the State of Arunachal Pradesh, *inter-alia*, submitted that the time-bound action plan vide Annexure-'A' to the affidavit-in-opposition filed by the respondent Nos. 1, 2 and 4 is not a government notification, but suggested steps, with each time bound step to be carried out by the Government departments with a view to understand the steps required to be undertaken by the State. Mr. Ete further submitted that Annexure -1, dated 16.04.2013, of the petition issued by the SEC was a notification under the Panchayat Raj Act, 1997 and Rule 3 of the Arunachal Pradesh Panchayati Raj (Conduct of Election) Rules, 2001, which pertained to three-tier Panchayati Raj system, not under the amended provisions of the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018 vide Notification, dated 30.05.2018, whereby major structural changes in the aforesaid Principal Act, 1997 are brought, deleting all the provisions relating to the constitution of Anchal Samitis (Intermediate Level). Mr. Ete also submitted that the writ petitioner has not challenged the aforesaid Notification of the Government of Arunachal Pradesh, dated 30.05.2018. According to Mr. Ete, the state has the absolute power of legislation derived as a whole, from Part IX and Part XI of the constitution, more particularly Articles 243 B and 246 as well as Entry-II. Referring to Section 24 of the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2014, notified on 21.04.2018, Mr. Ete, learned Senior Additional Advocate General, submitted that the functions of the Zilla Parishads and Gram Panchayats are now vested on the interim authorities to ensure that the interests of the public are protected, during the transition period, and accordingly, interim committees are constituted at the District and Gram Panchayat Levels. Mr. Ete submitted that the only issue in the present writ petition is the implementation of a time-bound action plan to hold the Panchayat election in the State to be completed on or before 28.02.2019 shown in break up in Annexure-'A' to the affidavit-in-opposition by the State respondent Nos.1,2 and 4.

15. Mr. A. Apang, learned Senior Standing Counsel representing the respondent No. 3/the State Election Commission, Arunachal Pradesh, *inter-alia*, submitted that the Commission is ready to conduct the general election to the Panchayati Raj bodies in

the State, but emphasized that the Commission needs 2(two) months' time for completing preparatory steps before issuing notification of election, necessary fund and staff etc. as well as concurrence of the State Government for holding election.

16. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

17. Part IX of the Constitution of India, which relates to the Rural Local Self Government, was inserted by the 73rd Amendment Act, 1992 and came into force on 22.04.1993. Article 243-B of the Constitution of India provides for constitution of Panchayats at the village, intermediate and district levels. However, the intermediate level is done away in a State having a population not exceeding twenty lakhs. As Arunachal Pradesh has a total population of 13,83,727 according to 2011 census report, the Government of Arunachal Pradesh amended the Arunachal Pradesh Panchayat Raj Act, 1997, which envisaged three-tier Panchayat Raj System by the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018 and notified vide Notification, dated 21.04.2018 and published in the Arunachal Pradesh Gazette in its issue, dated 21.04.2018, which came into force in the State from 23.04.2018. This amended Act, 2018 introduced the two-tier Panchayat Raj system doing away the intermediate body of Anchal Samiti, in terms of the mandate of Article 243 B(2). Regarding the duration of Panchayats etc, Article 243-E provides as herein below extracted:

1. ***"243-E. Duration of Panchayats etc. -(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.***
2. ***No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).***
3. ***An election to constitute of Panchayat shall be completed-***
4. ***a) Before the expiry of its duration specified in clause (1):***
5. ***b) Before the expiration of a period of six months from the date of its dissolution:***
6. ***Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.***

7. *A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.*

18. Clause (1) of Article 243-E stipulates that the normal tenure of Panchayat shall be of five years from the date appointed for its first meeting and in no case to be extended beyond the aforesaid fixed tenure. Clause (3) of Article 243-E provides that election to constitute a Panchayat must be completed (a) before the expiry of its duration of five years stipulated in Clause (1) of Article 243-E and, in case of a dissolution, as provided in Clause (4), the new body constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Clause (1), aforementioned, had it not been so dissolved, reinforcing the constitutional mandate provided in Clause (1) that the duration of a Panchayat shall in no case be beyond five years. However, the proviso to Clause (3) of Article 243-E provides a deeming provision to the effect that in case of dissolution, where the remainder of the period of the dissolved Panchayat is less than six months, it shall not be necessary to hold any election for constituting the Panchayat for such period. Interpreting thus the Article 243-E, it is understood that the duration of Panchayats shall, in no case, to exceed five years and election to constitute a panchayat must be conducted before expiry of the fixed five year term.

