

*** THE HONOURABLE SRI JUSTICE BATTU DEVANAND**

+ WRIT PETITION No.9560 of 2021

%Dated: -07-10-2021

W.P.No.9560 of 2021

#Regu Maheswara Rao

--- **Petitioner**

and

\$1. The State of Andhra Pradesh,

Rep.by its Principal Secretary to Government &

3 others.

---**Respondents**

! Counsel for the Petitioner : Sri B. Sesi Bushan Rao

^ Counsel for Respondents :1)G.P for Panchayat Rural
Development for R.1.
: (2) Sri M. Karthik Pavan Kumar
for R.2
: (3) Sri Vivek Chandra Sekhar S for
R.3.
: (4) M/s Indus Law Firm for R.4.

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> HEAD NOTE :

? Cases referred :

- 1) 2021 SCC Online SC 211
- 2) 2020(4) ALT 102
- 3) (1998) 1 SCC 1
- 4) 2015 (1) ADJ 387
- 5) 2020 CrI.L.J.1740
- 6)1993 (10) SCC 302
- 7) 2017 (4) SCC 665
- 8) 2021 SCC Online SC 463
- 9) 2006 (8) SCC 200
- 10) 2011 (4) SCC 353
- 11) 2010 (6) SCC 331
- 12) 2014(5) SCC 312
- 13) 2003 (8) SCC 40
- 14) (1996) 9 SCC 309
- 15) (2004) 2 SCC 150

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DATE OF ORDER PRONOUNCED: 07.10.2021

THE HON'BLE SRI JUSTICE BATTU DEVANAND

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No

3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes/No

JUSTICE BATTU DEVANAND

THE HON'BLE SRI JUSTICE BATTU DEVANAND**W.P.NO.9560 of 2021****ORDER:**

This Writ Petition has been filed by the petitioner for the following reliefs :

- i) declaring the appointment of Respondent No.4 as State Election Commissioner Vide G.O.Ms.No.20 PR & RD, (E&R), dated 28.03.2021 as unconstitutional being violative of Article 243 k (1) of the Constitution of India and contrary to the direction of the Hon'ble Supreme Court Judgment in ***State of Goa & Another Vs. Fouziya Imtiaz Shaikh and another¹***;
- ii) that this Hon'ble Court may be pleased to issue Writ of Quo-warranto against respondent No.4, requiring him to show the authority to hold the office of the State Election Commissioner from the date of appointment vide G.O.Ms.No.20 PR & RD, (E&R) Department, Dated 28.03.2021;
- iii) Declaring the G.O.Ms.No 20, PR & RD,(E & R) Dept, Dated 28.03.2021, as Unconstitutional being violative of Article 243 k (1) of the Constitution of India and contrary to the direction of the Honble Supreme Court judgment in Civil Appeal No. 881 of 2021 (State of Goa and another Vs Fouziya Shaikh and another, dated 12.3.2021);
- iv) Consequently Quash the appointment of the Respondent No.4 as State Election Commissioner by setting aside the G.O.Ms.No 20, PR and RD, (Elections), Department, dated 28.03.2021; and

¹ 2021 SCC Online SC 211

- v) Consequently direct the Respondent No 1 and 2 to comply with the mandate of Article 243 k (1) of the Constitution of India and the direction of the Hon'ble Supreme Court judgment in Civil Appeal No. 881 of 2021 (State of Goa and another Vs Fouziya Shaikh and another, dated 12.3.2021 in appointment of State Election Commissioner.

02. The case of the petitioner is that;

(i) The petitioner is a practicing Advocate and an elector of Salur Municipality, Vizianagaram District. The State of Andhra Pradesh had enacted the A.P. Panchayat Raj Act, 1994 to provide for the constitution of rural local bodies and Section 200 of the APPR Act, 1994, constitutes the State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayat. Sub-Section 2 of Section 200 of APPR Act, 1994, ordains that the Governor on the recommendation of the government shall appoint a persons, who is holding or who has held an office not less in rank than that of a Principal Secretary to Government as State Election Commissioner. In exercise of powers conferred under Section 200 of APPR Act, 1994, the Governor issued the APPR (Salaries, Allowances and Condition of Service of the State Election Commissioner) Rules, 1994. Prior to the appointment of Respondent No.4

as State Election Commissioner, the Election Commissioners were appointed on recommendation of the Government.

(ii) It is submitted that pursuant to the orders of this Court in the case of ***N. Ramesh Kumar and others vs. State of A.P and others***², position of Sri N. Ramesh Kumar as State Election Commissioner was restored vide orders in G.O.Ms.No.645, PR &RD,(E&R) Dept., dated 30.07.2020 and Sri N. Ramesh Kumar completed his term of office as Election Commissioner by 31.03.2021.

(iii) It is submitted that the 4th respondent, an Indian Administrative Service Officer borne on the Indian Administrative Service cadre of Andhra Pradesh, was appointed as Chief Secretary to Government vide G.O.Rt.No.2563 G.A. (SC.A) Department, dated 13.11.2019 and a notification was issued vide G.O.Rt.No.2593 General Administration (SC.A) Department, dated 19.11.2019 notifying the retirement of Indian Administrative Service Officers borne on the Indian Administrative Service cadre of Andhra Pradesh, during the year, 2020 on attaining the age of superannuation, wherein the name of the 4th respondent was shown at Serial No.5 and the date of retirement was 30.06.2020. Before attaining the age of superannuation, the Government of Andhra Pradesh has requested the

² 2020(4) ALT 102

Union of India to extend the services of the 4th respondent and the Union of India extended the services of 4th respondent from time to time till 31.12.2020 on which the date the 4th respondent was retired from service.

(iv) It is submitted that the 4th respondent was appointed as Principal Advisor to Chief Minister in the rank of Cabinet Minister, vide G.O.Rt.No.2011 General Administration (SC.A) Department, dated 22.12.2020, as she is the choice of political executive of the State.

(v) It is submitted that much before retirement as Chief Secretary to the Government, the 4th respondent to set at naught to the convention of political neutrality, one British convention, which applicable to the Civil Services, is that Civil Servants and other public authorities are expected to be politically neutral, unless this principal is followed strictly, there is bound to be chaos in the administration, by any stretch of imagination, one cannot come to a conclusion that the 4th respondent is an independent person to consider for appointment as State Election Commissioner, high constitutional office, which is to conduct elections under Part IX and IX A of the Constitution.

(vi) It is submitted that the candidature of the 4th respondent has been considered for appointment as State Election Commissioner when the 4th respondent being the

Principal Advisor to the Chief Minister, which resulted into issuance of notification, appointing the 4th respondent as State Election Commissioner vide G.O.Ms.No.20 Panchayat Raj and Rural Development (E&R) Dept., dated 28.03.2021 and the 4th respondent had tendered her resignation to the Principal Advisor post on 27.03.2021, the appointment of a person who served as Principal Advisor to the Chief Minister, the Executive of the State, as State Election Commissioner would affect the independence of the State Election Commission, the independence of the State Election Commission can be assured only if the appointment of the Election Commissioner are insulated from the influence of the political executive and this is the mandate of the constitution and that the election commission shall be completely independent of the executive but contrary to the mandate of the Constitution of India and the direction of the Hon'ble Supreme Court in ***State of Goa & another (1 supra)***, the 4th respondent was appointed as State Election Commissioner, which is violative of Article 14 and 243K of the Constitution of India, and therefore, the writ of Quo-warranto lies against the 4th respondent apart from writ of Mandamus or appropriate writ direction.

