



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

**S.B. Civil Writ Petition No. 1693/2020**

Virender Singh S/o Shri Rajender Singh, Aged About 51 Years,  
R/o Village Mokalsar, Panchayat Samiti Siwana, District Barmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of  
Panchayat Raj., Jaipur.

2. Sub Division Officer, Siwana, District Barmer.

3. Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Chief Election Commissioner.

4. District Election Officer, Barmer (Raj.)

----Respondents

Connected With

**S.B. Civil Writ Petition No. 1390/2020**

Vijay Singh S/o Late Shri Satyapal, Aged About 58 Years, By  
Caste Jat, Resident Of Vpo Rangmahal, Tehsil Suratgarh District  
Sri Ganganagar.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of  
Rural Development And Panchayati Raj, Government Of  
Rajasthan, Secretariat, Jaipur.

2. Addl. Chief Secretary, Department Of Rural Development  
And Panchayati Raj, Government Of Rajasthan,  
Secretariat, Jaipur.

3. The State Election Commission Rajasthan, Jaipur Through  
Chief Election, Sri Ganganagar.

4. District Collector, Sri Ganganagar.

5. Sub Divisional Officer, Suratgarh District Sri Ganganagar.

----Respondents

**S.B. Civil Writ Petition No. 1479/2020**

1. Deen Dayal S/o Shri Nathmal, Aged About 57 Years, B/c  
Pareek, R/o 11, Gindad Chouk, Budhawali, Tehsil  
Ratangarh, District Churu, Rajasthan

2. Tiju Kanwar, Aged About 40 Years, B/c Rajput, R/o 132,





Meghaval Basti, Sehla, Tehsil Ratangarh, District Churu,  
Rajasthan.

----Petitioners

Versus

1. The Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Its Chief Election Commissioner.
2. The District Election Officer, Churu, Rajasthan.

----Respondents

**S.B. Civil Writ Petition No. 1694/2020**

Varju W/o Shri Pola Ram Meghwal, Aged About 50 Years, R/o  
Khakharla, Panchayat Samiti Siwana, District Barmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of  
Panchayat Raj., Jaipur.
2. Sub Division Officer, Siwana, District Barmer.
3. Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Chief Election Commissioner.
4. District Election Officer, Barmer, (Raj.).

----Respondents

**S.B. Civil Writ Petition No. 1696/2020**

1. Bal Kisan S/o Shri Ghewar Ram, Aged About 29 Years,  
R/o Village Mavdi, Panchayat Samiti Siwana District  
Barmer.
2. Farukh S/o Shri Deen Mohammad, Aged About 30 Years,  
R/o House No. 151, Nalapar, Village Mavdi, Panchayat  
Samiti Siwana, District Barmer.

----Petitioners

Versus

1. State Of Rajasthan, Through Secretary, Department Of  
Panchayat Raj., Jaipur.
2. Sub Division Officer, Siwana, District Barmer.
3. Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Chief Election Commissioner.
4. District Election Officer, Barmer (Raj.)

----Respondents





**S.B. Civil Writ Petition No. 1756/2020**

Ashok Kumar S/o Shri Bhura Ram, Aged About 53 Years, R/o Meghwalo Ki Dhani, Hansadesh, Panchayat Samiti Lohawat, District Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Panchayat Raj, Jaipur.

Sub Division Officer, Lohawat, District Jodhpur.

Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.

4. District Election Officer, Jodhpur (Raj.).

----Respondents



**S.B. Civil Writ Petition No. 1759/2020**

Sunil S/o Shri Swaroop Lal, Aged About 35 Years, B/c Paliwal, R/o 696-B, Indira Colony, Jaisalmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary Department Of Rural Development And Panchayat Raj, Government Of Rajasthan, Secretariat Jaipur.
2. The State Election Commissioner Rajasthan, Jaipur Through Chief Election Officer, Jaipur.
3. District Election Officer, Cum District Collector, Jaisalmer.
4. Sub-Divisional Officer, Tehsil Fatehgarh, District Jaisalmer.

----Respondents

**S.B. Civil Writ Petition No. 1836/2020**

Hawa Kanwar W/o Shri Gopal Singh, Aged About 34 Years, R/o Village Parevar, Jaisalmer, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Panchayat Raj, Jaipur, Rajasthan.
2. Sub Division Officer, Jaisalmer, District Jaisalmer, Rajasthan.
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.



4. District Election Officer, Jaisalmer, Rajasthan.

----Respondents

**S.B. Civil Writ Petition No. 1896/2020**

Chanan Singh S/o Shri Shiv Nath Singh, Aged About 50 Years,  
Resident Of Ward No. 7, Village Delasar, District Jaisalmer (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary To Panchayati  
Raj Department, Secretariat, Jaipur (Raj.).

The Sub Divisional Officer, Jaisalmer, District Jaisalmer  
(Raj.).

3. Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Chief Election Commissioner.

4. District Election Officer, Jaisalmer (Raj.).

----Respondents

**S.B. Civil Writ Petition No. 1915/2020**

1. Manju Kanwar W/o Shri Shankar Singh, Aged About 40  
Years, R/o Gram Panchayat Nua, Tehsil Ratangarh,  
District Churu, Rajasthan.

2. Guddu Kanwar W/o Shri Bhagirath Singh, Aged About 49  
Years, By Caste Rajput, R/o Ghumanda, Gram Panchayat  
Bachhrara Bada, Tehsil Ratangarh, District Churu,  
Rajasthan.

3. Babita Devi W/o Shri Arun Kumar, Aged About 32 Years,  
By Caste Brahmin, R/o Gram Panchayat Menasar, Tehsil  
Ratangarh, District Churu, Rajasthan.

4. Sarita Pareek W/o Shri Naresh Kumar, Aged About 36  
Years, By Caste Brahmin (Pareek), R/o Ward No. 10,  
Uttaradabas Gogasar, Tehsil Ratangarh, District Churu,  
Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through The Secretary, Rural  
Development And Panchayati Raj, Secretariat, Jaipur,  
Rajasthan.