19. The SEC is the constitutional authority set up in pursuance of Article 243-K of the Constitution and vested with the plenary powers in the matter of conduct of elections to the Panchayats . Its residuary powers deal with the superintendence, direction and control of the preparation of electoral rolls for conducting free and fair elections. Clause 3 of Article 243-K provides that upon request being made, the Governor shall make available such staff as may be necessary for the discharge of the functions conferred on the SEC by Clause (1), meaning thereby that the State Government concerned shall be obliged to provide requisite number of staff for smooth holding of such elections to the Panchayats. Clause (4) of Article 243-K requires the legislature of a State to make necessary provisions by law, with respect to all matters relating to the elections to the Panchayats.

20. Perusal of the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018 which came into force on 21.04.2018, it is revealed that many of the provisions of the Arunachal Pradesh Panchayat Raj Act, 1997 are amended or deleted. By the said amendment Act, 2018, the existing three-tier Panchayat Raj System is replaced by two-tier in the State, abolishing the intermediate 'Anchal Samiti', in view of Article 243-B (1) which provides that in a State having a population not exceeding twenty lakhs, such intermediate level panchayat may not be constituted. Consequent upon such amendments being made to the parent Act namely, Arunachal Pradesh Panchayat Raj Act, 1997 and with a view to implement the amended provisions, the Government of Arunachal Pradesh needs to amend the various subordinate Legislations/Rules such as the reservation of seats for scheduled castes, women and reorganization of the constituencies, besides assisting the SEC in revision of the electoral rolls etc. Until such subordinate legislations are made, the Government of Arunachal Pradesh has, by Notification, dated 30.05.2018, has vested on District and Gram Panchayat Level Interim Committees to discharge the functions of the PRIs to protect the interest of the rural populace of the State of Aruachal Pradesh.

21. There is no dispute that the five year term of the PRIs in Arunachal Pradesh expired on 21.05.2018, but no step was taken prior to that to reconstitute the Panchayati Raj bodies before expiration of the tenure in compliance of Article 243 E (3) of the Constitution of India and no date for the elections has been so far notified by the SEC as per Rule 3 of the Arunachal Pradesh Panchayati Raj (Conduct of Election) Rules, 2001 till date. It is noticed that the SEC by a letter, dated 31.01.2018, addressed to the respondent No. 1/ the Chief Secretary to the Government of Arunachal Pradesh requested for concurrence/comments on its proposal for holding of election, 2018 for PRIs on 14.05.2018, latest by first week of March, 2018 so as to enable it to take advance steps in this regard, but no response was received and so a D.O. letter, dated 11.04.2018, was written conveying its constitutional obligation to conduct the general elections to the Panchayats and Municipalities before the expiry of the five year term and also that the schedule for issue of notification proposed by the Commission was expiring on 13.04.2018 as well as to indicate new date, which was convenient to the State Government for further necessary action to the Commission.

22. In response to the letters, dated 31.01.2018 and 11.04.2018 of the SEC, the i/c Chief Secretary to the Government of Arunachal Pradesh replied by a letter, dated 13.04.2018, conveying the decision of the Government to hold the Elections only after completing the legal and other required process, consequent upon passing of the Arunachal Pradesh Panchayat Raj (Amendment) Bill, 2018, whereby the existing three-tier Panchayati Raj system is replaced by two-tier in the State. The relevant para Nos. 2 and 3 of the said letter read as hereunder:

"2. In view of the amendment made to the parent Act, consequential changes/amendments are required to be incorporated in the various subordinate legislations namely; Arunachal Pradesh Panchayat Raj (Delimitation of Constituencies and Reservation of Seat for Women) Rule, 2002.