3. Respondent No.1 filed Counter Affidavit stating that the Writ Petition is liable to be dismissed in limini as a Writ of Quo-Warranto can be issued only when an appointment

is contrary to statutory rules or if the person holding the public office is not satisfying the stipulated eligibility criteria.

4. It is stated in the affidavit that a perusal of the affidavit filed in support of the writ Petition, nowhere shows any violation of statutory rules or eligibility criteria stipulated. The Writ Petition is filed merely based on misunderstanding of the factual situation and misapplication of the Supreme Court Judgment in the case of **State of Goa & another** (1 supra). The Apex Court has held in a catena of cases that the basic purpose of a Writ of Quo-Warranto is to confer jurisdiction on Constitutional Courts to ensure that public office is not held by a usurper without any legal authority. It is further stated that the Division Bench of this Court in the case of **N. Ramesh Kumar and others** (2 supra) inter alia held that the appointment of the State Election Commissioner made by His Excellency, the Governor, would be under the discretionary power vested in the Governor under Article 243K(1) of the Constitution of India and not under Section 200 of the Panchayat Raj Act, 1994 and that the State Government doesn't have any power to propose prescribe the eligibility or the manner of the appointment of the State Election Commissioner and that the words "on the recommendation of the

Government" occurring in Section 200 of the Act are not in accordance with Article 243K of the Constitution of India.

5. As the incumbent State Election Commissioner was to retire on 31-03-2021, a note file was circulated to His Excellency, the Governor, by the Hon'ble Chief Minister, bringing to his notice the judgment in the case of ***N. Ramesh Kumar and others*** (2 *supra*), requesting His Excellency, the Governor, to exercise his discretion under Article 243K of the Constitution of India and appoint a new State Election Commissioner. In the said Note File, names of three retired IAS officers was indicated for appointment. There was no recommendation from the Government nor was His Excellency, the Governor, was requested to make an appointment of the State Election Commissioner from the said three names. His Excellency, the Governor, after examination of a list of IAS Officers, who had retired in the last three years having at least 25 years experience and based on an independent assessment of the Annual Confidential Report and other criteria, appointed respondent No.4. Therefore, there is no illegality committed in the appointment of respondent No.4 as the State Election Commissioner.

6. It is further stated in the affidavit that the judgment mentioned in the Writ Petition by the petitioner is totally

inapplicable to the facts of the present case and the appointment of the respondent No.4 as the State Election Commissioner is very much within the contours of the judgment of Hon'ble Supreme Court. Further, the facts of the present case are clearly distinguishable from the facts of the case in ***State of Goa v Fouziya Imtiaz Shaik*** (1 *supra*). In the instant case, respondent No.4 was not holding any office or position either under the State Government or Central Government as on the date of her appointment as the State Election Commissioner. Respondent No.4 demitted her office as the Chief Secretary to the Government of A.P., on 31.12.2020 and thereafter she was appointed as Principal Advisor to the Chief Minister. Respondent No.4 resigned the post of Principal Advisor on 27.03.2021 and she was appointed by His Excellency, the Governor, as the State Election Commissioner on 28.03.2021.

7. It is not the case of the petitioner that respondent No.4 was holding any additional charge as in the relied case and as such, the facts and statutory procedure is totally variance from the case decided by the Hon'ble Apex Court. The question raised by the petitioner in the Writ Petition comparing the present case to the observations of the Hon'ble Supreme Court in the case of ***State of Goa & another*** (1 *supra*) is totally inapplicable, and as such, the

petitioner has not made out any case to warrant intervention by this Hon'ble Court. Hence, he prayed to dismiss the Petition.

8. Respondent No.2 filed Counter Affidavit stating that the petitioner in this Writ Petition is seeking issuance of both the Writs of Mandamus and Quo-warranto. Writ of Quo-Warranto is sought requiring respondent No.4 to show by what authority she is entitled to hold the office of the State Election Commissioner. Though the rules of *locus standi* are relaxed to an extent in proceedings relating to a Writ of Quo-Warranto, the same, however, stringently apply to the proceedings relating to a Writ of Mandamus. The Petitioner has not espoused any personal grievance or violation of any legal/fundamental right with regard to the above reliefs sought under Mandamus. Therefore, insofar as the Writ of Mandamus is concerned, the above Writ Petition is the nature of a Public Interest Litigation.

9. As per Rule 7-A of the Writ Proceedings Rules, 1977, framed by this Hon'ble Court, every Writ Petition filed in public interest should conform to the procedure prescribed and be heard by a Bench of two Judges. Suffice it to state that without following the procedure prescribed under Rule 7-A, the Affidavit filed in support of the Writ Petition is improper and amounts to abuse of process of court. The

Petitioner, who is an Advocate by profession, cannot plead any ignorance in relation thereto. On this ground alone, the Writ of Mandamus sought by the Petitioner is liable to be dismissed.

10. Notwithstanding the same, though the concerned Learned Single Judge of this Court, as per the roster assigned, would have jurisdiction to adjudicate the Writ of Quo-Warranto sought by the petitioner, he would have no jurisdiction to adjudicate the Writ of Mandamus intertwined therewith, which as already pointed out is in the nature of a Public Interest Litigation. The same would be in contravention of the Writ Proceedings Rules, 1977 and the roster assigned by the Hon'ble Justice. Needless to mention that any adjudication made in contravention thereof would be coram non jidice and a nullity. The petitioner has selectively interpreted the judgment of the Hon'ble Apex Court in the case of ***State of Goa & another*** (1 *supra*) to suit his convenience. Therefore, the appointment of respondent No.4 to the office of the State Election Commissioner has been made strictly in accordance with Article 243K of the Constitution and the directions issued by the Hon'ble Supreme Court in the said judgment.

11. At this juncture, it is necessary to point out the legal aspects, which are relevant for adjudication of the lis on

hand including the common order dated 29.05.2020 of this Court in ***N. Ramesh Kumar and others*** (2 *supra*) and the judgment of the Hon'ble Apex Court in ***State of Goa & another*** (1 *supra*).

a) Article 243K of the Constitution relates to Elections to the Panchayats'. Article 243K(1) provides that 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. Article 243K(2) stipulates that 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 grounds 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. Article 243ZA of the Constitution relates to 'Elections to the Municipalities'. Article 243ZA(1) provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

b) Section 200 of the A.P. Panchayat Raj Act, 1994, prior to its substitution in 2020, provided that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions shall vest with the State Election Commission and that for the Governor on the recommendation of the Government shall appoint a person, who is holding or who has held an office not less in rank than that of a Principal Secretary to Government, as State Election Commissioner, and that 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 grounds 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. The Hon'ble Governor of the State of Andhra Pradesh, in exercise of powers as conferred under Section 200(3) of the said Act, formulated the Andhra Pradesh Panchayat Raj (Salaries and Allowances and Conditions of Service of State Election Commissioner) Rules, 1994.

c) Ordinance No.5 of 2020 i.e. Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020 dated 10.04.2020 was promulgated substituting Section 200 of

the Andhra Pradesh Panchayat Raj Act, 1994. The amended Section 200 provided that the superintendence, direction and control of the preparation of electoral roils for, and the conduct of elections to, all the Panchayat Raj Institutions shall vest with the State Election Commission and that the Governor on the recommendation of the Government shall appoint a person, who has held an office of the Judge of a High Court, as State Election Commissioner and that the State Election Commissioner shall hold office for a term of three years and be entitled to be considered for re-appointment for another term of three years, provided that no person shall hold the office of State Election Commissioner for more than six years in the aggregate and that the conditions of service 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 grounds 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, and that on and with effect from the date of coming into force of the said Ordinance, any person appointed as State Election Commissioner and holding office as such shall cease to hold office.