2. The Election Commission Of Rajasthan, Secretariat, Jaipur  
Through Its Chief Election Commissioner.

3. The District Election Officer, Churu, Rajasthan.

----Respondents





### S.B. Civil Writ Petition No. 1929/2020

1. Vaja Ram S/o Shri Sagta Ram Choudhary, Aged About 68 Years, By Caste Choudhary, R/o Rajeshwarpura, Bichhawari, Sanchore, District Jalore, Rajasthan.
2. Kishan Kanwar W/o Shri Narayan Singh, Aged About 62 Years, By Caste Rajput, R/o Udusan, Post Bawarla, Tehsil Sanchore, District Jalore, Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through The Secretary, Rural Development And Panchayati Raj, Secretariat, Jaipur, Rajasthan.

2. The Election Commission Of Rajasthan, Secretariat, Jaipur Through Its Chief Election Commissioner.

3. The District Election Officer, Jalore, Rajasthan.

----Respondents

### S.B. Civil Writ Petition No. 1964/2020

1. Jainjir Singh S/o Shri Lun Singh, Aged About 40 Years, By Caste Rajput, Resident Of Nathato Ka Mohalla, Kawani, Panchayat Samiti And District Bikaner.
2. Bhanwar Singh S/o Shri Raghu Nath, Aged About 42 Years, Resident Of Village Kilchu, Panchayat Samiti And District Bikaner.

----Petitioners

Versus

1. The State Election Commission, Government Of Rajasthan, Jaipur Through Its Commissioner.
2. State Of Rajasthan, Through Secretary Department Of Panchayati Raj And Urban Development, Government Of Rajasthan, Jaipur.
3. District Collector Cum District Election Officer, Bikaner.
4. Sub Divisional Magistrate, Bikaner, District Bikaner.

----Respondents

### S.B. Civil Writ Petition No. 2013/2020

Surendra Singh S/o Shri Ramkumar Singh, Aged About 50 Years, R/o Mikhala, Changoi, Panchayat Samiti Taranagar, District Churu (Raj.).

----Petitioner





Versus

1. State Of Rajasthan, Through Secretary, Department Of Panchayat Raj., Jaipur.
2. Sub Division Officer, Taranagar, District Churu.
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.
4. District Election Officer, Churu (Raj.).

-----Respondents

**S.B. Civil Writ Petition No. 2021/2020**

Rajni Sharma W/o Shri Subhash Chandar Sharma, Aged About 30 Years R/o Ward No. 07, Mohalla Brahmano Ka Dadrewa, Panchayat Samiti Rajgarh, District Churu (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Panchayat Raj., Jaipur.
2. Sub Division Officer, Taranagar, District Churu.
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.
4. District Election Officer, Churu (Raj.).

-----Respondents

**S.B. Civil Writ Petition No. 2022/2020**

Subhash Chandra S/o Shri Teja Ram, Aged About 32 Years, R/o Punasa, Panchayat Samiti Bhinmal, District Jalore (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Panchayat Raj., Jaipur.
2. Sub Division Officer, Bhinmal, District Jalore.
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.
4. District Election Officer, Jalore (Raj.).

-----Respondents

**S.B. Civil Writ Petition No. 2030/2020**

Narendra Vyas S/o Mohan Lal Vyas, Aged About 45 Years, Bain, Panchayat Samiti Taranagar, District Churu (Raj.).





----Petitioner

Versus

1. State Of Raj., Through The Secretary, Department Of Panchayati Raj., Jaipur.
2. Sub Division Officer, Taranagar, District Churu.
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner.
4. District Election Officer, Churu (Raj.)

----Respondents

**S.B. Civil Writ Petition No. 2356/2020**

Munni Kanwar W/o Shri Mahendar Singh Rathore, Aged About 54 Years, R/o Vpo Bhaleri, Tehsil Taranagar, District Churu, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through District Collector Churu, District Churu, Rajasthan.
2. The Election Commission Of Rajasthan, Secretariat, Jaipur Through Its Chief Election Commissioner.
3. The District Election Officer, Churu, Rajasthan.
4. Sub Divisional Officer, Taranagar, District Churu, Rajasthan.

----Respondents

**S.B. Civil Writ Petition No. 2476/2020**

Shere Kanwar W/o Shri Mishri Singh, Aged About 48 Years, Resident Of Village Sodhakaur, District Jaisalmer (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary To Panchayati Raj Department, Secretariat, Jaipur (Raj.).
2. The Sub Divisional Officer, Jaisalmer, District Jaisalmer (Raj.)
3. Election Commission Of Rajasthan, Secretariat, Jaipur Through Chief Election Commissioner
4. District Election Officer, Jaisalmer (Raj.)

----Respondents





For Petitioner(s) : Mr. Moti Singh.  
 Mr. Manish Patel.  
 Mr. R.S.Choudhary.  
 Mr. Jogendra Singh.  
 Mr. Manas Khatri.  
 Mr. Sumer Singh Rathore.  
 Mr. Sajjan Singh Rathore.  
 Mr. H.R.Bishnoi.  
 Mr. B.R.Chahar.  
 Mr. Rajendra Singh.

For Respondent(s) : Mr. Sunil Beniwal, AAG.  
 Mr. Vikas Balia.



**HON'BLE MR. JUSTICE ARUN BHANSALI**  
Order

These writ petitions have been filed by the petitioners aggrieved against the order dated 9.1.2020 issued by the Election Commission of Rajasthan, order dated 24.1.2020 issued by the Additional Chief Secretary, Rural Development and Panchayati Raj Department and consequential action by the respondents in redrawing the lottery and determination of reservation for holding elections to the Panchayati Raj Institutions. Further direction has been sought to the Election Commission to conduct the elections as per the programme issued by it on 26/12/2019.

