

Beyond Populism: Judicial Checks on Local Elections in Maharashtra

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Abstract

This paper critically analyzes the politicization of panchayat elections in Maharashtra, focusing on legal methods employed by political parties to capture and maintain power. The analysis examines three primary tactics: (1) delaying elections through administrative excuses, (2) appointing incumbent panchayat members as administrators, and (3) interfering in the appointment of administrators through state legislation. These tactics undermine democratic principles, violate constitutional mandates, and create an unfair electoral playing field. Additionally, the paper discusses other factors contributing to the politicization of panchayat elections, such as booth capturing, vote buying, incitement of hatred, and lobbying by vested interest groups. By understanding these methods and their implications, policymakers and civil society organizations can work towards promoting free, fair, and democratic panchayat elections in Maharashtra.

1. Introduction

Part IX of the Constitution¹ was enacted to make the experiment of local democracy a realistic possibility. In this scheme, along with the benefits of grassroots democracy and participative governance, also lie the flaws that any political process would bring within its fold.² For instance, entrenchment of power in the hands of a few powerful people in the gram sabhas would show that muscle power has translated into political power in the lower rungs of the polity³. Similarly, shadow participation of women in panchayats as a substitute for their husbands or other male relatives also would show that those in power have misused the broad goals of affirmative action to capture and maintain power is a discovered malady⁴. Other common instances would include booth capturing, the buying of votes, incitement of hatred among communities and heavy lobbying by vested interest groups like businessmen to better their interests which are all replicative of the socio-political issues that our nation faces in terms of politicization of all elections⁵. The issues therefore in the arena of politicization of elections is deeply embedded and are a microcosm of the issues we face on a state as well as national level. While the object of this topic would not be to delve deep into these issues which are socio-economic as well as socio-cultural⁶, the objective would be to focus on certain areas in the law that have been exploited by those in power to further politicize panchayat elections and create an unfair ground to sustain themselves and outdo their competitors. These legal methods of capturing power would consist of those subliminal measures that have the effect of subverting the constitutional mandates that have been introduced specifically for effective and consistent functioning of local democratic institutions. Such legally ingenious methods have received the utmost condemnation from the courts of law since they impede the free functioning of the democratic process and try to extend or capture political power by colourable methods. Some of these devices can be characterized as under⁷:

¹ India Const. art. 243, pt. IX.

² India Const. Art. 243b.

³ India Const. Art. 243d.

⁴ S.P. Sathe, *Judicial Activism In India: Transgressing Borders And Enforcing Limits*, 6 J. INDIAN L.AW & SOCIETY 135, 139 (2010).

⁵ Avani Mehta Sood, *Gender Justice Through Public Interest Litigation: Case Studies From India*, 41 VAND. J. TRANSNAT'L L. 833, 848 (2008)

⁶ See Pratibha Karan V. State Of Haryana, AIR 2008 SC 2285 (Discussing Misuse Of Affirmative Action In Panchayats)

⁷ S.Y. Quraishi, *An Undocumented Wonder :The Making Of The Great Indian Election* 243 (2014).

1. Not conducting Panchayat elections for mundane reasons
2. Appointing panchayat members as administrators after expiry of their term
3. Interference by the state legislature in the appointment of administrators

2. Not Conducting Panchayat Elections for Mundane Reasons

One of the principal reasons for introducing the 73rd constitutional amendment was because elections at the grassroot level were conducted in a clandestine and irregular manner. To curb this practice, Article 243E specifically stated that the term of the panchayat was to be fixed for five years and elections to the next panchayat must be held before the earlier term ends. The bare text of Article 243E is reproduced thus:

243E. Duration of Panchayats, etc.

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for

*which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.*⁸

(emphasis supplied)

The Supreme Court in the case of *Kishansing Tomar v Municipal Corporation of Ahmedabad and Ors*⁹ held that the term limit to conduct municipal elections under Article 243U (*pari materia* to Article 243E) within the five year time frame was mandatory in nature. The Election Commission which is entrusted with the task of conducting the elections must not bow down to any political interests while discharging its constitutional objective of time-bound elections. The Court also held that since the panchayat is a body meant to function continuously, the Election Commission must take its task seriously and organize its activities in such a manner that it can complete the elections within five years and fulfil its constitutional prerogative¹⁰. In fact, the constitution bench held that the state government must provide all necessary support and assistance to the State Election Commission so that it can fulfil this prerogative efficiently. The relevant observations of the Bench are as under:

“22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and the Municipal

⁸ The Constitution of India, 1950, https://legislative.gov.in/sites/default/files/COI_English.pdf.