d) Pursuant to the said Ordinance, i) G.O.Ms.No.617, Panchayat Raj and Rural Development (E&R) Department, dated 10.04.2020 was issued notifying Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service, Tenure of State Election Commissioner) Rules, 2020, in supersession of the Andhra Pradesh Panchayat Raj (Salaries and Allowances and Conditions of Service of State Election Commissioner) Rules, 1994, ii) G.O.Ms.No.618, Panchayat Raj and Rural Development (E&R) Department, dated 10.04.2020, was issued stating that Mr.N. Ramesh Kumar, who was holding the office of the State Election Commissioner at that time, ceases to hold the said office with effect from 10.04.2020, and iii) G.O.Ms No.619, Panchayat Raj and Rural Development (E&R) Department, dated 11.04.2020, was issued appointing Justice V. Kanagaraj (Retd.) as State Election Commissioner in place of Mr.N. Ramesh Kumar.

e) The validity of the aforesaid Ordinance as well as G.O.Ms.Nos.617 to 619 dated 10.04.2020 and 11.04.2020, fell for consideration before this Hon'ble Court in the case of ***N. Ramesh Kumar and others*** (2 *supra*). This Hon'ble Court by common order dated 29.05.2020 set aside the aforesaid Ordinance as well as G.O.Ms.Nos.617 to 619 dated 10.04.2020 and 11.04.2020, by holding *inter alia* that the appointment of the State Election Commissioner

shall be made by the Hon'ble Governor in exercise of his discretionary power under Article 243K(1) of the Constitution, but not under Section 200 of the A.P. Panchayat Raj Act, 1994 and the expression conditions of service and tenure of office in Article 243K(2) of the Constitution do not include 'appointment', and the State Legislature does not have any power to propose or prescribe the eligibility or the manner of appointment of the State Election Commissioner and the words 'on the recommendation of the Government' occurring in Section 200 of the A.P.Panchayat Raj Act, 1994 (both unamended as well as amended) are not in accordance with the Article 243K of the Constitution, and the State Legislature is required to re-visit the definitions in Section 2(39) and 2(40) and the provisions of Section 200 of the A.P.Panchayat Raj Act, 1994, in accordance with the spirit of the Constitution as expeditiously as possible. The validity of the said common order dated 29.05.2020 of this Hon'ble Court in ***N. Ramesh Kumar and others*** (2 *supra*) is under challenge and pending consideration before the Hon'ble Supreme Court.

f) Thereafter, the validity of the order dated 04.02.2020 issued by the Director of Municipal Administration, Goa, in relation to reservation of wards for 11 Municipal Councils within the State of Goa, fell *inter*

*alia*for consideration before the Hon'ble Supreme Court of India in the case of ***State of Goa & another*** (1 *supra*). In the said case, on 03.11.2020, the Hon'ble Governor of Goa appointed the Law Secretary of the Government of Goa, a member of the IAS, as State Election Commissioner, which duties were to be in addition to his duties as Law Secretary. In that context, the Hon'ble Supreme Court by its judgment dated 12.03.2021 held that when the State Election Commissioner is none other than the Law Secretary to the Government of Goa, the whole process of the elections is faulted at the start as the State Election Commissioner is not an independent body as mandated by Article 243K and that the State Election Commissioner has to be a person who is independent of the State Government as he is an important constitutional functionary who is to oversee the entire election process and that giving an additional charge of such an important and independent constitutional office to an officer who is directly under the control of the State Government is a mockery of the constitutional mandate, and that all State Election Commissioners appointed under Article 243K have to be independent persons who cannot be persons occupying any post or office under the Central or any State Government.

12. It is stated in the affidavit that prior to the completion of the term of Mr. N. Ramesh Kumar as State Election

Commissioner on 31.03.2021, the office of the Hon'ble Governor received Note dated 24.03.2021 from the office of the Chief Minister with respect to the statutory position and legal regime applicable to the appointment of the State Election Commissioner. By the said Note, while requesting the Hon'ble Governor to exercise his discretion under Article 243K of the Constitution to appoint a new State Election Commissioner, the office of the Chief Minister suggested names of three retired IAS officers viz., the 4th Respondent, Mr. M. Samuel and Mr. L. Prem Chandra Reddy, for the said post. The office of the Hon'ble Governor was well aware of the directions of this Hon'ble Court in **N. Ramesh Kumar and others** (2 *supra*) and in **State of Goa & another** (1 *supra*), and for the said reason, decided to independently consider and assess persons for the said post, without reference to Section 200 of the AP Panchayat Raj Act, 1994, and the aforesaid Note from the office of the Chief Minister, in a uniform and unbiased manner.

13. Considering the fact that the State Election Commissioner is an important constitutional office, responsible for the superintendence, direction, control of preparation of electoral rolls and for conduct of all elections to Panchayat Raj bodies and Municipal bodies in the State, the office of the Hon'ble Governor decided to consider persons, who have sufficient knowledge and experience in

handling administrative matters, election matters, quasi judicial matters, matters relating to the functioning of the Government, etc. The aforesaid matters are primarily the core functioning areas of IAS Officers, who play an essential part in the preparation and management of electoral rolls in the capacity of Electoral Registration Officers. In addition, they have direct field experience in conducting elections to Lok Sabha, State Assembly, State Legislative Council, etc., as Returning Officers. Further, as District Election Officers, they have in depth knowledge with regard to the overall conduct of elections at the District level including Panchayat elections. For the said reason, the office of the Hon'ble Governor decided to consider IAS officers, having at least 25 years of experience, who retired in the last three years, for the post of the State Election Commissioner. Accordingly, the office of the Hon'ble Governor considered 11 IAS officers, who satisfied the abovementioned criteria and retired during the period 2018 to 2020, for appointment to the post of State Election Commissioner including the candidature of Mr. M. Samuel, I.A.S.. (retired in 2014) and Mr. L. Prem Chandra Reddy, L.A.S., (retired in 2016), who were suggested by the office of the Chief Minister in the aforesaid Note dated 24.03.2021. Further, the Annual Performance Appraisal Reports (APAR), also known as Annual Confidential Reports (ACR), of all the

above mentioned individuals for the last 5 years of their service as well as details relating to the disciplinary proceedings initiated or cases pending against them, were duly considered by the Hon'ble Governor, in his sole discretion, for the purpose of making an appointment to the post of the State Election Commissioner.