3. I am also to inform that in view of the above mentioned facts, it would not be just and proper to hold the general elections of the Panchayati Raj Institutions as per the schedule and, therefore, it has been decided by the Govt. to hold the Elections only after completing the aforesaid legal and other required process."

23. Upon receipt of the above letter, dated 13.04.2018, from the Government of Arunachal Pradesh, the respondent No. 3/the Secretary, State Election Commission, Arunachal Pradesh, by a letter, dated 17.04.2018, addressed to the respondent No. 1/the Chief Secretary to the Government of Arunachal Pradesh, with reference to the previous letters of the Commission in this regard, stated that the Commission was unaware of the amendments made in the Arunachal Pradesh Panchayat Raj Act, 1997, without consulting the State Election Commission and requested the State Government to consider seriously for early completion of the required process of consequential amendments needed to the connected subordinate legislations and to propose a fresh date for notification of election. This letter of the Commission carried significance as the Commission thereby agreed with the Government of Arunachal Pradesh about the need to amend/revise the Arunachal Pradesh Panchayat Raj (Preparation of Electoral Roll) Rules, 2002; the Arunachal Pradesh Panchayat Raj (Conduct of Election) Rules, 2002 and the Arunachal Pradesh Panchayat Raj (Delimitation of Constituencies and Reservation of Seat for Women) Rules, 2002, due to amendments made in the

Arunachal Pradesh Panchayat Raj Act, 1997. For better appreciation, the relevant para Nos. 2,3 and 4 of the said letter are hereinunder extracted:-

"2. The Commission is unaware of the amendments made in the APPR Act, 1997 prompting for amendments in APPR (Preparation of Electoral Roll) Rule, 2002, the APPR (Conduct of Election) Rule 2002 and the APPR (Delimitation of constituencies and Reservation of Seat for Women) Rule, 2002 as has been stated in paragraph 2 vide your letter under reference as the Govt. has not consulted the matter with the Commission for its view before tabling the bills in the Legislative Assembly. However, any such amendments shall take effect prospectively only.

3. Therefore the State Government should seriously consider for early completion of the required process of the amendments to enable the Commission to discharge its constitutional obligation to hold the general elections to Panchayat Raj Institutions before the expiry of the five years term which is expiring by the end of May 2018 so that there is no constitutional crisis situation due to undue delay.

4. A fresh date may be decided for notification of election and conveyed to the Commission at the earliest".

24. The relevant question that arises here for consideration is whether in view of Article 243-E(3) a of the Constitution of India, which mandates that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in its clause (1) and failure of the Government of Arunachal Pradesh to concur with the date of polling scheduled on 14.05.2018, proposed by the SEC, as required by Rule 3 of the Arunachal Pradesh Panchayat Raj (Conduct of Election) Rules, 2001, the State of Arunachal Pradesh is pushed to a situation of constitutional crisis?

25. It may be pointed out that the petitioner has not challenged the legality and validity of the Arunachal Pradesh Panchayat Raj (Amendment) Act, 2018 and the Notification No. PR-Election/478/2012/484, dated 30.05.2018, issued by the respondent No. 1/the Chief Secretary to the Government of Arunachal Pradesh. The petitioner has sought for directions to the State respondent (1) to hold the Panchayati Raj Election, 2018 in order to comply with the constitutional mandate of Article 243-E of the Constitution of India and (2) to provide necessary budgetary support and requisite staff as sought for by the SEC to conduct the general election, 2018 of PRIs in the State in order to facilitate to the SEC to carry out its constitutional obligations in terms of Section 104(1) and (3) of the Arunachal Pradesh Panchayat Raj Act, 1997.