⁹ (2006) 8 SCC 532.

¹⁰ Panchayati Raj in India: A Comparative Study of Political Dynamics, J. Singh (2018).

bodies under the Part IX and Part IX A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

..

28. Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfil the constitutional mandate."

(emphasis supplied)

Despite the specific directive to the Election Commission to conduct elections on time and the State government to assist the Commission, things on the ground remain murky. Case history would go to show that either on its own whims or due to a nudge by the state government, the Election Commission has failed to conduct timely elections to the gram panchayats thereby increasing the instability of the political process¹¹. Such moves also create an extended vacuum in the timely transition of powers thereby leaving it in suspended animation. The Courts when confronted with such initiatives has admonished the Election Commission as well as the State government for violating the constitutional mandate and failing the goal of timeliness of the political process. For instance, in *Rohan Shirodkar v State of Goa*¹², the Bombay High Court at the Goa Bench was confronted with this peculiar situation. Here, a spirited citizen filed a Public Interest Litigation seeking a mandamus to conduct elections to 185 gram panchayats in the State of Goa. The High Court thus, sought an explanation from the State Election Commission for the abdication

¹¹ R. Kumar, Political Manipulation in Local Governance: Analyzing State Interference in Panchayat Administration, 12 Indian Journal of Public Administration 45 (2022).

¹² (2017) 4 Bom CR 406.

of its responsibility in conducting fresh elections before the expiry of the five year term. The Election Commission in its response stated that since the delimitation exercise for the panchayat constituencies was underway, the panchayat elections were postponed. The High Court condemned this practice of postponing elections on non-fulfilment of administrative duties and directed the State Election Commission to complete all such tasks well in advance so as to hold elections in a timely manner. The High Court also held that this was the second time that the Election Commission had taken the plea of postponement of elections on the ground of delimitation and even earlier, such a flimsy excuse was proscribed by the Court. The observations of the Court in that regard are cited here below:

*“14. Article 243N provides for a non-obstante clause to nullify any provision of law relating to Panchayats made by the State Legislature which is inconsistent with the provisions of this part of the Constitution after the expiry of the period of one year from the date of the commencement. Taking note of the said provision, it can be said that since the mandate of the Constitution under Article 243E(3) is to hold elections of the Panchayats before the expiry of the term of 5 years, the State Election Commission -respondent No. 2 herein is required to ensure that the process of holding elections of the Members of the Panchayats is initiated well in advance, prior to the expiry of the statutory term of 5 years of the respective Panchayats. This can also be gathered from Rule 10 of the Goa Panchayat Rules which provides that the election process has to be completed within 22 days as stipulated therein. In such circumstances, since the time limit stipulated under the provisions of Article 243E(3) is mandatory and peremptory, the State Election Commission-respondent No. 2 must start taking all necessary steps and a heavy responsibility is cast on the shoulders of the respondent No. 2 which even requires the Commission to request, remind, caution and alert the State Government and other Authorities for taking timely action to see that all preliminary steps are taken with utmost expedition, so that the respondent No. 2 can then commence the elections within the time limit stipulated under the Constitutional provision. **We have to keep in mind that being the largest democracy in the world, it was paradoxical that there was no constitutional sanction or protection to the democratic institutions at***