14. It is pertinent to note that Annual Performance Appraisal Reports are written for All India Service Officers in accordance with the All India Services (Performance Appraisal Report) Rules, 2007. Appraisal Reports are very important documents, which reflect the performance, competency and integrity, of an officer. They are written, reviewed and assessed at three stages i.e. by the Reporting Authority, the Reviewing Authority and the Accepting Authority respectively. They are confidential documents and the numerical grades on the scale of 1 to 10 are awarded on the work out put, personal attributes and functional competency of an officer. Therefore, taking all of the aforesaid aspects into consideration, the Hon'ble Governor, in his sole discretion, taking into account the unblemished career of the 4th Respondent and the maximum possible A.P.A.R grading received by her, decided to appoint her as the State Election Commissioner. It is necessary to point out that the 4th Respondent received the highest possible grading of 10 in her APAR for all the last five years of her

service, which no other candidate in the zone of consideration received. Further, no cases/proceedings are pending against the 4th Respondent. However, in view of the directions issued by the Hon'ble Supreme Court in ***State of Goa & another (1 supra)***, the Hon'ble Governor decided to appoint the 4th Respondent as State Election Commissioner subject to the condition that she resigns from the post she was holding with the State Government i.e. the Principal Advisor to the Chief Minister. Accordingly, the 4th Respondent tendered her resignation on 26.03.2021 and the same was accepted by the competent authority on 27.03.2021. After the 4th Respondent resigned from the post of the Principal Advisor to the Chief Minister on 27.03.2021, the Hon'ble Governor appointed her as the State Election Commissioner vide G.O.Ms.No.20, Panchayat Raj and Rural Development (E&R) Department, dated 28.03.2021, in exercise of his powers under Article 243K of the Constitution. After her resignation from the post of the Principal Advisor to the Chief Minister, the 4th Respondent is no longer under the direct control of the State Government. The conjecture of the Petitioner to malign the integrity and independence of the 4th Respondent merely because she worked as the Principal Advisor to the Chief Minister prior to her appointment as State Election Commissioner is highly

reproachful. As already stated, there is no factual or legal basis for the same.

15. It is well settled that the scope of judicial review exercised by this Hon'ble Court under Article 226 of the Constitution over the discretion exercised by an Administrative Authority, much less the Hon'ble Governor under Article 243K of the Constitution, is very limited. Nowhere in the Affidavit filed in support of the above Writ Petition does the Petitioner allege that the said discretion has been exercised by the Hon'ble Governor arbitrarily, with a malafide intention or for irrelevant considerations. On the basis of vague assertions and baseless allegations, the Petitioner has filed the above Writ Petition, calling into question the appointment of the 4th Respondent to a high constitutional office and the same is vexatious and amounts to abuse of process of court. For the reasons stated supra, the above Writ Petition is devoid of any merits and the same is liable to be dismissed.

16. Respondent No.3 filed Counter Affidavit stating that in the Writ Petition, the Writ Petitioner seeking issuance of both the Writ of Mandamus and Quo-warranto simultaneously. Having prayed for the Writ of Mandamus, the Petitioner failed to espouse any personal grievance or violation of any of his legal or fundamental rights. It is a well

settled legal principle that any Petitioner, invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, has to establish his legal right and its infringement and in the absence of the same, a writ of mandamus cannot be sought in his individual capacity. Further, it is also settled that the Petitioner in his individual capacity cannot espouse any grievance which involves a public interest at large. In view of the above, the present Writ Petition seeking a Writ of Mandamus is not maintainable and is liable to be dismissed in limini.

17. It is further stated that while seeking the Writ of Quo-Warranto, the petitioner majorly relied on the judgment of the Apex Court in ***State of Goa & another*** (1 *supra*), but the material on record suggest otherwise as he incorrectly interpreted the above judgment. It is evident from the material on record that the appointment of respondent No.4 to the office of the State Election Commissioner has been made strictly in accordance with Article 243K of the Constitution of India and also in accordance with the judgment rendered by the Hon'ble High Court in the case of ***N. Ramesh Kumar and others*** (2 *supra*).

18. A bare perusal of the material available on record demonstrates that respondent No.4 was appointed to the post of Chief Secretary to Government vide

G.O.Ms.No.2563, dt. 13.11.2019 and she took charge as Chief Secretary to Government on 14.11.2019 and retired from service on 31.12.2020. Thereafter, respondent No.4 was appointed as Principal Advisor to the Chief Minister with effect from 01.01.2021. On 26.03.2021 she tendered her resignation from the post of the Principal Advisor to the Chief Minister and the same was accepted by the competent authority on 27.03.2021. It is further stated that it is only after the resignation by respondent No.4 from the post of Principal Advisor to the Chief Minister on 27.03.2021, His Excellency, the Governor appointed respondent No.4 as the State Election Commissioner vide G.O.Ms.No.20, dt. 28.03.2021 in exercise of his powers under Article 243K of the Constitution of India. Therefore, pursuant to her resignation from the post of the Principal Advisor to the Chief Minister, respondent No.4 is no longer under direct control or is anyway allied to the State Government. Thus, the Judgment relied on by the petitioner is not applicable to the present facts of the case as the appointment of respondent No.4 is in visible consonance with the said judgment.

19. Furthermore, the Petitioner while seeking a Writ of such nature as that of Quo-Warranto, placing reliance on the said judgment, the onus lies on the Petitioner to establish that the 4th Respondent is not independent of the

influence of the State Government at the time of her appointment and as to how the appointment is in contravention of the said judgment. The Writ Affidavit or the material filed by the Petitioner is completely silent about the same. Instead of establishing such contravention or illegality, the Petitioner simply adhered to making baseless and unsubstantiated allegations against the Respondents and is challenging the integrity of the 4th Respondent merely because the 4th Respondent worked as the Principal Advisor to the Chief Minister prior to her appointment as State Election Commissioner. As such this Writ petition is wholly misconceived.

20. The allegations made by the petitioner against respondent No.4 are baseless and are not backed by any evidence whatsoever. Nothing in the affidavit or the material available on record establishes the alleged lack of independence of respondent No.4 or even slightly suggests that the impugned appointment is arbitrary or illegal in nature. Therefore, he prayed to dismiss the Writ Petition.

21. Respondent No.4 filed Counter Affidavit stating that the Writ Petition filed questioning the appointment of respondent No.4 as the State Election Commissioner is not maintainable as none of the grounds raised by the petitioner falls within the contours for issuance of Writ of

Mandamus or Writ of Quo-Warranto. For issuance of Writ of Mandamus, the petitioner has to establish his legal right and its infringement and in the absence of the same, the issuance of the said Writ by this Hon'ble Court does not arise. As the petitioner failed to establish his legal right, the present Petition seeking to issue Writ of Mandamus is not maintainable. As regards the issuance of Writ of Quo-Warranto, for the reasons stated above, the same is not maintainable as the same is based on the judgment of Hon'ble Supreme Court in '**State of Goa and another**' referred above, which is inapplicable to the present case on hand. Thus, the present Writ Petition is wholly misconceived and it cannot be countenanced either in law or on facts.

22. It is stated in the Counter Affidavit that respondent No.4 is an Officer of 1984 batch of Indian Administrative Service (IAS) borne on the Andhra Pradesh State Cadre. She was appointed to the Post of Chief Secretary to Government, Vide G.O.Ms.No.2563, dt. 13.11.2019 and she took charge on 14.11.2019 and thereafter she retired from service on 31.12.2020. After superannuation i.e., 31.12.2020, the Government Vide G.O.Rt.No.2011, dt. 22.12.2020 has appointed her as Principal Advisor to the Chief Minister to look after different subjects and as allocated by the Chief Minister from time to time. He resigned from the post of Principal Advisor to Chief Minister

on 27.03.2021. Thereafter, she appointed as the State Election Commissioner through G.O.Ms.No.20, dt. 28.03.2021. As on the date of appointment, he was not occupying any post under the State Government or the Central Government.