The facts, though relate to a short span of time, however, are chequered. The Government of Rajasthan issued a notification for delimitation of panchayat circles on 12/6/2019 and revised guidelines were issued on 19/6/2019. Pursuant thereto, a notification dated 15/11/2019 was issued reconstituting the Gram Panchayats while exercising power under Section 101 of the Rajasthan Panchayati Raj Act, 1994 ('the Act, 1994'). Pursuant thereto, the exercise as envisaged under Rule 4 of the Rajasthan



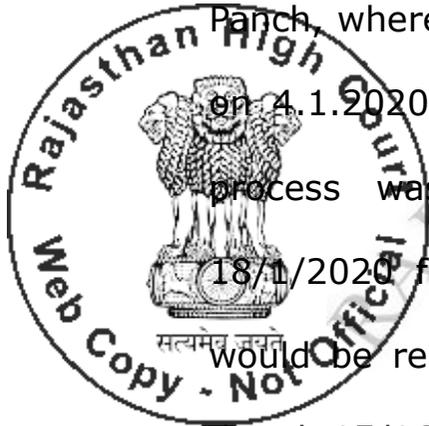
Panchayati Raj (Election) Rules, 1994 ('the Rules, 1994') was undertaken, which was followed by the exercise pertaining to reservation of seats for Schedule Castes/Schedule Tribe and Other Backward Classes and Women under Rules 5 and 6 of the Rules, 1994. The Election Commission issued notification dated 26/12/2019 declaring the programme of election of Sarpanch and

Panch, whereby, the elections were to be held in three phases and on 4.1.2020 programme was issued for 4<sup>th</sup> phase. The election process was to be initiated on 7/1/2020, 11/1/2020 and 18/1/2020 for first three phases, respectively. At this stage, it

would be relevant to notice that after publication of notification dated 15/16.11.2019 under Section 101 of the Act, 1994, as noticed hereinbefore, further notifications were issued exercising power under Section 101 of the Act on 23.11.2019, 1/2.12.2019 and 12.12.2019. The entire delimitation exercise came to be challenged by filing various writ petitions and by judgment led by *Jai Singh vs. State of Rajasthan & Ors. : D.B.Civil Writ Petition No. 17993/2019* decided on 13/12/2019, the Division Bench quashed and set aside the notifications issued subsequent to the notification dated 15/16.11.2019 except for the notifications which were purely rectifying the typographical errors.

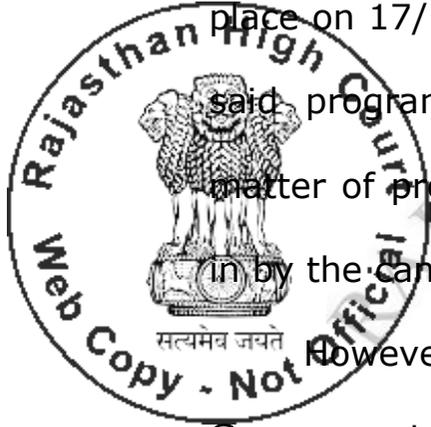
Apparently, the exercise was undertaken by the State for drawing lottery for reservation, in terms of the status based on the judgment in the case of *Jai Singh* (supra) i.e. delimitation of constituencies based on notification dated 15/16.11.2019 only.

Qua the first phase of elections, public notice under Rule 23 read with Rule 56 of the Rules, 1994 was issued on 7/1/2020 providing that nomination forms could be presented on 8/1/2020





between 10.30 am to 4.30 pm, the nomination forms were to be scrutinized on 9/1/2020 from 10.30 am and the last date for withdrawal of the nomination was 9/1/2020 upto 3.00 pm. The allotment of election symbols and list of contesting candidates was to be issued on 9/1/2020 immediately at the end of time for withdrawal of nomination and polling, if required, was to take place on 17/1/2020 between 8.00 am to 5.00 pm. Pursuant to the said programme, in all the constituencies, which are subject matter of present writ petitions, the nomination forms were filled in by the candidates on 8/1/2020.



However, in a Special Leave Petition filed by the State Government against the judgment in the case of Jai Singh (supra), the Hon'ble Supreme Court on 8/1/2020 stayed the operation of judgment dated 13/12/2019. The Election Commission in midst of election process, on 9/1/2020 noticing the fact of grant of interim order by Hon'ble Supreme Court directed that only in Panchayat Samities indicated in Schedule 'A' the elections be held as per the scheduled programme and for rest of the Panchayat Samities, it was directed that the nomination forms etc. be placed in a sealed cover, the scheduled 4<sup>th</sup> phase of election was stayed, meaning thereby, qua Panchayat Samities which were not indicated in the Schedule 'A', the election process was stayed/suspended.

Subsequent thereto, the Hon'ble Supreme Court in the pending SLP by its order dated 24/1/2020 impleaded Election Commission as party respondent to the petition, noticed the contentions of counsel appearing for the State Election Commission that the elections will be held in accordance with the notifications dated 15/16.11.2019, 23.11.2019, 1/2.12.2019 and

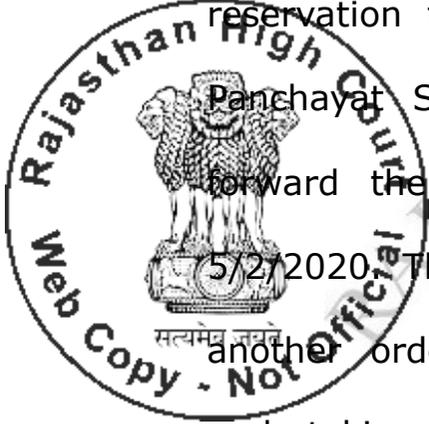


12.12.2019 and that the elections will be held according to law in the second half of April, 2020, ordered accordingly.

The same resulted in the State passing an order dated 24.1.2020 noticing the order passed on the same date by Hon'ble Supreme Court and directed the District Collectors and SDOs to take steps for redrawing the lottery for determination of reservation for the post of Ward Panch, Sarpanch, Member - Panchayat Samiti, Member - Zila Parishad and Pradhan and forward the same to the State Election Commission before 5/2/2020. The said order passed by the State was followed by another order dated 27/1/2020 issuing further directions for undertaking the reservation process. The Election Commission also issued communication to the Addl. Chief Secretary on 31/1/2020 with reference to the order dated 24/1/2020 passed by the Hon'ble Supreme Court and orders dated 24/1/2020 and 27/1/2020 issued by the State to do the needful and supply information by 6/2/2020.