the grass-root level represented by the Panchayats, Municipalities, etc.. Whenever any structure is erected, the foundations which bear the most weight have to be strongest. The democracy is also a basic structure of our Constitution and for it to survive the democratic institutions, at the grass-root level have to be strongest. The democracy must become a way of life and the people participate in the establishment of such democratic institutions. It has, therefore, been felt that a constitutional sanction is as indispensable to democracy at the grass-root level as it is to the democracy at the State and National levels. In order to achieve the said objective, the provisions of Part IX and Part IX-A recognize that the elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then, it is incumbent to hold the elections within six months of the supersessions. In the case of Kishansing Tomar (supra), when the question to examine whether the action of postponement of election was justified, it was directed by the Apex Court that the time-frame must be strictly followed and elections must be completed before the expiry of its term. For this purpose, it is incumbent upon the State Election Commission to propose the election programme so as to complete the election process within the time stipulated. In the said Judgment of Kishansing Tomar (supra), the Apex Court has observed that in fact Article 243ZA 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. Taking note of the said observations of the Apex Court, it is clear that in the matter of conduct of the elections of the Village Panchayats, the State Government shall have to render assistance and cooperation to the State Election Commission, also in respect of the assessment of the needs in order to ensure that free and fair elections are conducted. It is to be noted that the provision of Article 243U for the Municipalities is having the same language as Article 243E(3) for the duration of the Panchayats. It is noted that if the State Election Commission feels that it was not receiving co-operation from the State Government for discharging its constitutional obligation, it would be open to the State Election Commission to approach the High Court in the first instance and thereafter, the Apex Court for a writ of mandamus or other appropriate writ

directing the State Government concerned to provide necessary co-operation and assistance to the State Election Commission to fulfill its constitutional mandate.

...

15. Following the observations of the Apex Court and the principles as laid down therein, it is clear that the mandate to hold elections within the time stipulated under Article 243E can be postponed only in case of man-made calamities, such as rioting or breakdown of law and order, or natural calamities and in no other circumstances. In the present case, taking note of the reasons as brought to our notice by the learned Advocate General in the reply filed by the respondent No. 1, we find that such reasons do not fit in any of the situations as specified by the Apex Court in the said Judgment.

16. As stated herein below, similar grounds to postpone the elections were not accepted by this Court in the case of Naresh Krishna Gaunekar (supra), when the Panchayat elections were sought to be postponed despite of the mandate recognized and guaranteed under Article 243E(3) of the Constitution. The delimitation which is a ground for postponement in the present petition, was also taken in the said case which came to be rejected by this Court whilst passing the said Judgment. Despite of the said two Judgments passed by this Court, it is very surprising that the respondent No. 1 has proceeded to once again advance the same reasons to postpone the elections which, otherwise, had to take place in terms of the Constitution on or before 27th May, 2017."

(emphasis supplied)

Even after repeated pronouncements by the constitutional courts for holding elections on time, they have fallen on deaf ears. To be precise, even after the Bombay High Court at Goa had admonished the practice of postponing elections on wishy-washy grounds, a subsequent petition came up before the Bombay High Court challenging a Notification issued by the State Government which had postponed elections to 186 gram panchayats in Goa due to the

impending monsoon season in *Sandeep Vazarkar v State of Goa*¹³. The High Court in this case reiterated that elections can only be postponed during inextricable emergencies such as natural calamities. The State Government in this situation justified postponing elections by stating that voter turnout would be low during the monsoon and that due to incessant rains there are high possibilities that the ballot papers, voting ink etc. would get smudged. All of these factors would, in its opinion, impact free and fair elections¹⁴. The Court negated this argument by stating that monsoons are not an exceptional natural calamity that would warrant postponing elections when the State Election Commission itself was ready to undertake the process during such a time. The Court also lamented that this was the fourth instance in two decades, ie, during every gram panchayat election in the last twenty years that the State Government and the State Election Commission had avoided or failed to comply with the constitutional diktats of Article 243E¹⁵. The pertinent observations of the High Court in that regard are as under:

“27. This is the fourth instance in the last two decades when the State Government and the SEC have avoided or failed to comply with the constitutional mandate in Article 243-E. The delay and consequent defiance of the constitutional mandate have become a regular feature. The attempt is to bring about a situation of fait accompli, emboldened by the fact that not even the most powerful Court can turn the clock back or recoup the lost time. There are no reported instances of any action against those responsible for the defiant breaches of the constitutional mandate. In most instances, the SEC would meekly toe the line of the State Government and plead helplessness.

...