23. It is stated that the premise on which the present writ petition filed is the judgment of the Hon'ble Supreme Court in " **State of Goa & another** (1 supra), wherein the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution of India has held that the State Election Commissioner must be a person, who is independent of the State Government and that all the State Election Commissioners appointed under Article 243K of the Constitution of India have to be independent persons, who shall not be occupying a post or office under the Central or any State Government. The Hon'ble Supreme Court, in the above judgment was dealing with a case where the Governor of Goa appointed the Law Secretary of the Government of Goa, a member of the IAS., as State Election Commissioner which duties were to be in addition to his duties as Law Secretary. In this background, the Hon'ble Supreme Court has held that State Election Commissioner, being an important and independent Constitutional Office, cannot be under the control of the State Government and thus, held that all State Election

Commissioners appointed under Art.243K of the Constitution of India in the length and breadth of India must independent persons, who cannot be occupying a post or officer under the Central or any State Government. Thus, by issuing such directions, Hon'ble Supreme Court insulated the said Constitutional Post, thereby making it free from any type of control from the State Government.

24. It is further stated that the Hon'ble High Court in its judgment dated 29.05.2020 in the case of **N. Ramesh Kumar and others** (2 supra) held that the power of appointment of State Election Commissioner is discretionary and vested on the Governor and Sub-section (2) of Section 200 of A.P. Panchayat Raj Act, 1994 was not as per the Constitutional spirit and that the State Election Commissioner appointed in exercise of powers under Section 200 of the A.P. Panchayat Raj Act, 1994, cannot function for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities and the Municipal Corporations and the appointment must be made by the Governor in exercise of the power under Article 243K of the Constitution of India. In conformity with the said Judgment and also in exercise of the powers vested under Article 243K of Constitution of India, Hon'ble Governor has appointed R.4 and accordingly, G.O.Ms.No.20, Panchayat

Raj & Rural Development (E & R) Department, dated 28.03.2021 was issued appointing R.4 as State Election Commissioner.

25. It is further stated that considering the proven impeccable track record as an Officer of the Indian Administrative Service for about 36 years and having worked in several key positions and having served in the highest posts both in the Centre and the State, the Hon'ble Governor has appointed Respondent No.4 to the Constitutional Post of the State Election Commissioner by reposing confidence in her capabilities.

26. The allegations of the petitioner pertaining to previous stints as Chief Secretary and later Principal Advisor to the Chief Minister have bearing on independence of the respondent No.4 as State Election Commissioner do not merit any consideration as respondent No.4 was not occupying any such positions as on the date of her appointment. Therefore, the said allegations are wholly false and baseless apart from being as vague and the petitioner cannot assume that there would be lack of independence in discharge of duties as State Election Commissioner. Therefore, respondent No.4 prays to dismiss the Petition.

27. In reply affidavit of the petitioner to the counter affidavit filed by the 1st respondent, he reiterated the contents in the affidavit filed along with the writ petition and stated that according to para No.3, which referred about the judgment in the case of ***N. Ramesh Kumar and others*** (2 *supra*), wherein this Hon'ble Court held that the appointment of State Election Commission made by His Excellency, the Governor would be under the discretionary power vested in under Article 243K(1) of the Constitution of India and not under Section 200 of the Panchayat Raj Act, 1994 and that the State Government does not have any power to propose and prescribe the eligibility or the manner of the appointment of the State Election Commission but contrary to this, a Note files was circulated to His Excellency, the Governor by the Head of Executive of the State, names of three retired IAS Officers was merely indicated for appointment and the 4th respondent is one among three IAS officers and the names figured in the Note were also held an office not less in rank than that of Principal Secretary to Government and thus, the appointment of 4th respondent as State Election Officer is contrary to the mandate of Article 243K(1) of the Constitution of India.

28. In reply affidavit of the petitioner to the counter affidavit filed by the 2nd respondent, it is stated that para

No.3 of the counter-affidavit states that the Writ Petitioner has not espoused any personal grievance or violation of any legal/fundamental right with regard to the relief sought under Writ of Mandamus and insofar as the Writ of Mandamus is concerned, the Writ Petition is the nature of a Public Interest Litigation. As per Rule 7-A of the Writ Proceedings Rules, 1977, every writ petition filed in public interest should conform to the procedure prescribed and be heard by a Bench of Two judges are untenable since the petitioner is an elector and 3rd respondent office is constitutional office constituted for the purpose democratic process, hence, he can invoke Article 226 of the Constitution of India by way of writ petition, the present writ cannot be termed as Public Interest Litigation.

29. It is also stated that the averment made in paragraph 7 of the counter-affidavit of the 2nd respondent is that there was a note file which contains the names of three IAS Officers apart from the list Eleven (11) IAS Officers considered for appointment as State Election Commissioner, a reason was assigned for appointment of 4th respondent as State Election Commissioner but a prudent man can understand the purpose of Note file. It appears names of three retired IAS officers was merely indicated for appointment in the Note file but out of three IAS officers only one IAS officer, the 4th respondent has fulfilled the

requirement for appointment as State Election Commissioner gives a presumption that the decision to appoint the 4th respondent was predetermined.

30. In reply affidavit of the petitioner to the counter affidavit filed by the 3rd respondent, it is stated that para No.2 of the counter-affidavit states that since the petitioner is an elector and 3rd respondent office is constitutional office constituted for the purpose democratic process, hence, he can invoke Article 226 of the Constitution of India by way of writ petition, the present writ cannot be termed as Public Interest Litigation. As such, the judgment of the Hon'ble Supreme Court in ***State of Goa & another*** (1 supra) is applicable to the present case.

31. In reply affidavit of the petitioner to the counter affidavit filed by the 4th respondent, it is stated that the before the appointment as A.P. State Election Commissioner, Respondent No.4 got extension of service as Chief Secretary for a period of Six months after attaining the age of superannuation and before completion of extended tenure, she was appointed as State Election Commissioner. Therefore, the appointment of the State Election Commissioner is contrary to the mandate of Article 243k(1) of the Constitution of India and the law declared by the Hon'ble Supreme Court in ***State of Goa & another***

(1 *supra*). The petitioner is an elector and respondent No.3 office is constitutional office constituted for the purpose of democratic process and the petitioner and any elector can invoke Article 226 of the Constitution of India by way of Writ Petition. The Judgment of Hon'ble Supreme Court in the case of ***State of Goa & another*** (1 *supra*) is applicable to the present facts of the case.

32. Learned counsel for the petitioner submits that the petitioner is a practicing Advocate in various Courts at Vizianagaram District and he is an Elector of Salur Municipality, Vizianagaram District, and as such, he is having locus standi to file this Writ Petition seeking Writ of Mandamus. The petitioner has not espoused any public cause in the Writ Petition and as such, it cannot be treated as Public Interest Litigation and as such, the learned Single Judge can hear the Writ Petition. He relied on a judgment of this Court in W.P.No.7778 of 2021, to substantiate his contentions.

33. Learned counsel for the petitioner submitted that appointment of respondent No.4 as Andhra Pradesh State Election Commissioner is contrary to the mandate of Article 243K (1) of the Constitution of India, since before appointment as State Election Commissioner, respondent No.4 got extension of service for a period of Six months

after attaining the age of superannuation as Chief Secretary and before completion of extended tenure, respondent No.4 was appointed as Principal Advisor to the Hon'ble Chief Minister with cabinet rank and later as State Election Commissioner. Therefore, the appointment of the State Election Commissioner is contrary to the mandate of Article 243k (1) of the Constitution of India and the law declared by the Hon'ble Apex Court in ***State of Goa & another (1 supra)***.