The action of the respondents Election Commission and the State in issuing order dated 9/1/2020 and 24/1/2020 staying further election process and requiring redraw of lottery for reservation as per the provisions of Rules 5 & 6 of the Rules, 1994 led to filing of petitions being S.B.Civil Writ Petition Nos. 1390/2020 and 1479/2020 by the candidates who were contesting the elections in first phase and the election process was stayed questioning the validity of order dated 9/1/2020 and 24/1/2020.

By order dated 30/1/2020 passed by this Court, it was directed that if lotteries are drawn by the respondent pursuant to the order dated 24/1/2020, the same shall remain subject to the





final outcome of the writ petitions and shall not be given effect without prior permission of the Court. The order dated 30/1/2020 was reiterated on 3/2/2020 and further direction was given to the State to examine the action of drawing of the lotteries with respect to its desirability/necessity in the petitions where challenge was laid.

Replies to the writ petitions were filed and on 4/2/2020 in the pending SLP the Hon'ble Supreme Court noticing the contention of learned counsel for the Election Commission that the elections will be held as per the order dated 24/1/2020 in accordance with law, confirmed the interim orders dated 8/1/2020 and 24/1/2020 and disposed of the SLP in terms of the said order.

The redrawing of lottery pursuant to the orders dated 24/1/2020 issued by the State, resulted in earlier position getting changed, whereby, the wards which were either unreserved and/or were reserved for certain other categories, got reserved for some different category, which resulted in filing of the rest of the petitions challenging the action of the respondents in relation to the draw of lottery besides the basic challenge qua the orders dated 9/1/2020 and 24/1/2020 issued by the Election Commission and the State, respectively.

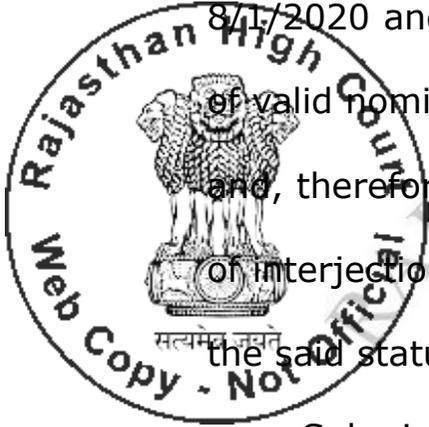
It is *inter alia* submitted by learned counsel for the petitioners with vehemence that the action of the Election Commission in issuing the order dated 9/1/2020 ordering for stay of further process that also at a stage where the nomination forms had already been filled up, scrutiny had taken place and even the symbols were allotted, is wholly without jurisdiction inasmuch as





once the process was started the Election Commission has no power to stop/postpone the election process.

Submissions were made that in S.B.Civil Writ Petition No. 1694/2020 filed by Smt. Varju, a situation has arisen where for Gram Panchayat, Khakharlai, the post of Sarpanch was reserved for SC Women, the petitioner filed her nomination form on 8/1/2020 and on 9/1/2020 the Returning Officer published the list of valid nomination, wherein, the petitioner was the only candidate and, therefore, she stood elected unopposed, however, on account of interjection of the Election Commission, she is being deprived of the said status.



Submissions were made that merely because the interim order was granted by Hon'ble Supreme Court on 8/1/2020 in the case of Jai Singh (supra), the same could not have been used by the Election Commission in passing the order in midst of the election process and, therefore, the action is wholly illegal.

Further submissions were made that the Election Commission only deferred the process by its communication dated 9/1/2020, whereby, it was directed that the nomination forms be placed in sealed covers and, therefore, the action of the State on 24/1/2020 to order for redrawing of the lottery was *ex-facie* incorrect and was essentially overreaching the election process.

Submissions were made that once the lotteries had already been drawn, election process having been commenced and same having not been quashed/cancelled by the State Election Commission, there was no occasion for the State to issue order for redrawing of the lotteries and, therefore, the action of the State in



this regard is *ex facie* illegal and deserves to be quashed and set aside.

With reference to the provisions of the Act and the Rules, it was submitted that the Election Commission and the State are bound to act only in terms of the said provisions and have no power beyond the said provisions and under the relevant provision there is no provision to de-notify the election and/or stay the same during the process, as the said power is confined only under Rule 48 of the Rules, 1994, which circumstance does not exist in the present case and, therefore, the action of the respondents in this regard deserves to be quashed and set aside.



In the petitions, which have been filed challenging the redrawing of lottery and/or the result of redraw of the lottery, submissions have been made that there was no necessity to redraw the lottery and the action in this regard cannot be sustained.

Submissions were made that reservation is provided and is to be undertaken in terms of Section 16 of the Act and Rule 7 of the Rules, which have been violated and, therefore, action of the respondents in this regard cannot be sustained. It was alleged that the action of redrawing the lottery was left to the mercy of respective SDOs, who have acted in a most arbitrary, discriminatory and malafide manner in applying the process of redraw of lottery.

Submissions were made that pick and chose policy in this regard was adopted and, therefore, the action of the respondents in this regard deserves to be quashed and set aside.



It was submitted that in S.B.Civil Writ Petition No. 1756/2020 filed by Ashok Kumar, with reference to Annex.10, that though for Panchayat Samiti, Dechu directions were to draw lottery for the post of Sarpanch and for Panchayat Samiti, Lohawat it was directed that same be drawn for the Ward Panch, factually the same was done vice versa, which clearly reflects the arbitrariness on the part of respondents.

In few petitions with reference to certain stray examples, submissions were made that either redraw of lottery was not required and/or the same was not drawn appropriately.

Reliance was placed on the judgments in *West Bengal Election Commission vs. Communist Party (Marxist)* : AIR 2018 SC 3964, *Sudhir Laxman Hendre vs. Shripat Amrit Dange & Ors.* : AIR 1960 Bombay 249, *Udai Khanderao Pawar & Anr. Vs. State Election Commission* : Writ Petition No. 5386/2006 decided by Bombay High Court on 3/10/2006, *Ramesh Dutta vs. State Election Commission* : WP (C) No. 1331/2007 decided on 6/3/2007 by Delhi High Court.