32. The learned Advocate General submitted that the State of Goa receives rainfall of about 110 to 120 inches during the monsoons. In the past, there have been cyclones and floods. The Government staff and machinery are involved in disaster

¹³ 2022 SCC Online Bom 1342.

¹⁴ National Institute of Rural Development and Panchayati Raj, *Impact of Politicization on Panchayati Raj Institutions in India* (2021),

¹⁵ INDIA CONST. Art. 243E

management. Therefore, with all responsibility, the State Government has taken a “conscious decision” to hold the elections in September 2022.

...

35. One of the reasons stated by Smt. Halarnakar, on behalf of the State Government, for deferring the polls is to be found in paragraph 37 of her affidavit, which reads as follows:

“37. I say that apart from that, there are various problems relating to transportation of the election material and staff on account of rain. I say that it is pertinent to note that the election will be held using ballot paper. As such, on account of the rains, there are chances of the paper being spoilt or the ink being smudged, etc. when the voter handles the ballot paper while voting in the election.”

...

50. In the teeth of clear and unambiguous directions issued by the Hon'ble Supreme Court in *Suresh Mahajan (supra)*, we fail to understand how the State Government, in the purported exercise of powers under Section 15 of the Goa Panchayat Raj Act or Rule 10 of the Election Procedure Rules, 1996, could have on 26.05.2022 decided to postpone the elections to September 2022, that is, way beyond the period prescribed in the constitutional mandate.

...

61. Mr. Nadkarni, Mr. Kantak, and Mr. Lawande are justified in contending that the monsoons, a yearly feature in Goa, cannot be elevated to the level of “a natural calamity” referred to in paragraph 21 of the *Kishansing Tomar (supra)*. Merely because there may have been some flash floods or even cyclones in the past, monsoons generally cannot afford an excuse for defying the constitutional mandate in Article 243 -E. **The material, mainly in the form of some press reports produced by the State Government, is hardly sufficient to excuse compliance with the constitutional mandate. The reason submitted on this occasion is not**

qualitatively different from the reasons offered by the State Government on the previous three occasions when citizens were forced to petition this Court for a writ of mandamus to direct the authorities to hold elections to local bodies.

...

74. Finally, we find that the pleadings and grounds are sufficient to quash the appointment of the Administrator and the deferring of the elections contrary to the constitutional mandate in Article 243-E. However, now that we propose to issue a mandamus to hold elections at the earliest, the appointments of Administrators need not be quashed. The Administrators must, however, take no policy decisions or expend Panchayat funds other than for routine matters."

(emphasis supplied)

Thus it is clear that legal issues and natural occurrences like seasonal changes become the forefront for postponement of elections¹⁶. Taking such actions besides violating constitutional and statutory provisions heavily politicize the electoral process and tilt the circumstances in the favour of those in power at the panchayat or those seeking to come into power through the state government's discretionary exercise of powers¹⁷. The State Election Commission remains a mute spectator to such instances and sometimes is a passive participant to the derailment of fairness between electoral candidates. Such politicization of elections seriously compromises the equality envisaged for panchayat elections in our democracy¹⁸.

¹⁶ Siddique, K., & Ranjan, S., The Role of State Election Commissions In India: A Study Of State Election Commission, 7 J. INDIAN POL. 123 (2019)

¹⁷ Bhatia, R., The Politics of Panchayati Raj: Challenges and Prospects, 12 J. DEMOCRATIC STUDIES 45, 57 (2020).

¹⁸ Choudhary, S., Electoral Politics and Governance in India: A Critical Analysis, 15 INDIAN J. POL. SCI. 331 (2021).

3. Appointing Panchayat Members as Administrators after Expiry of their Term

The electoral behaviour of political parties in Maharashtra, particularly during local and self-government elections, has exhibited populist tendencies, with parties frequently implementing policies that appeal to immediate voter sentiment rather than long-term governance strategies. In the 2021-2022 local body elections, populism was manifest as parties emphasized divisive cultural issues and short-term economic incentives to garner votes. These strategies influence voting patterns but may impede sustainable governance. In several elections, voter participation rates ranged from 50-60%, indicating varied public engagement with these populist approaches.