34. Learned counsel for the respondents advanced their arguments in detail, however, almost all reiterating the averments in the Counter Affidavits.

35. Particularly, Sri C.V. Mohan Reddy, learned Senior Counsel appearing for Respondent No.2, submitted that writ of Quo-warranto is sought requiring the 4th respondent to show by what authority she is entitled to hold the office of the State Election Commissioner. Except stating in the affidavit filed in support of the above writ petition that the petitioner is an elector of Salur Municipality, Vizianagaram District, there is no averment in the said affidavit as to how the petitioner is personally aggrieved by the appointment of the 4th respondent as State Election Commissioner. As such, no violation of any fundamental or statutory right of the petitioner is espoused in the said writ petition. Insofar

as the writ of Mandamus is concerned, the above writ petition is in the nature of a Public Interest Litigation. As per Rule 7-A of the Writ Proceedings Rules, 1977, framed by this Hon'ble Court, every writ petition filed in public interest should conform to the procedure prescribed and be heard by a Bench of two Judges. Suffice it to state that without following the procedure prescribed under Rule 7-A, the Affidavit filed in support of the Writ Petition is improper and amounts to abuse of process of Court. On this ground alone, the Writ of Mandamus sought by the petitioner is liable to be dismissed. Though the concerned learned Single Judge of this Hon'ble Court, as per the roster assigned, would have jurisdiction to adjudicate the Writ of Quo Warranto sought by the petitioner, he would have no jurisdiction to adjudicate the Writ of Mandamus intertwined therewith, which as already pointed out is in the nature of a Public Interest Litigation and the same would be in contravention of the Writ Proceedings Rules, 1977 and the roster assigned by the Hon'ble Chief Justice. Needless to mention that any adjudication made in contravention thereof would be coram non judice and a nullity. Therefore, for the said reason, the Writ Petition is required to be heard by a Bench of two Judges. In support of his contentions, he placed reliance on a judgment reported in **State of**

***Rajasthan v. Prakash Chand*³, *Chawali v. State of UP and others*⁴, and *In Re, Suo Motu Cognisance by a Special Bench of 11 Judges v. Union of India*⁵.**

36. He further submitted that Writ of Quo-Warranto does not lie in the circumstances narrated in the Affidavit filed in support of the Writ Petition as appointment of the 4th Respondent is perfectly legal and in consonance with Article 243 K of Constitution of India read with the Division Bench Judgment of this Hon'ble Court in ***N. Ramesh Kumar and others*** (2 *supra*), wherein it was held that the Government/Legislature cannot prescribe qualifications for the post of the State Election Commissioner and the Hon'ble Governor has to take his own decision in choosing a person to occupy the said position of the State Election Commissioner.

37. The only and sole ground raised by the Petitioner in Affidavit filed in support of the Writ Petition, and during the course of arguments, and repeatedly adverted to by the Counsel for the Petitioner regarding the alleged ineligibility of the 4th Respondent to be appointed as the State Election Commissioner, is that she is not an independent person and therefore, her appointment is in contravention of the

³(1998)1SCC1

⁴2015(1)ADJ 387

⁵2020 CriLJ1740

judgment dated 12.03.2021 of Hon'ble Supreme Court in ***State of Goa & another (1 supra)***.

38. The Hon'ble Supreme Court by its aforesaid judgment dated 12.03.2021 held that when the State Election Commissioner is none other than the Law Secretary to the Government of Goa, the whole process of the elections is vitiated from the beginning as the State Election Commissioner is not an independent body as mandated by Article 243K and that the State Election Commissioner has to be a person who is independent of the State Government as he is an important constitutional functionary who is to oversee the entire election process and that giving an additional charge of such an important and independent constitutional office to an officer who is directly under the control of the State Government is a mockery of the constitutional mandate, and that all State Election Commissioners appointed under Article 243K have to be independent persons who cannot be persons occupying any post or office" under the Central or any State Government. The facts of the said case are completely different and distinguishable from the facts of the lis on hand.

39. In the present case, the 4th Respondent resigned from the post of Principal Advisor on 26.03.2021 and her resignation was accepted on 27.03.2021, and thereafter,

she was appointed as State Election Commissioner on 28.03.2021 and in fact Hon'ble Governor selected her out of the names he considered, subject to the condition of the 4th Respondent relinquishing the office of Principal Advisor to the Hon'ble Chief Minister. As on the date of her appointment, the 4th Respondent was not holding any post under the Government. As Respondent No.4, on the date of her appointment as the State Election Commissioner, was not working for the Government or under the control of the Government, either State or Central, in any way, she is an independent person eligible to be appointed to the said post.

40. In addition, there is no averment in the Affidavit filed in support of the above Writ Petition as to why or how the Respondent No.4 is not an independent person except stating that the Respondent No.4 was appointed as the Principal Advisor to the Chief Minister and her name was recommended in the Note circulated by Chief Minister's Office to the Hon'ble Governor. Therefore, the allegations made in this regard in the Affidavit filed in support of the above Writ Petition are mere conjectures and without any factual basis.

41. Learned Counsel placed Reliance on a Judgment reported in the case of ***State of Madhya Pradesh v. Ajay***

Singh⁶, Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Limited⁷, and Madras Bar Association v. Union of India⁸, to support the contention that once the tenure and other conditions of service of the 4th Respondent are secured and not dependent on the will of the Government, it implies that the 4th Respondent functions as an independent person, unless facts to the contrary are pleaded and proved by the Petitioner.

42. It is well settled that scope of judicial review is limited to the deficiency in the decision making process but not the decision itself. He placed reliance on a judgment reported in **Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel⁹**, in support of the said legal proposition.

43. The office of the Hon'ble Governor decided to independently consider and assess persons for the post of State Election Commissioner, without reference to Section 200 of the AP Panchayat Raj Act, 1994, in view of Division Bench Judgment dated 10.04.2020 in the case of **N. Ramesh Kumar and others (2 supra)**, and the aforesaid Note from the office of the Chief Minister, in a uniform and unbiased manner. The Annual Performance Appraisal Reports (APAR), also known as Annual

⁶1993 (10) SCC 302

⁷2017 (4) SCC 665

⁸2021 SCC Online SC 463

⁹2006 (8) SCC 200

Confidential Reports (ACR), of all the said 13 mentioned individuals for the last 5 years of their service as well as details relating to the disciplinary proceedings initiated or cases pending against them, were duly considered by the Hon'ble Governor, in his sole discretion, for the purpose of making the appointment to the post of the State Election Commissioner.

44. The Hon'ble Governor, in his sole discretion, taking into account the unblemished career of Respondent No.4 and the maximum possible APAR grading received by her, decided to appoint her as the State Election Commissioner. It is necessary to point out that Respondent No.4 received the highest possible grading of 10 in her APAR for all the last five years of her service, which no other candidate in the zone of consideration received. Further, no cases/proceedings are pending against Respondent No.4.

45. It is not the case of the Petitioner that the procedure evolved by the Hon'ble Governor to make appointment to the post of State Election Commissioner is arbitrary, malafide or for extraneous considerations. Therefore, the scope of judicial review in the above Writ Petition is very limited. In support of his contentions, he placed reliance on

a judgment reported in ***Narayan Dutt v. State of Punjab***¹⁰, and ***BP Singhal v. Union of India***¹¹.