Learned counsel for the respondent Election Commission made submissions seeking to justify its action in staying the election process qua the Panchayat Samities, which were affected by the interim order granted by Hon'ble Supreme Court. Submissions were made that the election process pursuant to the notification dated 26/12/2019 was being conducted based on the resultant position after the Division Bench judgment in the case of Jai Singh (supra) dated 13/12/2019 and once the said order was stayed by Hon'ble Supreme Court on 8/1/2020, in the Panchayat Samities, which were affected by the notifications issued



subsequent to 15/16.11.2019, to hold elections as per the provisions of the Act and Rules in the changed circumstances, it was necessary to postpone/defer the election process. It was submitted that in all 1119 Gram Panchayats from out of phase one were affected on account of delimitation subsequent to the notification dated 15/16.11.2019 and, therefore, the Election Commission had no option but to defer the elections.

Further submissions were made that the powers of Election Commission under Article 324 are plenary in nature inasmuch as it has to act as per the circumstances, which present themselves and as on account of passing of the judgment in the case of Jai Singh (supra) and its subsequent stay by Hon'ble Supreme Court, it was thought appropriate and necessary by the Election Commission, for conducting free and fair elections in accordance with the provisions of the Act and Rules, to defer the same, which action is not open to challenge and/or cannot be questioned as illegal and/or arbitrary.

Further submissions were made that though the order dated 24/1/2020 issued by the State after the order passed by the Hon'ble Supreme Court was issued without consultation/concurrence of the Election Commission, the same is also justified inasmuch as the said exercise of redraw of lottery would clarify the position in relation to Gram Panchayats, which would be affected by the redraw of lottery so as to save the process which is already undertaken qua the unaffected Gram Panchayats. It was submitted that though on account of the interim order granted by this Court, no further action has been taken, however, as per the data supplied, out of 1119 Gram Panchayats, where the further





process was deferred, after redraw of lottery, 741 Gram Pachayats are unaffected and 378 Gram Panchayats are affected, based on which, the required steps have been taken for finalization of the voter list etc.

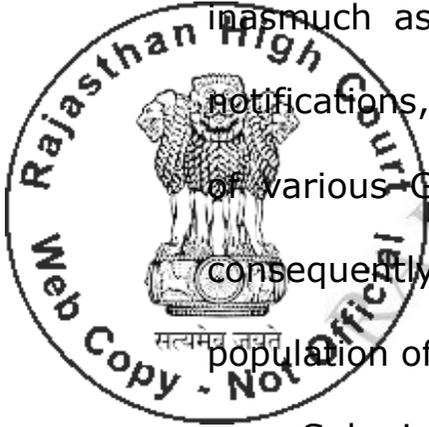
It was submitted that the plea regarding initiation of process for redrawing of lottery without there being any order to cancel the ongoing process being illegal has no basis, it was submitted that the exercise was permitted to be undertaken to ensure that the entire exercise is not redone in case of Gram Panchayats which remain unchanged/unaffected by delimitation pursuant to the notifications issued after 15/16.11.2019. It was submitted that the challenge laid to the action of the Election Commission and the drawing of lottery pursuant to the order dated 24/1/2020 without cancelling the ongoing process has no substance and the petitions deserve to be dismissed.

Qua the case of Smt. Varju (C.W.No.1694/2020) it was submitted that though the petitioner was the only candidate, who had filed her nomination form and her nomination form was found valid, the same does not create any right in her favour inasmuch as no declaration had taken place pertaining to her election. It was submitted that merely because the petitioner, in case the process had proceeded further, would have been declared elected unopposed cannot be a reason to question the action of the Election Commission, which was not targeted at an individual case/petitioner.

Reliance has been placed on *Election Commission of India vs. State of Haryana : AIR 1984 SC 1406* and *Man Singh vs. State of Rajasthan & Ors.: 1995 (2) WLC 17*.



Learned counsel for the State made submissions that once the election process came to be deferred by the Election Commission and the Hon'ble Supreme Court by its order dated 24/1/2020 permitted holding of elections in accordance with the notification dated 15/16.11.2019 and also subsequent notifications, the draw of lottery was a natural consequence inasmuch as if the elections were to be held based on all the notifications, the same would result in variations of the boundaries of various Gram Panchayats and formation of fresh wards and consequently change in status of reservation on account of population of SC/ST electoral, which was inevitable.



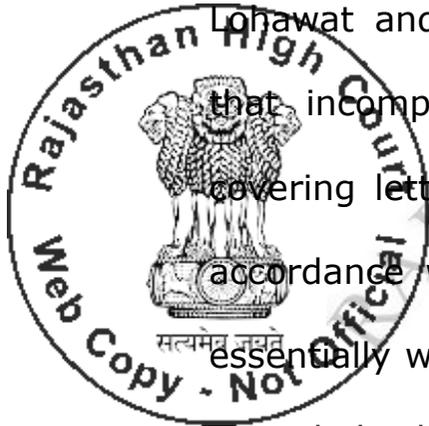
Submissions were made that in each and every case, draw of lottery has been in accordance with the provisions of Section 16 of the Act and Rule 7 of the Rules and the entire challenge laid by the petitioners in this regard has no substance.

Learned counsel painstakingly and meticulously took the Court through all the cases where redetermination took place and pointed out that on account of change in population of SC electors in the concerned Gram Panchayat, based on subsequent notifications and applying the provisions of Rule 7 of the Rules, resulted in requirement of redraw of lottery, which was accordingly done and no fault can be found in this regard. Even in cases where specific objections were raised, the same have been addressed by way of response given in all the petitions essentially pointing out the same single thread i.e. change happening on account of the population of SC electors in particular Gram Panchayat which got reserved for SC candidates and requiring redraw of lottery. It was submitted that only on account of interjection by the Division



Bench and the subsequent orders of Hon'ble Supreme Court resulted in the exercise being undertaken and the entire exercise has been done keeping in view the provisions of Act and Rules and as such no fault can be found in the said exercise.