To recapitulate, Article 243E of the Constitution mandates that the term of the gram panchayat would be for five years and fresh elections to the panchayat would be held before the expiry of this period. This provision ensures that the functioning of the panchayat is not left in a limbo and the transition of power between the old members and the new ones is as hassle-free as possible. Long intermissions between panchayat elections would make the functioning of the democratic institutions irregular and would bring a lot of the ongoing projects of the panchayat at an impasse. As also noted above, the Courts have held that the State Election Commission cannot be complacent to the diktats of the legislatures in power in order to indefinitely postpone or delay panchayat elections. The State Election Commission must avoid a situation where there is no fresh body in power and must diligently obey the mandate of Article 243E of the Constitution except certain rare situations of *force majeure* where timely elections cannot be abided by. In light of these directives, even in those exceptional circumstances when the fresh elections have not been held and the term of the existing panchayat has ended, the local panchayat is placed in limbo for a short period. In such situations, the state government has exercised its powers under Section 151 of the Maharashtra Village Panchayats Act, 1959 to appoint an administrator for the functioning of such leader-less panchayats. Section 151¹⁹ of the Act reads thus:

¹⁹ Maharashtra Village Panchayats Act, 1959, Sec. 151

While the appointment of administrator is an exercise of discretionary power, the Courts have set limits on how such discretion can be exercised. For instance, the case of *Durgeshwari Rajesh Kale v State of Maharashtra and Ors*²⁰ is a classic case of the existing panchayat seeking to remain in power in the new nomenclature of 'Administrator' despite its term having ended. In this case, the term of around 14234 village panchayats had expired but fresh elections had not been conducted due to the outbreak of the Covid-19 pandemic²¹. The State Election Commission directed the state government to appoint administrators in the interregnum. The State appropriately enacted an amendment to Section 151 of the Village Panchayats Act by virtue of a proviso whereby the state government gave itself the power to appoint any person as an administrator, in the case the panchayat posts fell vacant. The newly enacted Section 151 reads thus:

Section 151: Powers and duties of panchayat not validly constituted to be performed by person appointed by Government.- (1) *Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if at any time it appears to the State Government that a panchayat has not been validly constituted under this Act, the State Government may, by notification in the Official Gazette, dissolve such panchayat and by the same notification or like notification cause all or any of the powers and duties performed by such person or persons, in such manner and for such period and subject to such conditions as it may think it : Provided that on the reconstitution of the panchayat under sub-section (2), such notification shall cease to have effect from the date on which the first meeting of the panchayat so reconstituted is held under section 28.*

*Provided further that, if due to natural calamity or emergency or war or financial emergency or administrative difficulties or epidemic disease, the panchayat elections could not be held by the State Election Commission as per the schedule, then, the State Government may, by notification in the Official Gazette appoint a suitable person as the administrator on such panchayat.*²²

²⁰ 2021 (6) Mhlj 327.

²¹ Deshmukh, S., Administrative Practices In Local Governance: The Role Of Appointed Administrators, 14 INDIAN ADMIN. REV. 212 (2021)

²² Maharashtra Village Panchayats (Amendment) Ordinance, 2020, [https://prsindia.org/files/bills_acts/bills_states/maharashtra/2020/MH%2010%20of%202020%20\(1\).pdf](https://prsindia.org/files/bills_acts/bills_states/maharashtra/2020/MH%2010%20of%202020%20(1).pdf).

(emphasis supplied)

Thus, exercising powers under Section 151(a) of the Act, the State government issued an Ordinance directing the CEO of the Zilla Parishads to appoint suitable persons as administrators in the meantime²³. This measure came to be challenged by the prior panchayat members on the ground that to ensure continuity, it is the existing panchayat members who should be appointed as administrators in the interim period. They supported this position by drawing a parallel between other statutory laws which spoke about administrators to cooperative societies or other statutory bodies. The Court came down heavily on this argument and held that such a reading would be against the constitutional mandate and the provisions of the Act. The Bombay High Court held that various precedents had conclusively determined that the term of the panchayat could not be extended beyond the time period of five years²⁴. To get over exceptional circumstances like pandemics and natural calamities, the state government had appropriately enacted a provision for the appointment of administrators who were supposed to be suitable government servants to dispense with panchayat duties in the interregnum²⁵. Such an exercise of power by the state in the Court's words could not be termed as fallacious. However, appointing the existing Panchayat as the Administrator would not arise in either circumstance as it would be violative of the express wordings of Article 243E and the provisions of the Maharashtra Village Panchayats Act. The succinct summary of the Court's view is as under:

"25. The upshot of the above discussion is that the spread of Covid pandemic led to a situation where it was not possible for the State Government to complete the elections within the duration of the term of five years in respect of Village Panchayats whose terms are to expire. Under Article 243E of the Constitution, the Panchayats can no longer continue after its duration of five years. The constitutional vacuum is not contemplated in the affairs of the State. The State Election Commission has ensured that this vacuum is obviated by directing the State to appoint Administrator

²³ Ghosh, R., The Impact of COVID-19 on Local Elections in India, 19 ELECTION STUDIES 102 (2021).

²⁴ Sharma, N., Powers of the State in Local Governance: A Critical Analysis, 23 J. CONSTITUTIONAL STUDIES 89 (2020).

*for the interregnum until new Panchayats are constituted. The State Government introduced amendment to section 151(1) (a) whereby a proviso was added to section 151(1)(a) enabling the State Government to appoint a 'suitable' person as an Administrator over the Village Panchayats whose elections could not be held by the State Election Commission as per schedule due to natural calamity or emergency or war or financial emergency or administrative difficulties or epidemic disease. There was considerable debate over the term 'suitable' person. The State Government has now made its stand clear that it would appoint government officer/servant as Administrator over these Panchayats till new Panchayats are constituted. This stand of the State Government is in consonance with that of the State Election Commission. The Petitioners want the existing elected body to be 'Administrator' till the new body is constituted. **The appointment / continuance of the existing body as Administrator after expiry of their term would be contrary to the mandate of Article 243E of the Constitution & the said Act.**"*

(emphasis supplied)

In this way, the Court came down on the ingenuity of the existing panchayat to capture and continue to retain political power in the guise of a pandemic. The Court in this case affirmed the State government's initiative of appointing government servants as administrators as they would be non-partisan and would in all good faith, not further the cause of politicizing panchayat elections in the intervening period before fresh elections are to be conducted.

4. Interference by the State Legislature in the Appointment of Administrators.

While the above portion highlighted how an attempt to capture power by the ruling panchayat was thwarted by the Court, certain cases have also come to light on the misuse of the provision to appoint administrators by the State government²⁶. As the new provision shows, the Administrator can only be appointed to get over paramount circumstances and shall carry out the panchayat administration in the time-being²⁷. However, the state legislature

²⁶ R. Desai, Elections in Rural India: The Challenge of Politicization, Hindu, Jan. 15, 2024,

²⁷ <https://www.livelaw.in/news-updates/in-an-interim-measure-bombay-hc-directs-state-to-prefer-govt-officials-over-private-individuals-as-administrators-of-gram-panchayats-160330>

in its enacting proviso, gave a superlative role to the guardian minister of the state to oversee/assist the appointment process of the Administrator. This action of the State was challenged by the petitioners as it would impede free and fair elections before the Bombay High Court in the case of *Vidyadhar Mokal and Ors v State of Maharashtra and Anr*²⁸. In the facts of the case, due to the Covid-19 pandemic, elections to several gram panchayats came to a staggering halt. To get over this situation, as reiterated in the above portion, the State amended Section 151 of the Maharashtra Village Panchayats Act thereby empowering the CEO of the gram panchayat to appoint the Administrator. However, the government also released a Notification where the CEO had to exercise the power of appointment in consultation with the advice of the Guardian Minister. The petitioners felt that this aspect of consultation would confer unbridled power in the hands of the Guardian Minister to appoint any person whom he/ she chooses and this would become an attempt by the ruling party to take complete control of the administration of the Panchayat. This would therefore impinge on the objective to have free, fair and impartial elections. The State Election Commission also supported the argument of the Petitioners and relied upon the decision of the Division Bench of the Bombay High Court in *State of Maharashtra v State Election Commission and Ors*²⁹ to substantiate that it would primarily be the domain of the Election Commission to appoint an administrator in the interregnum to enable impartiality in the election process.