46. When the procedure evolved by the Hon'ble Governor is fair and transparent, this Hon'ble Court, while exercising jurisdiction under Article 226 of the Constitution of India, would not be pleased to step into the shoes of the Hon'ble Governor, and find some other candidate more suitable than Respondent No.4. It is also not the case of the Petitioner that some other candidate in the zone of consideration is either more suitable or qualified than the Respondent No.4 to hold the post of State Election Commissioner.

47. He also placed reliance on a judgment reported in ***Arikala Narasa Reddy v. VenkataRam Reddy Reddygari***¹², and ***V.K.Majotra v. Union of India***¹³, wherein it was stated that this Hon'ble Court, while exercising jurisdiction under Article 226 of the Constitution of India, would not be pleased to go beyond the pleadings of the parties, and conduct a roving enquiry.

As there are no merits in the Writ Petition, the learned counsel for respondent No.2 prayed to dismiss the petition.

¹⁰2011 (4) SCC 353

¹¹2010 (6) SCC 331

¹²2014 (5) SCC 312

¹³2003 (8) SCC 40

48. Learned Senior Counsel also submitted his written arguments.

49. This Court gave anxious consideration to the submissions of the respective counsel. Carefully perused the material available on the record.

50. The sum and substance of the case is as follows:

(i) The petitioner is an Advocate by profession in Vizianagaram and an elector of Solur Municipality, Vizianagaram District.

(ii) Respondent No.4 was appointed as State Election Commissioner of Andhra Pradesh. As per the petitioner, the appointment of respondent No.4 as State Election Commissioner is contrary to the mandate of Article 243K (1) of the Constitution of India and contrary to the law declared by the Hon'ble Apex Court in the case of ***State of Goa and another*** (1 *supra*).

iii) The contention of the respondents is that except stating in the affidavit that the petitioner is an Elector of Salur Municipality, Vizianagaram District, there is no averment to show how the petitioner is personally aggrieved by the appointment of respondent No.4 as State Election

Commissioner and there is no mention about violation of any fundamental or statutory right of the petitioner espoused in this Writ Petition. As such, the Writ of Mandamus is concerned, it is to be treated as a Public Interest Litigation.

iv) As per Rule 7-A of the Andhra Pradesh High Court Writ Proceeding Rules, 1977, every Writ Petition filed in public interest should be heard by a bench of two judges. Though the concerned Learned Single Judge, as per the roster assigned, would have jurisdiction to adjudicate the Writ of Quo-Warranto sought by the petitioner, he would have no jurisdiction to adjudicate the Writ of Mandamus which was filed in the nature of Public Interest Litigation.

v) The Hon'ble Governor, in his sole discretion, taking into account the Annual Performance Appraisal Reports, decided to appoint respondent No.4 as State Election Commissioner and there is no irregularity in it. The said action of appointing respondent No.4 as State Election Commissioner is in consonance with Article 243k(1) of the Constitution of India and not in any contravention of the Judgment dated 12.03.2021 of the Hon'ble

Apex Court in the case of ***State of Goa & another***
(1 *supra*).

51. It is the contention of the learned counsel for the petitioner that the petitioner is an elector of Salur Municipality and the petitioner has the right to participate in the local body elections as an Elector or as a contesting candidate. Respondent No.4, who worked as Chief Secretary of the State Government and whose tenure was extended for Six months after attaining the age of superannuation and who was appointed as Principal Advisor of the Hon'ble Chief Minister with cabinet rank prior to her retirement as Chief Secretary, was appointed as State Election Commissioner, and as such, she would not act fairly and independently in discharging her duties as State Election Commissioner, and as such, the petitioner will be deprived of his rights as an Elector.

52. The State Election Commissioner has to discharge the functions of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Local Bodies. As and when respondent No.4 was appointed at the instance of the political executive of the State, by any stretch of imagination, one cannot come to a conclusion that the 4th respondent is an independent person for appointment as State Election Commissioner, high constitutional office, which has to

conduct elections under Part IX and IX A of the Constitution of India.

53. On the other hand, the contention of the learned counsel for the respondents is that the petitioner has not made out any case to show any violation of constitutional or statutory rights of the petitioner by the appointment of respondent No.4. In the absence of the same, the Writ of Mandamus filed by the petitioner has to be considered as a Writ of Mandamus filed in the nature of Public Interest Litigation. The Writ of Mandamus in the nature of Public Interest Litigation has to be heard by a Division Bench of this High Court as per Rule 7-A of the Andhra Pradesh Writ Proceedings Rules, 1977.

54. It is an admitted fact that the petitioner is an Elector of Salur Municipality. He has the right to participate in the local body elections as an Elector or as a contesting candidate. The petitioner is having doubt about the independency of respondent No.4, who is appointed as State Election Commissioner, as the State Election Commissioner has to discharge the duties from the preparation of electoral rolls to conduct elections to all the local bodies. As respondent No.4 got extension for six months after attaining the age of superannuation as Chief Secretary of the State and was later appointed as Principal

Advisor to the Chief Minister before retirement as Chief Secretary, the petitioner is doubting the independency of respondent No.4. Accordingly, he filed the Writ of Mandamus challenging the appointment of respondent No.4 along with Writ of Quo-Warranto. In our view, the Writ of mandamus filed by the petitioner in the present form is maintainable as he has not espoused any public cause except to espouse his personal grievance as an elector.

55. It is settled law that free and fair elections are the foundation of democracy, right to contest in the election and elect a representative is a constitutional right. If such right is violated or infringed, any citizen can approach the Court for redressal.

56. When an identical issue aroused in W.P.No.7778 of 2021, this Court, after a detailed consideration and discussion on this aspect, passed a reasoned order dated 21.05.2021 and held as under:

“ In view of my foregoing discussion, I hold that the petitioner has locus standi to maintain the writ petition under Article 226 of the Constitution of India in the present form of the writ petition, as filed before this Court, as it is not in contravention of Rule 7-A of the Writ Proceeding Rules or Public Interest Litigation Rules. Accordingly, Point No.1 is answered in favour of the petitioner and against the respondents in W.P.No.7778 of 2021”.

57. In the present case also, following the Order of this Court in the above mentioned case, this Court holds that the Writ of Mandamus filed by the petitioner under Article 226 of the Constitution of India in the present form of the Writ Petition is maintainable as it is not in contravention of Rule 7-A of the Writ Proceeding Rules or Public Interest Litigation Rules.

58. As per the material available on record, prior to completion of the term of Mr. N. Ramesh Kumar as State Election Commissioner on 31.03.2021, the office of the Hon'ble Governor received a Note dated 24.03.2021 from the Chief Minister, requesting His Excellency, the Governor, to exercise his discretion under Article 243K of the Constitution of India to appoint a new State Election Commissioner. The office of the Chief Minister suggested the names of three retired IAS officers viz., the 4th Respondent, Mr. M. Samuel and Mr. L. Prem Chandra Reddy for the said post.

59. It appears that the Hon'ble Governor considering the importance of the State Election Commissioner as constitutional authority responsible for the superintendence, direction, control of preparation of electoral rolls and for conducting of all elections to Panchayat Raj bodies and Municipal bodies in the State, decided to consider the

persons, who have sufficient knowledge and experience in handling administrative matters, election matters, quasi judicial matters, matters relating to the functioning of the Government, etc. For that purpose, the Hon'ble Governor decided to consider IAS Officers having at least 25 years of experience, who retired in the last three years for the post of the State Election Commissioner. Accordingly, the Hon'ble Governor considered 11 IAS officers including Respondent No.4, who satisfied the criteria considered by the Hon'ble Governor and who retired during the period 2018 to 2020. In addition to the 11 IAS Officers, the Hon'ble Governor also considered the names of two Officers suggested by the Chief Minister in the Note dated 24.03.2021. The Annual Performance Reports of the said Officers for the last five years of their service as well as the details relating to the disciplinary proceedings initiated or cases pending against them were also considered by the Hon'ble Governor to make appointment to the post of the State Election Commissioner.