In relation to specific objection raised in the case of Ashok Kumar (S.B.C.W.No. 1756/2020) in relation to Panchayat Samiti, Lohawat and Panchayat Samiti, Dechu, submissions were made that incomplete documents have been placed on record, the covering letter thereof gives the discretion to the SDO to act in accordance with the provisions of Act and Rules and the chart essentially was for guidance and, therefore, the plea raised in this regard also has no substance.



It was prayed that the petitions have no substance, the same deserves to be dismissed.

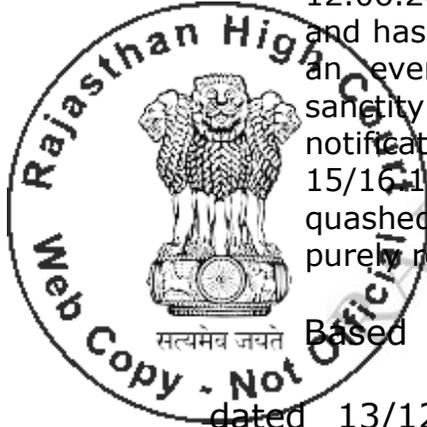
I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The facts are not in dispute, wherein, pursuant to the provisions of the Act, delimitation exercise was completed by the State on 15/16.11.2019 and by way of subsequent notifications issued on 23.11.2019, 1/2.12.2019 and 12/12/2019. However, the notifications issued subsequent to 15/16/.11.2019 were quashed by the Division Bench in the case of Jai Singh (supra), the Division Bench *inter alia* directed as under:-

"71. In view of the aforesaid observations, while dismissing all the issues pertaining to non-consideration of representations/non-consideration of recommendations/changes made in recommendations/changes made by the Sub Committee/changes not considered by the Sub Committee/not considered in the proposals/not considered by the District Collectors are held to be not maintainable, as this Court draws a strict line while adhering to the precedent laws of State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra) and Bhupendra Pratap Singh Rathore



Vs. State of Rajasthan &Ors. (supra). This Court is conscious that it cannot cross the golden line, which reflects the mandate of the Constitution of India itself, as laid down under Article 243-O. Thus, the petitions are dismissed as far as the pre-proceedings to the notification dated 15/16.11.2019 are concerned. However, at the same time, this Court is of the considered opinion that such golden line prescribed by the Constitution of India read with Section 101 of the Act of 1994 cannot be crossed by the State as it will amount to abuse of process of law, as the delimitation exercise cannot be an ever continuing exercise, and the same has to be completed in one procedure, spanning between the initial notice which in this case was dated 12.06.2019 to the final notification which was 15/16.11.2019 and has to be brought to an end then and there. It cannot be an ever continuing exercise, as it shall jeopardize the sanctity of the mandate of the Constitution, and thus, all the notifications subsequent to the notification dated 15/16.11.2019, pertaining to the issue in question, stand quashed and set aside, except for the notifications which are purely rectifying the typographical errors."



Based on the status, which emerged after the judgment dated 13/12/2019, the election process was started by the Election Commission by issuing notification dated 26/12/2019 providing for elections in three phases, whereafter, on 4/1/2020 fourth phase of election was announced. The first phase started on 8/1/2020 for 4563 Gram Panchayats, which included 1119 Gram Panchayats, which ultimately came to be affected.

The order dated 13/12/2019 passed by the Division Bench in the case of Jai Singh (supra) was challenged by the State by filing Special Leave Petition, wherein, the following order was passed on 8/1/2020:

"Permission to file SLPs is granted.  
Issue notice.

Until further orders, the operation of the impugned judgment and final order dated 13.12.2019 passed by the High Court of Judicature, Rajasthan at Jodhpur shall remain stayed."

A perusal of the order would indicate that the operation of the judgment dated 13/12/2019 was stayed, resulting in the notifications issued subsequent to the 15/16.11.2019, apparently,



putting the status of quashed notifications in medio. Once the Election Commission was faced with such a situation and apparently the prospect of the entire election process getting vitiated in case ultimately the judgment dated 13/12/2019 was not sustained, deferred the first phase of elections qua the affected 1119 Gram Panchayats.

The action of the Election Commission, in the circumstances of the case, which apparently were extraordinary, cannot be said to be arbitrary and/or illegal inasmuch as the said action did not occur on account of any decision taken by the Election Commission, which it could have contemplated earlier and as the prospect of the elections in large number of Gram Panchayats getting vitiated and a wholly unforeseen circumstance of process having been completed and, thereafter, the foundational notification pertaining to delimitation getting effected and vitiating the elections, the action of deferring the election was apparently a prudent decision, which could have been taken by the Election Commission, as has been proved by way of subsequent orders passed by the Hon'ble Supreme Court.

The Hon'ble Supreme Court on 24/1/2020 directed as under:

"For the reasons, interlocutory application for impleadment being I.A.No.12824 of 2020, is allowed and the applicant is impleaded as party respondent.

We have heard learned Senior Counsel appearing for the parties and perused the interlocutory application being I.A. No. 10689 of 2020, for directions filed by the petitioners-State.

Mr. K.V.Vishwanathan, learned Senior Counsel appearing for the newly added respondent -State Election Commission, states that the elections will be in accordance with the notifications dated 15/16.11.2019, 23.11.2019, 01/02.12.2019 and 12.12.2019. He further states that the elections will be held according to law in the second half of April, 2020.

Order accordingly."



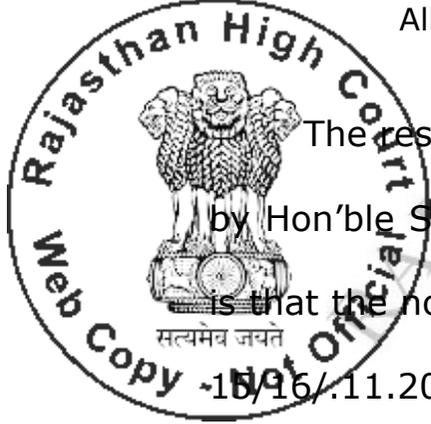
The order dated 24/1/2020 was followed by order dated 4/2/2020, wherein, while disposing of the Special Leave Petition, it was further directed as under:

“Learned counsel for the Election Commission reiterates that the elections will be held as per order dated 24.01.2020 in accordance with law.