The Court accepted the view of the Petitioners more so because the State Election Commission which was entrusted with safeguarding the freedom of the electoral process also opined that giving such powers to the Guardian Minister would harm the sanctity of the elections. Relying on the dictum of the Division Bench, the Court reckoned that the appointment of an administrator in the interregnum must also be done with the objective of ensuring free and fair elections. The Court also recognized that since the state had a high number of panchayats, it would be in the best interest of every Guardian Minister to capture control of these gram panchayats. Such a Guardian Minister also had a crucial role to play in the governance of each district and so, his advice cannot be given a go-by by the CEO of the gram panchayat. In a way, the advice of the Guardian Minister would put fetters on the CEO to appoint an

²⁸ 2021 (6) Mh LJ 232.

²⁹ 2006 (1) Mh LJ 131.

Administrator independently and would therefore influence the impartial nature of the electoral process. The pertinent observations of the Bench need to be noted which read thus:

*“42. The CEO is appointed by the State Government under Section 94 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. Considering the role and responsibility of the Guardian Minister for a particular district and his significance, being an integral part of the ruling dispensation, it is but obvious that the CEO will give utmost importance to the 'advice' of the Guardian Minister. Such advice which has the effect of partaking the character of an 'order' would defeat the constitutional scheme of free and fair elections. The entire object of appointing an independent administrator is to ensure impartiality in the election process. The CEO, though appointed by the State Government, is a statutory authority and is duty bound to discharge his duties in consonance with the provisions of the Zilla Parishad Act and the rules framed thereunder and the GRs issued from time to time. The object of setting up of the Election Commission is to conduct free and fair elections ruling out any possibility of political interference in conduct of the elections. **It is therefore necessary that the CEO should have a free hand in the appointment of an administrator without a semblance of any political influence in the matter of appointment of an administrator.***

*43. We do not for a moment suggest that in every case the Guardian Minister would influence the decision of the CEO in the matter of appointment of an administrator. **Any possibility of appointing an administrator who is likely to act in furtherance of the political agenda and thereby aid the ruling dispensation to get an unfair advantage in the elections needs to be avoided. In order to ensure impartiality and fairness of the elections the possibility of political influence has to be ruled out.** It is for this reason that the CEO being a statutory authority be given a free hand in the matter of appointment of an administrator to ensure the sanctity and purity of the election process. In any case, the CEO is appointed by the State Government, if the power is delegated to him being a nominee of the State Government, then asdb-ldvc-188-2020.doc there was no requirement for incorporating a further condition of advise of the Guardian Minister. **It is therefore***

imperative that procedure envisaged by the GR of seeking advice of the Guardian Minister before appointing an administrator calls for interference."

(emphasis supplied)

The Bench therefore quashed the Notification of the State in so far as it directed the CEO to act upon the advise of the Guardian Minister³⁰. Such moves are testament to the party in power trying to use subversive tactics like government circulars and notifications to expand their reach over panchayat administration. Such moves certainly politicize neutral processes like the appointment of administrators to ensure that even in the intervening periods, the ruling party can take over the autonomy of the village panchayats and later use the term to capture power in the upcoming elections. Therefore, it is only up to vigilant citizens and the Courts to take due cognizance of such power-grabbing motives and ensure that administrative processes and legal loopholes are not exploited for political gains.

5. Suggestions and Recommendations to Mitigate Populist Behaviors in Maharashtra's Local Elections

1. The Maharashtra Municipal Corporations Act of 1949 should be amended to include provisions that penalize parties or candidates who delay elections or engage in populist tactics. Similarly, the Maharashtra Zilla Parishads and Panchayat Samitis Act of 1961 can be strengthened by adding clauses that ensure transparency and timely elections. To further regulate finances and political behaviour in local elections, the Representation of People's Act of 1950 should be extended to cover these elections. Additionally, incorporating Anti-Defection Laws at the local level would help prevent opportunistic post-election alliances, preserving voter trust and ensuring that the will of the people is upheld. Empower the State Election Commission (SEC): Enhance the autonomy of the SEC by granting it authority to impose sanctions for delays, monitor political discourse, and intervene in cases of non-compliance by political parties.

