

State Election Commission's Autonomy: Andhra Pradesh Panchayat Elections

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As per Indian Constitution, the responsibility for establishment of local self-government institutions falls on the state governments (entry 5, List II, Seventh Schedule). However, experience has shown that not all state governments were serious about empowering Panchayati Raj institutions as elections were not being conducted regularly. The tussle between Andhra Pradesh government and the SEC is an opportunity to learn the issues involved with local self-government institutions.

In news: Andhra Gram Panchayat polls will be held as scheduled says State Election Commission

Placing it in syllabus: Indian Polity

Dimensions

- What is the controversy about?
- SEC: Composition, Appointment, Functions and Powers

Content

What is the controversy about?

Conduct of the rural local bodies' elections has emerged as a major bone of contention between the Andhra Pradesh government and the **State Election Commissioner Nimmagadda Ramesh Kumar**.

These elections were originally **supposed to have been held in 2018** when the tenure of the local bodies expired back then **but were not held**.

Chief Minister Jaganmohan Reddy **accused the SEC of acting at**

the behest of opposition leader N Chandrababu Naidu. He even tried to replace him, which backfired as the SEC has Constitutional protection equal to a Supreme Court judge.

Timeline of the controversy:

- 08-Jan-2021: The Andhra Pradesh SEC announced the schedule for conduct of elections to gram panchayats in four phases beginning February 5.
- 11-Jan-2021: The state government challenged the SEC's announcement and Justice M Ganga Rao of the High Court, on January 11, suspended the poll schedule.
- 21-Jan-2021: The Andhra Pradesh High Court allowed the conduct of elections to gram panchayats in four phases from February 5.
- The Andhra Pradesh government challenged the High Court's judgement through a special leave petition in the Supreme Court.
- 23-Jan-2021: SEC issued the notification for conduct of elections to gram panchayats. The first phase of elections will be held on February 5.

Court intervention in SEC working

- **Courts cannot interfere** in the conduct of polls to local bodies and self-government institutions **once the electoral process has been set in motion.**
- The Constitution bars interference in poll matters set in motion by the SECs (**Article 243-0 and 243-ZG**)
- The SECs' decisions or conduct **can be questioned only after the polls are over** through an **election petition** .
- These powers enjoyed by the SECs are the same as those by the Election Commission.

State government's objections to SEC:

- The state government has been raising objections regarding local body elections including gram panchayat polls.

- The government, in its petition before the Supreme Court, accused the SEC of **not taking it into confidence** while taking the major decision of deferring the polls and called the move **anti- constitutional**.
- The government has said that the **officials** would be **engaged in the vaccination programme** and the conduct of **elections would not be possible**.
- it amounts to risking employees' lives amid the coronavirus pandemic to go to elections at a time when the Covid vaccination drive was being held
- The petition pointed out that the current SEC has two more months left in the office and was adamant to conduct polls during his tenure at any cost, disregarding public health.

Objections from State Government Employees:

- The **Federation of State Government Employees** is opposed to holding elections during a pandemic.
- Leaders of the employees' associations made it clear that they will not discharge election duties till they are administered Covid vaccine.
- They accuse the SEC of going ahead with conduct of elections unilaterally **without having any concern towards the lives** of employees and people.
- They also **threatened to boycott the election duties if** necessary and will not hesitate to go on a flash strike.
- As per the employee organisation there is no emergency now. In the past also, panchayat elections were postponed for minor reasons.
- The SEC may conduct elections with those willing to discharge their duties, the federation added.

Administrative shortcomings in the AP's panchayat election are:

- **No election notification has been issued** at the district level, marking commencement of the election process

- **No arrangements have been made in the districts to receive papers** from the aspiring candidates. District panchayat officials said they are yet to get directions from the State government to make arrangements for receiving the nominations.
- Although the State Election Commission has issued the notification for the panchayat elections, **district officials are still waiting for the State government's instructions.**
- The **final voters' list has not prepared and no budget has been released** so far for conducting elections in each district.
- The SEC has a **shortage of funds and staff.** It does not have a secretary, joint secretary, joint director and legal advisor

In 2006, in **Kishan Singh Tomar vs Municipal Corporation of the City of Ahmedabad**, the Supreme Court directed that **state governments should abide by orders of the SECs** during the conduct of the panchayat and municipal elections, **just like they follow the instructions of the Election Commission** during Assembly and Parliament polls.

SEC's views on the election

- Prior to issuing the notification, State Election Commissioner Ramesh Kumar **expressed dissatisfaction over the functioning of Panchayat Raj higher officials.**
- The Panchayat Raj Commissioner has the responsibility to coordinate the affairs related to elections. However, they have not updated the electoral lists.
- SEC said that they are forced to go with the 2019 voter list as there is no other option. This has resulted in depriving 3.6 lakh newly enrolled voters from exercising their franchise.
- The SEC said **it was the responsibility of the state government to ensure that the elections were conducted in a smooth manner.** Ultimately the government will have to face the consequences if anything doesn't go well.

SEC: Composition, Appointment, Function and Power:

- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats (**Article 243K**) and municipalities (**Article 243ZA**) shall be vested in the state election commission.
- The State Election Commission consists of a **single state election commissioner**
- He is to be **appointed by the governor.**
- His **conditions of service and tenure** of office shall also be **determined by the governor.**
- He shall not be removed from the office except in the **manner and on the grounds** prescribed for the **removal of a judge of the state high court.**
- His **conditions of service shall not be varied to his disadvantage** after his appointment.
- As per articles 243K(3) and 243ZA(3), the Governor, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the SEC

Removal of SECA judge of a high court can be removed from his office by the president on the recommendation of the Parliament. This means that a **state election commissioner cannot be removed by the governor**, though appointed by him.

Mould your thought: What are the powers available to the State Election Commission with respect to conduct of elections to local self governing institutions? Do you think the State Election Commissions in India as independent as the Election Commission of India?

Approach to the answer:

- Introduction
- Write about the powers of SEC in Panchayat and Municipality elections
- Compare the powers of Election Commission of India and

SEC

- Observations of Supreme Court about the independence of SEC
- Conclusion