26. Be it mentioned here that the petitioner has preferred the instant writ petition apparently to give effect to the provisions contained in the Arunachal Pradesh Panchayat Raj Act, 1997 and Part IX of the Constitution of India and by filing an additional affidavit, dated 01.06.2018, placed 2 (two) documents namely, (a) copy of WT message, dated 28.05.2018, transmitted by the respondent No. 2 to all the Deputy Commissioners of Arunachal Pradesh intimating, *inter-alia*, that all PRIs in the State will cease to function w.e.f. 31.05.2018 and another copy of the Notification No. PR-ELECTION/478/2012/484, dated 30.05.2018, aforementioned, but neither in the body of the petition nor in the prayer portion necessary amendments were done in view of the amendments brought to the Arunachal Pradesh Panchayat Raj Act, 1997, replacing the three-tier Panchayat Raj structure by two-tier.

27. Be it further mentioned that so far the prayer No. 2, mentioned above, made by the writ petitioner is concerned with the interest of the SEC. But no such grievance has been raised in the affidavit-in-opposition of the SEC. On the other hand, the petitioner has not shown any reason in the writ petition as to how he has a sufficiency of interest to sustain his standing to enforce his right so far the prayer No. 2, which concerns the constitutional authority-the State Election Commission.

28. In *Pub-Magaldai Anchalik Panchayat* (supra), this court observed:-

"22. It is, thus, clear that in any case, the duration of the Panchayat is fixed as five years from the date of its first meeting and no longer and it is incumbent upon the Election Commission and the State to carry out the mandate of the Constitution and to see to it that PRIs are constituted in time and elections are conducted before the expiry of the duration of five years as specified in Clause (1) of Article 243E. There may be, however, genuine supervening difficulties to hold election, such as, unforeseen natural calamities like flood, earthquake, etc., break down of law and order or extremely urgent situation prevailing in the State for which election of the PRIs cannot be held within the time-frame. It is only in exceptional circumstances, as State or the Election Commission may be justified in not holding election in due time. The law does not compel one to do which one cannot possibly perform. When performance of obligations prescribed by as statute, which is mandatory in character, is rendered impossible by circumstances over which the person or authority has no control, the circumstances can be taken as a valid and lawful excuse. This, however, does not negate the mandatory character because of supervening impossibility.

However, one must guard against situations that may be created by human contrivance to see that elections do not take place. It needs no emphasis that Clauses of Article 243 E are to be followed in letter and spirit and the State and the Election Commission remain alive to the duties and obligations mandated by the Constitution to hold Panchayat election."

29. In *Uttar Dhemaji Gaon Panchayat* (supra), this court held:- :"

"14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243-U."

30. In *Jatan Kumar Thaosen* (supra), which related to non-holding of election to the N.C. Hills District Council, a Division Bench of this court held that the power to extend the term of the council is discretionary and can be exercised if the Governor is of the opinion that holding of election is impracticable, inasmuch as the powers given to the Governor is extraordinary in nature and identical to that of the Parliament. It was further held that the discretionary power of the Governor under the VIth schedule of the Constitution of India is amenable to judicial review only for ascertaining, whether it is based on wholly extraneous and irrelevant grounds and cannot be questioned on the ground of inadequacy. In **Sheikh Abdullah** (supra), a single bench of this court declined to issue any direction to restore back the defunct bodies to discharge duties and functions of Panchayat body till the Panchayat elections are held and directed to hold elections expeditiously.

31. In **Muna Thapa** (supra), this court held that the State is duty bound to hold elections of Panchayats in compliance of the mandate provided under Article-E (3) of the Constitution of India to constitute a body of Panchayat within the expiry of its previous duration and such a mandate cannot be diluted even by introducing any amendment to the Statutory Laws on the subject.

32. In **Prof. B.K. Chandrashekar & anr.** (supra), a Division Bench of the Karnataka High Court, placing reliance upon an order passed by the Supreme Court in W.P. (C) No. 719/95, observed as herein below extracted:

