LANDMARK JUDGEMENTS

On Panchayat and Municipal Elections

State Election Commission Haryana

NIRVACHAN SADAN, Sector-17, PANCHKULA

Website : secharyana.gov.in

LANDMARK JUDGEMENTS

On Elections to Municipalities and Panchayats in Haryana

From 2000-2017

A compilation of reported Judgements of the Honourable High Court of Haryana and Supreme Court of India relating to Election to Local Authorities in the State of Haryana

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PREFACE

It gives me immense pleasure in presenting the compilation of 'Landmark Judgements on Elections to Local Authorities in Haryana'. These judgements interpreting the Constitutional and Statutory provisions shall not go unnoticed. The cases compiled herein are the pick of the cases relating to and in connection with election decided by Hon'ble Supreme Court of India and Punjab and Haryana High Court. These Judgements vouchsafe the Constitutional obligation of the State Election Commission towards the conduct of free and fair election and how the Commission managed the large amount of issues, concerns and litigations.

I hope this compilation would be useful for lawyers, Judges, academicians, student of law, politicians, bureaucrats and everyone interested in the field of election law and parliamentary studies.

I am grateful to Sh.P.K.Sharma, Secretary, Sh.Anil Aggrawal, District Attorney and Sh.Parmal Singh, Asstt. State Election Commissioner and Sh.Vijay Kumar Bansal, Superintendent alongwith Staff of the Commission who have contributed in various ways to this publication.

Dr.Dalip Singh, IAS (Retd.)
State Election Commissioner, Haryana

Panchkula
May, 2018

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1

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Words & Phrase – election called into question word "election" and the expression "called into question" used in Art. 243ZG(b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e calling in question the election, would have to be made by way of election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Art. 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition. However, the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question as election. A petition seeking an expeditious conclusion of an

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Words and Phrases - "Community of property" and "communiao dos bens" marriage between the appellant and Respondent 4 is governed by the system "communiao dos bens" i.e community of property. Accordingly, on marriage, the property of the spouses gets merged. Each spouse, by operation of law, unless contracted otherwise, becomes 50% shareholder in all their properties, present and future and each spouse is entitled to a one-half income of the other spouse.

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(2015) 3 Supreme Court Cases 467 : 2015 SCC Online SC 102

In the Supreme Court of India

(BEFORE DIPAK MISRA AND PRAFULLA C.PANT,JJ.)

KRISHNAMOORTHY … Appellant;

Versus

SIVAKUMAR AND OTHERS .. Respondents.

Civil Appeals No. 1478 of 2015 [±], decided on February 5, 2015

A. Election – Corrupt Practices/Electoral Offences – Undue influence – Non disclosure of criminal antecedents of candidate in entirety and in full detail, held, amounts to corrupt practice of undue influence and election of candidate must be set aside on such ground.

-- Act of candidate calculated to interfere with "free exercise of any electoral right" of voters – Words "direct or indirect" interference used in S.123(2) RP Act, 1951 but not used in S. 171 – C IPC, held, are significant and to be kept in mind while appreciating expression "undue influence" in S.123(2) RP Act, 1951, which is to be applied bearing in mind the factual context.

-- Non-disclosure of criminal antecedents of candidates in entirely and in full detail, especially pertaining to serious crimes or those relating to corruption or moral turpitude, as mandated by S. 33-A RP Act, 1951 and Rules, creates impediment in free exercise of electoral rights, hence constitutes corrupt practice of undue influence – Thus, as the candidate has the special knowledge of the pending cases where congnizance has been taken or charges have been framed and there is a non-disclosure on his part of the offences in entirety and in full detail, it would amount to the corrupt practice of undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under S. 100(1)(b) of the 1951 Act once such non-disclosure is established – The question whether such non-disclosure materially affects the election or not will not arise in a case of this nature.