Interim orders dated 08.01.2020 and 24.01.2020 are hereby confirmed.

The special leave petition is disposed of in terms of the above order.

All applications stand disposed of accordingly.”



The resultant position which emerged from the orders passed by Hon'ble Supreme Court on 8/1/2020, 24/1/2020 and 4/2/2020 is that the notifications issued subsequent to the notification dated 15/16/11.2019, which were quashed by the Division Bench in the case of Jai Singh (supra) stood restructured and as the Hon'ble Supreme Court ordered for holding elections in accordance with the notifications, in case the exercise had not been deferred pursuant to the order dated 8/1/2019 passed by the Hon'ble Supreme Court, the same would have resulted in complication of unimaginable proportions, whereby, the candidates who would have got elected, if the election process was to run its full length, their elections would have stood vitiated for lack of holding the elections based on incomplete delimitation.

The action of the Election Commission is not being examined based on the events subsequent to passing of the order i.e. in retrospect/by hindsight only as even on 9/1/2020 in view of interim order passed by the Hon'ble Supreme Court there was enough justification for the Election Commission in staying the further process qua the affected Gram Panchayats.



So far as the judgments cited by learned counsel for the petitioners are concerned, in the case of West Bengal Election Commission (supra), when the interference was made by the Calcutta High Court after the large number of candidates were elected unopposed, at the instance of the State Election Commission, it was held by Supreme Court that the process once completed could only be quashed as per the procedure. However, the judgment did not deal with the powers of Election Commission to take appropriate measures based on the extra ordinary situation, which was presented in the present case.



The reliance placed on the judgment in the case of Sudhir Laxman Hendre (supra) of Bombay High Court pertained to ordering for a re-poll at a polling station laying down that the powers of the Election Commission are confined to what has been provided under the Act and the Rules, which apparently has no application to the facts of the present cases, as the situation created out of the orders passed by the courts, reaction thereto/action pursuant to the said orders, cannot be provided by a statute, as such the judgment has no application.

The Hon'ble Supreme Court in the case of Election Commission of India (supra) cited by learned counsel for the Election Commission dealt with the powers of the Election Commission under Article 324 and *inter alia* laid down as under:

"We must add that it would be open to the Chief Election Commissioner, as held in Mohd. Yunus v. Shiv Kumar Shastri, (1974) 3 SCR 738, 743-744. (AIR 1974 SC 1218 at pp.1221-1222) to review his decision as to the expediency of holding the poll on the notified date. In fact, not only would it be open to him to reconsider his decision to hold the poll as notified, it is plainly his duty and obligation to keep the situation under constant scrutiny so as to adjust the decision to the realities of the situation. All the facts and circumstances, past and present, which bear upon the



question of the advisability of holding the poll on the notified date have to be taken into account and kept under vigil. That is a continuing process which can only cease after the poll is held. Until then, the Election Commission has the focus, for good reasons, to alter its decision. The law and order situation in the State, or in any part of it, or in a neighbouring State, is a consideration of vital importance for deciding the question of expediency or possibility of holding an election at any particular point of time. We are confident that the Chief Election Commissioner, who is vested with important duties and obligations by the Constitution, will discharge those duties and obligations with a high sense of responsibility, worthy of the high office which he holds. If he considers it necessary, he should hold further discussions with the Chief Election Officer of Haryana and consult, once again, leaders of the various political parties on the question whether it is feasible to hold the poll on the due date. One as important issue such as the holding of an election, which is of great and immediate concern of the entire political community, there can be no question of any public official standing on prestige, an apprehension which was faintly projected in the State's arguments. A sense of realism, objectivity and nonalignment must inform the decision of the Election Commission on that issue."

(Emphasis supplied)



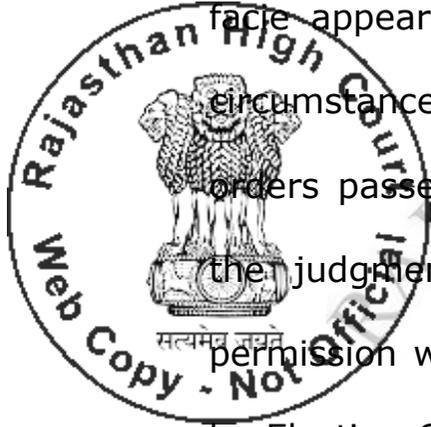
The principles laid down in the above decision, squarely govern the cases in hand, wherein, the Election Commission has been held to have power to adjust the decision to the realities of the situation in relation to holding of the polls. In view thereof, insofar as the decision of Election Commission in deferring the poll/further process qua the 1119 Gram Panchayats is concerned, the same cannot be faulted.

The subsequent decision of the State dated 24/1/2020 ordering for redraw of lottery qua the affected Gram Panchayats was also forced on account of interim order granted by Hon'ble Supreme Court on 8/1/2020 and order dated 24/1/2020. The action of the Election Commission in deferring the election on 9/1/2020 and the order dated 24/1/2020 passed by the Hon'ble Supreme Court (supra) permitting/ordering the Election Commission to hold elections in accordance with the notification



dated 15/16.11.2019 and all subsequent notifications, which action also cannot be faulted.

