Supreme Court Order on State Election Commissioners

Why in news?

- The Supreme Court (SC) recently ruled that the State Election Commissioners (SECs) across the country should be completely independent.
- They should not be persons holding office with the central government or a state government.

What is the case about?

- The observation came in a case relating to the municipal elections in Goa.
- The Goa government had moved the Supreme Court against a ruling of the High Court of Bombay at Goa.
- The HC had quashed an order of the Goa government.
- The order determined the reservation of seats in wards of five of the 11 municipal councils that were set to go to polls.
- The High Court ruling had come on a clutch of petitions filed by Goan residents.
- They had urged the court to set aside an earlier order of the Director of Municipal Administration.
- The petitioners alleged that, in the order, wards were arbitrarily reserved.
- Also, constitutional provisions mandating 33% seats for women and rotation of seats reserved for SC/ST candidates were not followed.
- The HC was of the opinion that the course adopted by the state government violates the constitutional mandate of law in reserving one-third seats for women in all local body polls.
- The High Court directed the Director, Municipal Administration to carry out the reservation of the wards afresh “rectifying gross illegalities”.
- It was also asked to issue a fresh election schedule.
- The state government had contended that the courts cannot interfere in the election schedule since they were imminent.
- But the Supreme Court has upheld the ruling of the High Court.

What did the Supreme Court rule?

- The SC directed the Goa government to redo the exercise of delimitation and reservation of municipal wards for women and SC/ST candidates in five municipal councils that were set to go to polls in a week.

- The Court also directed the State to appoint an independent SEC.
- The government is now in the process of doing.
- The Court has also asked all SECs who are under the direct control of the respective State governments to step down from their posts.
- It has done this by invoking its extraordinary power under Article 142 of the Constitution.
- The Court has boosted the power of the SEC by holding that it is open to the SECs to revoke any violations of the law made by the State government in the course of preparing for local body polls.

What were SC's observations on State Election Commissioners?

- The SEC (State Election Commissioner) in Goa was the state Law Secretary.
- Noting this, the apex Court described it as the "most disturbing feature of the case".
- The court noted that the Law Secretary, an IAS officer, was appointed SEC by the Goa Governor in November, 2020, handing him an additional duty.
- In this regard, the Court said the following:
    - The SEC is an important constitutional functionary who is to oversee the entire election process in the state for panchayats and municipalities.
    - The SEC thus has to be a person who is independent of the State Government.

What makes the ruling significant?

- More than a quarter century has elapsed since the Constitution was amended to make urban and rural local bodies a self-contained third tier of governance.
- But it is evident that there is inadequate devolution of powers to them.
- Their relative lack of autonomy is a key factor.
- On a different note, a key concern is the manner in which their representatives are elected.
- Notably, it is often beset by controversies.
- Local polls are often marred by violence, and charges of arbitrary delimitation and reservation of wards.
- A key factor in any local body polls being conducted in a free and fair manner is the extent to which the SEC is independent and autonomous.
- Unfortunately, most regimes in the States appoint senior bureaucrats from among their favourites to this office.
- So, in practice, SECs frequently face charges of being partisan.
- Routine exercises such as delimiting wards, rotating the wards reserved for women and SCs and fixing election dates become mired in controversy.
- This cannot be generalised in respect of all States and all those manning the

position.
- However, it is undeniable that SECs do not seem to enjoy the confidence of political parties and the public.
- Seen in this context, the Supreme Court’s recent ruling has significantly boosted the independence of SECs in holding local body elections.

Source: The Indian Express, The Hindu