-- Criminalisation of politics being anathema to sanctity of democracy, voters have fundamental right to know in entirety and in full detail, the antecedents of candidates and concealment, suppression or misinformation about their criminal antecedents deprives voters of making informed choice of candidate which eventually promotes criminalisation of politics.

-- Hence, even though appellant had disclosed one criminal case pending against him, he had not disclosed the details of 8 other cases also

pending against him – Hence, his election was rightly declared to be null and void.

-- Representation of the People Act, 1951 – Ss. 33-A, 123(2), 100(1)(b) & (d)(ii), 169 and 125-A – Conduct of Elections Rules, 1961 – R.4-A Form 26 – T.N. Panchayats Act, 1994 (21 to 1994) – Ss. 259(1)(b) and 260(2) – Penal Code, 1860 – S.171-C—Compared with S.123(2) of RP Act, 1951 – Constitution of India – Art. 19 (1)(a) – Voters' right to know about antecedents of candidates.

B. Election – Corrupt Practices/Electoral Offences – Undue influence – Non-disclosure of criminal antecedents by returned candidate – Illiteracy or lack of educational attainment of candidate as ground for failure to disclose clearly and completely all the criminal antecedents/cases, not acceptable – Representation of the People Act, 1951, Ss. 33-A 123(2) and 100.

C. Election – Corrupt Practices/Electoral Offences – Undue influence – Non-disclosure of criminal antecedents by returned candidate, once established, held amounts to corrupt practice and S.100(1)(b) of RP Act will apply and election of such candidate has to be declared null and void by the Election Tribunal – No other condition is attached to it – Question whether the non-disclosure materially affects the election or not will not arise in a case of this nature – Hence, such non-disclosure being established on part of appellant returned candidate, election of appellant was rightly declared void by Tribunal and High Court in present case.

D. Election – Corrupt Practices/Electoral Offences – Undue influence – Concept – Explained in detail – Manner of interpretation of concept – Concept on undue influence applies at pre-voting stage as well as at time of casting vote – However, undue influence applies at pre-voting stage as well as at time of casting vote – However, undue influence should be differentiated from proper influence and therefore, legitimate canvassing such as by Minister or issue of whip in form of request, permissible – Interpretation has to be in light of progression of election law, contemporaneous situation, prevalent scenario and statutory content – Representation of the People Act, 1951 – Ss. 123(2) and 100 – words and Phrases – "Undue influence direct or indirect", "direct", "indirect".

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F. Election – Election Petition/Trial -- Contents/Material facts/Full particulars – Implicit pleading/particulars – Material particulars – Ground of corrupt practice not expressly made – Inconsequential if same is implicitly clear.

G. Election – Eligibility/Qualification/Disqualification/recall/Removal of Candidate – Disqualification and corrupt practice – Distinguished.

H. Rule of Law – Mightiest sovereign in a civilised society – Constitution of India – Generally.

The appellant, who was the President of a Cooperative society, on allegation of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in Crime No.10 of 2001. During investigation, the police found certain other facts and eventually placed eight different charge-sheets, being CCs Nos. 3, 4, 5, 6, 7, 8, 9, and 10 of 2004 before the Judicial Magistrate and the Magistrate took cognizance where after charges were framed in all the right cases for the offences under Sections 120-B 406, 408 and 477-A IPC.

Subsequently, the appellant filed nomination papers for election of President of Panchayat in the State of Tamil Nadu. Tamil Nadu State Election Commission (TNSEC) had issued a Notification bearing S.O.No.43/2006. TNSEC/EG dated 01.09.2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories referred to in para 5 of the preamble to the Notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which charges have been framed or congnizance taken by a court of law.

Accordingly, the appellant filed a declaration and the affidavit but only mentioning Crime No.10 of 2001 but without mentioning the details of the charge-sheets filed against him which were pending trial.