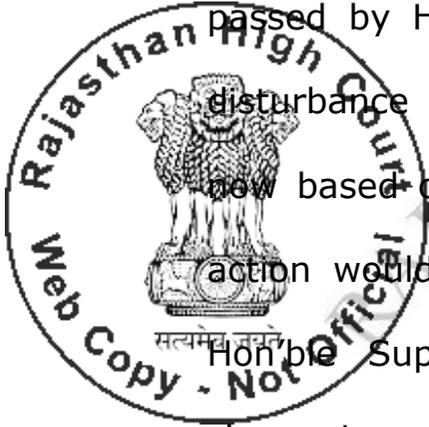
So far as the plea regarding illegality of the action on account of the fact that as already the process pursuant to the notification issued by the Election Commission dated 26/12/2019 was on, the exercise could not have been undertaken, may prima facie appears to have substance, in view of the extra ordinary circumstances which have been presented on account of various orders passed by Hon'ble Supreme Court, whereby, operation of the judgment dated 13/12/2019 was stayed and, thereafter, permission was granted/order was passed on a submission made by Election Commission that it would conduct the elections based on the notification dated 15/16.11.2019 and all subsequent notification, the entire paradigm changed. With the passing of the said order dated 24/1/2020 essentially the clock was put back/status quo ante restored by Hon'ble Supreme Court to a situation prior to the date when the lotteries were drawn based on the delimitation, which was available on account of passing of the order dated 13/12/2019 by the Division Bench in the case of Jai Singh (supra). As status quo ante stood restored from before the draw of lotteries, the natural consequence thereof was to restart the process from the said stage based on the delimitation taking into consideration all the notifications and in those circumstances, it cannot be said that as the process pursuant to the notification dated 26/12/2019 had not been cancelled by the Election Commission the lotteries could not have been drawn has any substance.





The submissions made on behalf of the Election Commission that it did not cancel the election process pursuant to passing of the order dated 24/1/2020 by Hon'ble Supreme Court as from the result of redrawing the lotteries it wanted to determine as to how many Gram Panchayats would be affected by the exercise/redraw of the lottery based on the notifications pursuant to the orders passed by Hon'ble Supreme Court so as to cause minimum of disturbance in this regard/save time and expense involved and now based on the result which has been received, the requisite action would be taken to implement the orders passed by the Hon'ble Supreme court also appears to be justified in the circumstances which have been presented and the fact that now ultimately it is found that out of 1119 Gram Panchayats about 378 Gram Panchayats only would be affected, post facto action/inaction on part of the Election Commission in not cancelling the elections also appears to be justified and cannot be faulted.

Coming to the various challenges laid in the petitions to drawing of lottery/their justification on the grounds raised in the petition, the common thread by which the same have been dealt with by the State by filing reply in most of the matters is that the percentage of population of SC/ST in various Gram Panchayats got affected on account of notification issued subsequent to 15/16.11.2019, which resulted in variation in Gram Panchayat reserved for SC and the Gram Panchayat which was earlier reserved, getting dereserved and available for further reservation under the category pertaining to OBC and/or General (Women) it





was necessary to undertake exercise for redrawing the lotteries for all the Gram Panchayats.

The actuated action of the State is apparently in consonance with the provisions of Section 16 of the Act, 1994, which provides for reservation of the office of Chairpersons and Rule 7 of the Rules, 1994, which provides for procedure for reservation. The respondents have filed replies in most of the petitions, indicating the reasons for change and/or the requirement to redraw the lottery and has also produced a case wise synopsis for perusal of the Court, which material clearly indicates that the respondents have followed the statutory provisions while redrawing the lotteries.



Learned counsel for the petitioners though made attempts to question the validity, have failed to point out any perversity in the said decisions.

The specific plea raised pertaining to Panchayat Samiti, Lohawat and Panchayat Samiti, Dechu by learned counsel for the petitioner in the case of Ashok Kumar (C.W.No. 1756/2020) is also apparently baseless inasmuch as guidance was given by the State and it was left to the SDO to take the final decision with regard to redraw of the lottery and, therefore, it cannot be said that any pick and chose policy was adopted and/or the provisions were violated.

Coming to the case of Smt. Varju (C.W.No.1694/2020), wherein, it is claimed based on the provision of Rule 29 of the Rules, 1994 that on completion of scrutiny of nomination form and once it was found that the petitioner was the only candidate and her nomination was found to be valid, the consequence was that



she stood declared unopposed and, therefore, subsequent action of redrawing of lottery cannot be sustained, apparently has no substance in view of provisions of Rule 29 (2) of the Rules, 1994, which *inter alia* reads as under:

"Rule 29. Subsequent procedure to be observed by Returning Officer.-

(1) .....

(2) If there is only one candidate in a ward and his nomination has been accepted the Returning Officer shall declare him to be duly elected."

(emphasis supplied)

The provision of Rule 29(2) above requires a declaration from the Returning Officer about the candidate having been duly elected and the mere fact that she was the only candidate in the ward and her nomination has been accepted by the Returning Officer is not sufficient for her to claim herself as elected. Admittedly, no declaration has been issued and as the Election Commission had already ordered for stay of further process, no declaration could have been granted by the Returning Officer and in those circumstances as the process stood deferred prior to declaration having been given to the petitioner, nothing turn on the fact of her being the only candidate with valid nomination and her case would also be governed by the situation which emerged on account of passing of various orders by Hon'ble Supreme Court.

In view of the above discussion, it is apparent that after the notifications issued subsequent to 15/16.11.2019 were quashed by the Division Bench in the case of Jai Singh (supra), the process was started by the State and Election Commission for holding elections for Panchayat Raj Institution, however, on account of interim orders dated 8/1/2020 and 24/1/2020 and final order



dated 4/2/2020, the Election Commission issued order dated 9/1/2020, the State issued orders on 24/1/2020 & 27/1/2020, whereafter, the Election Commission issued order dated 31/1/2020 and the State undertook the exercise of redraw of lotteries, the same on account of extra ordinary circumstances presented, as noticed and discussed hereinbefore, cannot be faulted. The challenge laid to the drawing of lotteries also, for lack of any credible challenge and/or discrepancy having been brought before the Court and the appropriate response having been given by the State also apparently has no substance.

In view of the above discussion, the order passed by the State Election Commission dated 9/1/2020 and order passed by the State dated 24/1/2020 and subsequent orders thereto do no call for any interference. The individual challenges laid to the draw of lotteries also, for lack of any substance are rejected. Consequently, the writ petitions are dismissed. Stay applications also stand disposed of.

No order as to costs.

**(ARUN BHANSALI),J**

baweja/-

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