60. Taking all the aspects into consideration, the Hon'ble Governor decided to appoint Respondent No.4 as State Election Commissioner. The Hon'ble Governor appointed Respondent No.4 as State Election Commissioner vide G.O.Ms.No.20 Panchayat Raj and Rural Development (E&R),

dated 28.03.2021 by exercising his powers under Article 243K of the Constitution of India.

61. There is no dispute about the fact that respondent No.4 worked as Chief Secretary and her services were extended for Six months by the Central Government basing on the recommendation of the State Government. It is also an admitted fact that respondent No.4 was appointed as Principal Advisor to the Chief Minister. Respondent No.4 tendered her resignation on 26.03.2021 and it was accepted by the competent authority on 27.03.2021 from the post of the Principal Advisor to the Chief Minister. Respondent No.4 was appointed on 28.03.2021 as State Election Commissioner by the Hon'ble Governor. So, as on the date of appointment i.e., on 28.03.2021, she is not holding the post of the Principal Advisor to the Chief Minister. As such, in our view, it cannot be said that respondent No.4 is under the control of the State Government as on the date of the appointment as State Election Commissioner.

62. The entire case of the petitioner is based on the judgment of the Hon'ble Apex Court in the case of **State of Goa & Another** (1 supra). In the said case, the validity of the Order dated 04.02.2020 issued by the Director of Municipal Administration, Goa, in relation to reservation of

wards for 11 Municipal Councils within the State of Goa, fell *inter alia* for consideration before the Hon'ble Supreme Court of India. In the said case, on 03.11.2020, the Hon'ble Governor of Goa appointed the Law Secretary of the Government of Goa, a member of the IAS, as State Election Commissioner, which duties were to be in addition to his duties as Law Secretary. In that factual situation, the Hon'ble Apex Court by its judgment dated 12.03.2021 held that when the State Election Commissioner is none other than the Law Secretary to the Government of Goa, the whole process of the elections is faulted at the start as the State Election Commissioner is not an independent body as mandated by Article 243K, that the State Election Commissioner has to be a person who is independent of the State Government as he is an important constitutional functionary who is to oversee the entire election process, that giving an additional charge of such an important and independent constitutional office to an officer, who is directly under the control of the State Government, is a mockery of the constitutional mandate, and all State Election Commissioners appointed under Article 243K have to be independent persons who cannot be occupying any post or office under the Central or any State Government.

63. This Court after careful examination of the ruling of the Apex Court came to a conclusion that the facts in the

present case and the facts in the case of ***State of Goa & another*** (1 supra) are different. As such, this Court is holding that the ratio laid down by the Hon'ble Apex Court in ***State of Goa & another*** (1 supra) is not applicable to the case on hand.

64. In the considered opinion of this Court, the contention of the petitioner that respondent No.4 cannot act independently, on the ground that she worked as Chief Secretary to the State on extension and Principal Advisor to the Chief Minister has no substance in the absence of any substantial material.

65. The matter can be looked from yet another angle. The Hon'ble Judges of the High Court will be appointed as per the "Memorandum of procedure" prescribed for that purpose. In the "Memorandum of Procedure for appointment of High Court judges", there is a provision that "the Chief Justice of the High Court may consider the name of one Advocate suggested by the Chief Minister of the State". The name of an Advocate, who is holding the post of Advocate General, Public Prosecutor or Government Pleader of the State Government is suggested by the Chief Minister and it is considered by the Collegium of the High Court headed by the Hon'ble Chief Justice for appointment as Judge of the High Court and the President of India

appoints the said Advocate as a Judge of the High Court. Can any one say that the said Advocate, who is appointed as a Judge, is under the influence of the Chief Minister or he is not an independent person? Answer would be in negative.

66. Because, it has to be noted that though, the Chief Minister suggested one name of the Advocate for appointment as a Judge of the High court, the collegium of the High Court headed by the Hon'ble Chief Justice recommends his name, only after considering his eligibility, suitability, and integrity. In the same way, when the Hon'ble Governor appointed respondent No.4 as State Election Commissioner after considering all aspects at his own discretion under Article 243K of the Constitution of India, the decision of the Hon'ble Governor cannot be found at fault.

67. It is further to be noted that except making bald allegations against respondent No.4 that she would not act fairly and independently in discharging her duties as State Election Commissioner, there is no material placed before the Court to substantiate this contention. The petitioner also failed to make a case to substantiate or to establish any arbitrariness or malafides in appointing the Respondent No.4.

68. The Writ Petition filed by the petitioner for the relief seeking a Writ of Mandamus and a Writ of Quo-warranto on relying the law declared by the Hon'ble Apex Court in ***State of Goa & another*** (1 supra). As already, we have expressed our view that the ratio laid down by the Hon'ble Apex Court in the case of ***State of Goa & another*** (1 supra) is not applicable to the facts of the case on hand. As such, the relief sought by the petitioner in the present Writ Petition fails, as the petitioner failed to plead and prove the requirements for issue of Writ of Mandamus or Writ of Quo-Warranto.

69. *In State of U.P. and Ors. v. Harish Chandra and Ors.*¹⁴" the Supreme Court held as follows:

"10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition."

70. In ***Union of India v. S.B.Vohra***¹⁵" the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who

¹⁴ (1996) 9 SCC 309

¹⁵ (2004) 2 SCC 150

has a legal duty to perform, but has failed and/or neglected to do so.

71. In view of the law declared by the Hon'ble Apex Court as stated above, it is for the petitioner to plead and prove his legal right either statutory or constitutional is violated by appointing Respondent No.4 as State Election Commissioner. In the absence of establishing any violation of the right of the petitioner, the petitioner is not entitled to claim Writ of Mandamus. In our view, the petitioner could not prove and plead the requirements for issuance of Writ of Mandamus.

72. With regard to seeking of Quo-Warranto, the petitioner has to establish that respondent No.4 holding the post of State Election Commissioner without legal authority or respondent No.4 is disqualified to hold the post. In this aspect, it has to be considered that disqualification is of two types i.e., (1) initially disqualified and (2) subsequently disqualified. A person not legally entitled to hold a public office even at the first instance if he is suffering with initial disqualification. The subsequent disqualification could be by the acts committed by the holder of such post by which she would be disentitled from holding that post.

73. In the instant case, the petitioner failed to prove any disqualification of respondent No.4 except making bald

statement that she is not an independent person and as such, the petitioner is not entitled for issuance of Writ of Quo-Warranto as sought.

74. For the reasons stated in the above mentioned paras, the petitioner failed to make out a case warranting interference of this Court under Article 226 of the Constitution of India to issue either Writ of Mandamus or Writ of Quo-Warranto and as such, this Writ Petition is liable to be dismissed.

75. Accordingly, the Writ Petition is dismissed without costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

JUSTICE BATTU DEVANAND

Date : 07.10.2021

Note: L.R.Copy be marked

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THE HONOURABLE SRI JUSTICE BATTU DEVANAND

W.P.NO.9560 of 2021

Date : 07-10-2021

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