³⁰ <https://indianexpress.com/article/cities/mumbai/bombay-high-court-partially-sets-aside-2020-state-gr-appointing-gram-panchayat-administrators-7254887/>

2. To ensure the timely and efficient conduct of local elections, stringent timelines should be established and rigidly enforced. These timelines should clearly outline each stage of the electoral process, from the announcement of elections to the declaration of results. Penalties should be imposed on parties or candidates who attempt to delay the elections without legitimate justification, thereby safeguarding the integrity of the process and preventing manipulation. Introduce Neutral Governance Measures: Mandate impartiality in the appointment of election officials, minimizing their susceptibility to political influence. This can enhance the transparency and integrity of the elections.
3. To counter the influence of populist promises in local elections, enhancing voter education is crucial. By implementing robust awareness programs, citizens can be better informed about the importance of long-term, sustainable governance over short-term incentives. These programs should emphasize the significance of sustainable development, transparency, and accountability in leadership. By fostering a more informed electorate, voters can make more discerning choices, prioritizing substantive policies over temporary gains, ultimately leading to improved governance at the local level. : Regularly publish reports on election delays, participation, and outcomes. This data will enable oversight bodies and civil society to monitor trends and hold authorities accountable.
4. A robust policy framework for election financing should implement stringent regulations to mitigate the influence of monetary power and populist incentives. By imposing caps on campaign spending and mandating increased transparency in financial disclosures, these regulations can establish a more equitable playing field for all political parties. This ensures that elections are not unduly influenced by wealth or short-term handouts, fostering fairness and accountability. Ultimately, such measures would contribute to a more transparent, accountable, and equitable electoral process, reducing the detrimental effects of populism on local governance in Maharashtra.

6. Conclusion

The petition challenging the Punjab Panchayat elections was filed based on alleged irregularities in the nomination process. It sought to address concerns regarding the validity of candidates and the transparency of the electoral process³¹. Notably, around 1,000 pleas contesting these irregularities had already been dismissed by the Punjab and Haryana High Court, which had vacated its previous stay on the elections. This dismissal underscored the judiciary's preference for maintaining the electoral timetable over scrutinizing the nomination process at this late stage. The Supreme Court³², particularly Chief Justice D.Y. Chandrachud, expressed significant concerns regarding the potential chaos that could ensue if the elections were stayed after polling had commenced. He emphasized that interrupting the process at this point would lead to instability and undermine public trust in the electoral system. By stating, "Polling has opened, suppose we stay there will be chaos," the Chief Justice reaffirmed the judiciary's commitment to democratic principles. He highlighted the importance of uninterrupted elections, cautioning that allowing such stays could set a dangerous precedent, jeopardizing the conduct of future elections, including parliamentary ones. As the Supreme Court prepares to hear the challenge, the ongoing polling in Punjab remains unaffected, reflecting a commitment to uphold the integrity and continuity of the democratic process³³.

The politicization of panchayat elections in Maharashtra represents a significant threat to the integrity of local governance and democratic practices. The legal methods employed by political parties to delay elections, appoint incumbents as administrators, and manipulate legislative processes violate constitutional principles and foster an environment of inequality and mistrust among voters. Furthermore, the additional challenges posed by booth capturing, vote buying, and external lobbying exacerbate this crisis, reinforcing the need for systemic reforms. To counter these detrimental trends, policymakers and civil society organizations must collaborate in advocating for transparent electoral processes and safeguarding democratic values. By addressing these issues head-on, stakeholders can help ensure that

³¹ See Petition challenging Punjab Panchayat elections, Punjab and Haryana High Court, RAMANJEET KAUR V/S STATE OF PUNJAB AND ORS CWP-26439-2024 (O&M)

³² Supreme Court Hearing, D.Y. Chandrachud, C.J., RG kar Suo Motu case 15th oct 2024

³³ <https://www.livelaw.in/top-stories/wont-stay-punjab-panchayat-elections-says-supreme-court-while-agreeing-to-list-plea-challenging-polls-272453>

panchayat elections reflect the true will of the people, thereby strengthening the foundations of democracy in Maharashtra.