"Before we part, we may, however, indicate that 73^d amendment of the Constitution was made with the stated object of the continuity of the Panchayat bodies regulating the tenure. Article 243-E of the Constitution envisages that the tenure of the Panchayat shall be five years from the date appointed for its first meeting and shall continue no longer than that. Even a Panchayat constituted upon premature dissolution of the earlier one, shall not continue beyond the tenure of five years. Article 243-E also provides that election of Panchayat shall be held before the expiry of the said tenure of five years or within six months of its dissolution as the case may be. In order to ensure holding of election of Panchayats, Article 243-E of the Constitution provides that laws relating to Panchayats in the States inconsistent with the 73^d amendment shall continue in force only for a year from the commencement of Seventy-third Amendment unless the competent Legislature has repealed or suitably amended such laws in the meantime. It is necessary to emphasize that various clauses of Article 243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in cases of genuine supervening difficulties to hold such elections e.g. unforeseen natural calamities in the state like flood, earthquake etc. or extremely urgent situation prevailing in the State for which election of the Panchayats cannot be held within the time-frame. It will be unfortunate if the concerned States remain insensitive to the constitutional mandate of holding election of Panchayats. We hope and trust that the State Government will be alive and sensitive to the duties and responsibilities flowing from the mandates of the Constitution in holding Panchayat elections. "

33. In the facts of the case, the Karnataka High Court directed the SEC to hold the elections to the Gram Panchayats forthwith and in any case, complete the same within six weeks from the date of the judgment as the court found no reasonable ground for not holding the election of the Panchayat within the mandated period under Article 243-E of the Constitution of India.

34. In *Gujarat Assembly Election Matter* (supra), the Hon'ble Supreme Court observed as follows:-

"The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia exusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law

will in general excuse him. " Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th edition at pp. 1962-63 and Craies on Statute Law 6th Ed. P. 268). These aspects were highlighted by this Court in Special Reference 1 of 1974 (supra). Situations may be created by interested persons to see that elections do not take place and the caretaker government continue in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

35. In ***Pranoy Roy & ors (supra)***, the Hon'ble Supreme Court referred to its earlier decision in ***Maharashtra & ors. Vs. Jalgaon Municipal Council & ors. reported in (2003) 9 SCC 731***, wherein it was held that the elections of the Municipal Corporations should be conducted before the expiry of the term of the existing tenure, but at the same time it noted certain exceptional circumstances, under which such elections could be deferred. One of the circumstances specifically taken note of by the court was reconstitution of the municipal bodies. In para 21 of the said judgment, it was observed:-

" 21. Having heard the learned Counsel for the parties at length on this aspect we are of the opinion that the said hiatus is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. Reliance on Article 243 U by the learned Counsel for the Respondents in this context is misconceived. The use of expression 'a municipality' in Sub-article (3) of Article 243U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a consequence of term of the previous municipality coming to an end. Article 243 U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243 U (3) cannot be pressed into service to base a submission on that an election to constitute a municipal corporation is required to be completed before the expiry of duration of a municipal council."

13. Even after there is a reconstitution of the municipal bodies, the State Government will have to determine the

number of wards in terms of Section 8 of the West Bengal State Commission Act, 1994. It is stated at the Bar by Mr. Kapil Sibal, learned senior Counsel, that this would also be accomplished by 30.06.2015”.

36. Considered thus, as the respondents/State submitted that due to the above amendments done in view of the provisions under Article 243-B (1)(2) of the Constitution, whereby the provisions pertaining to the intermediate Panchayat/Anchal Samiti has been done away with, the State has worked out an action plan as shown in break-up in Annexure -'A' to their affidavit-in-opposition and presently the process of consequential amendments to the subordinate legislations is in process, **a writ of mandamus is hereby issued to avert a constitutional crisis in the State, directing the Government of Arunachal Pradesh to suitably revise its action plan so as to complete the exercise, by 30.11.2018 and thereafter, the State Election Commission shall start its exercise for holding the general election to the Panchayats. Writ of mandamus is further issued directing the Government of Arunachal Pradesh and its functionaries to render all co-operations and assistance to the State Election Commission in discharging its constitutional obligations of holding a smooth and fair election.**

37. It is further directed that the entire process, as indicated above, **shall not continue beyond 31.12.2018, keeping in mind that the mandate of Article 243 E (3) of the Constitution of India cannot be diluted by introducing any amendment to the statutory Laws on the subject and demography of the State.**

The writ petition stands disposed of in terms of the above.

JUDGE

Munmun Talom