In the election the appellant was elected as President of the Panchayat. The respondent filed an election petition challenging the validity of the election on the sole ground that the appellant had filed a false declaration suppressing the details of the criminal cases pending trial against him which constituted the corrupt practice of undue influence under Section 260 of the Tamil Nadu Panchayats Act, 1994 and that therefore, his election deserved to be declared null and void. Section 260 of the T.N. Act had adopted similar expressions as have been used under Section 123(2) of the Representation of the People Act, 1951.

The Election Tribunal (Principal District Judge) held that the nomination papers of the appellant deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election null and void and ordered re-election for the post of President of the Panchayat. In revision, the High Court opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall with the meaning of "undue influence" and consequently "corrupt practice" under Section 259(1)(b) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion of the tribunal though for a different reason.

Dismissing the present appeal with costs assessed at Rs.50,000, the Supreme Court.

Held:

In a respectable and elevated constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance if independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested.

The crucial recongnised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass root level as well as at the higher levels there is a feeling that "monstrosity" is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values to tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict – "The law", the mightiest sovereign in a civilised society.

In constitutional democracy, criminalisation of politics is absolutely unacceptable. The criminalisation creates a concavity in the heard of democracy and has the potentially to paralyse, comatose and strangulate the purity of the system. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate.

S.Raghbir Singh Gill v.s. Gurcharan Singh Tohra, 1980 Supp SCC 53; S.S Bola v.B.D.Sardana, (1997) 8 SCC 522; State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1 : 2005 SCC (L&S) 642; Reliance Natural Resources Ltd. V. Reliance Industries Ltd., (2010) 7 SCC 1; Ram Jethmalani v. Union of India, (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310; State of Maharashtra v. Saeed Sohail Sheikh, (2012) 13 SCC 1992 : (2012) 4 SCC (Cri) 240; Dinesh Trivedi v. Union of India, (1997) 4 SCC 306; Anukul Chandra Pradhan v. Union of Indi, (1997) 6 SCC 1; Manoj Narula v. Union of India (2014) 9 SCC 1; Niranjan Hemchndra Sashittal v. State of Maharashtra, (2013) 4 SCC 642; (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187; Subramanian Swamy v. CBI (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36, followed.

Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; T.N. Seshan v. Union of India (1995) 4 SCC 611; Kuldip Nayar v. Union of India, (2006) 7 SCC 1, referred to

The right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. The ground of “undue influence” is a part of corrupt practices under Section 123 of the RP Act, 1951. Section 123(2) RP Act, 1951 deals with “undue influence” which is a facet of corrupt practice. The two provisos added to Section 123(2) do not take away the effect of the principal or main provision. Section 260(2) of the T.N. Panchayats Act, 1994 has adopted “undue influence” as defined in Section 123(2), RP Act. The concept of undue influence as is understood in the context of Section 123(2) of the 1951 Act has been adopted as it is a deemed conception for all purposes. While appreciating the expression “undue influence” in Section 123(2) of the RP Act, 1951, the structure of the provisions contained in Section 171-C IPC are to be kept in view. Section 123(2) of the 1951 Act defines “undue influence” more or less, in the same language as in Section 171-C IPC except the words “direct or indirect” which have been added into the nature of interference. Further, the principles pertaining to undue influence are required to be appreciated regard being had to be progression of the election law, the contemporaneous situation, the prevalent scenario and the statutory content.

Baburao Patel v. Zakir Hussain, AIR 1968 SC 904; Shiv Kirpal Singh v. V.V.Giri, (1970) 2 SCC 567; Javed v. State of Haryana, (2003) 8 SCC 369 : 2004 SCC (L&S) 561; Charan Lal Sahu v. Giani Zail Singh (1984) 1 SCC 390, relied on

R.B. Surendra Narayan Sinha v. Amulyadhone Roy, 1940 IC 30; Linge Gowda v. Shivananjappa, (1953) 6 ELR 288 (Tri), referred to

N.P. Ponnuswami v. Returning Officer, AIR 1952 SC 64; Jagan Nath v. Jaswant Singh, AIR 1954 SC 210 Jyoti Basu v. Debi Ghosal, (1982) 1 SCC 691, cited

The words “undue influence” in Section 123(2) of the RP Act, 1951 are not to be understood or conferred a meaning in the context of English statutes. The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has been contemplated in Section 123 (2) of the RP Act, 1951. The basic concept of “undue influence” relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence. Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. The words “direct or indirect” used in Section 123(2) of the RP Act have their significance and they are to be applied bearing in mind the factual context.

Ram Dial v. Sant Lal, AIR 1959 SC 855 : 1959 Supp (2) SCR 748; Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, (1976) 2 SCC 17; Aad Lal v. Kanshi Ram, (1980) 2 SCC 350; Om Parkash v. Union of India, (1970) 3 SCC 942; V.T. Khanzode v. RBI, (1982) 2 SCC 7 : 1982 SCC (L&S) 147; D.K.Trivedi & Sons v. State of Gujrat, 1986 Supp SCC 20; State of J&K v. Lakhwinder Kumar, (2013) 6 SCC 333 : 2013 2 SCC (L&S) 527 ; BSNL v. Telecom Regulatory Authority of India, (2014) 3 SCC 222, relied on Keshav Talpade v. Kind Emperor, (1943) 5 FCR, cited

The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote. The factum of non-disclosure of the requisite information as regards the criminal antecedents is a stage prior to voting.

The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. Freedom in the exercise of the judgement which engulfs a voter’s right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage. There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is

expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This filing the nomination form, if the requisite information relating the criminal antecedents is not disclosed, indubitably there is an attempt to suppress, effort to misguide and keep the people in dark.

Non-discharge of the offences creates an impediment in the free exercise of the electoral right. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate. Misinformation nullifies and countermands the very basis and foundation of voter's exercise of choice and that eventually promotes criminalization of politics by default and due to lack of information and awareness. The denial of information, a deliberate one, thus amounts to the corrupt practice of "undue influence" as defined under Section 123(2) of the RP Act, 1951.

Resurgence India v. Election Commission of India (2014) 14 SCC 189; People's Union for Civil Liberties v. Union of India (2013) 10 SCC 1: (2013) 4 SCC (Civ) 587: (2013) 3SCC (Cri) 769: (2014) 2 (1970) 2 SCC 567; Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh, (2001) 3 SCC 594; Hari Vishnu Kamath v. Admad Ishaque, AIR 1955 SC 233; Election Commission of India v. Shivaji, (1988) 1 SCC 277; V.S.Achuthanandan v. P.J. Francis, (1999) 3 SCC 737; S.P. Chengalvaraa Naidu v. Jagnanath, (1994) 1 SCC 1 relied on Shaligram Shrivastava v. Naresh Singh Patel, (2003) 2 SCC 176, referred to King Emperor v. Sibnath Banerji, (1944-45) 72 IA 241 : AIR 1945 PC 156, cited

Nanak Chand, Law and Practice of Elections and Election Petitions (1937 Edn.) p. 362; Nanak Chand, Law of Elections and Election Petitions (1950 Edn.) , p. 263 cited

However, "undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up, Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.

Mast Ram v. S.Iqbal Singh, (1955) 12 ELR 34 (Tri); Bachan Singh v. Prithvi Singh, (1975) 1 SCC 368,

The Supreme Court in several decisions had held that a voter has a fundamental right to know that the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents especially criminal antecedents of a candidate, which is a requisite for making an informed choice. Accordingly, Section 33-A (1) of the RP Act, 1951

requires a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent jurisdiction. The requirement under Section 33-A(2) of giving an affidavit sworn by the candidate is a prescribed from verifying the information specified in Section 33-A(1) has its own signification. Disclosure of criminal antecedents of a candidate, especially pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of the nomination paper as mandated by law is a categorical imperative. Thus, non-furnishing of the information as required under Section 33-A and the Rules while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to the corrupt practice of undue influence.

When an FIR is filed, a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offence are not disclosed in entirely, the electorate remains in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body. Thus, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non disclosure on his part. It would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100 (1) (b) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature.

Union of India v. Assn. for democratic Reforms, (2002) 5 SCC 294 ; People Union for Civil Liberties V. Union of India, (2003) 4 SCC 399, relied on

Vineet Narain v. Union of India, (1998) 1 SCC 226 : 1998 SCC (Cri) 307; Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651; Mohinder Singh Gill V. Chief Election Commr., (1978) 1 SCC 405; Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628; Common Cause v. Union of India, (1996) 2 SCC 752; P.V. Narasimha Rao v. State, (1998) 4 SCC 626: 1998 SCC (Cri), 1108 referred to

If the corrupt practice is proven on the foundation of Section 100 (1) (b) of the RP Act, 1951, the Election Tribunal/High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100 (1) (d) (ii) of the RP Act, 1951. This distinction between the two provisions is of immense of significance. If the corrupt practice, as envisaged under Section 100 (i) (b) of the RP Act 1951 is established, the election has to be declared void. No other condition is attached to it.

Samant N. Balkrishan v. George Fernandez, (1969) 3 SCC 238; Manohar Joshi v. Nitin Bhaurao Patil, (1996) 1 SCC 169, relied on

If a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and a corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how here has been non disclosure in the affidavit. One that is established, it would amount to corrupt practice. It has to be determined in an election petition by the Election Tribunal. If the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void.

Jeet Mohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386; M. Narayan Rao v. G. Venkata Reddy, (1977) 1 SCC 771, relied on

In the present case, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure of eight such cases on his part, it would amount to undue influence and, therefore, the election has to be declared null and void by the Election Tribunal under Section 100 (1) (b) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature.

There is no substance in the contention that there was no challenge on the ground of corrupt practice in the election petition, the election was sought to be assailed on may a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, it cannot be alleged that there were no material particulars and no ground for corrupt practice in the election petition. In a way it is there. Further, the submission that the appellant has passed only up to Class X and therefore, was not aware whether he had to give all the details i..e details as to all the 8 embezzlement cases as he was under the impression that all the cases were one case or off shoots of the main case, also deserves to be rejected.

Krishanmoorthy v. Sivakumar, 2009 SCC Online Mad 933: (2009) 5 MLJ 1255, affirmed Mahadeo v. Babu Udai Pratao Singh, AIR 1966 SC 824; Baburao Patel v. Zakir Hussain, AIR 1968 SC 904; Jeet Mohinder Singh v. Harminder Singh Jassi (1999) 9 SCC 386; Govind Singh v. Harchand Kaur, (2011) 2 SCC 621; Mangani Lal Mandal v. Bishnu Deo Bhandari, (2012) 3 SCC 314; Shambhu Prasad Sharma v. Charandas Mahant, (2012) 11 SCC 390 referred to Maninder Singh (Amicus Curiae), Additional Solicitor General, Subramonium Prasad, Additional Advocate General and Harish N. Salve (Amicus Curiae), Senior Advocate (V.Mohana, B.Balaji, R.Rakesh Sharma, Ms Meha Agarwal, R.Ananad Padmanabhan, J Amritha Sarayoo, Pramod Dayal, R.Nedumaran, P.Soma Sundaram and P.V.yogeswaran, Advocates) for the appearing parties.

Advocates who appeared in this case:

Dipak Misra, J.-

In a respectable and elevated constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested. The crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass-root level as well as at the higher levels there is a feeling that 'monstrosity' is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values of tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one, can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict - "The law', the mightiest sovereign in a civilised society.

2. The preclude, we are disposed to think, has become a necessity, as, in the case at hand, we are called upon to decide, what constitutes "undue influence" in the context of Section 260 of Tamil Nadu Panchayats Act, 1994 (for short 'the 1994 Act') which has adopted the similar expression as has been used under Section 123 (2) of the Representation of People's Act, 1951 (for brevity 'the 1951 Act') thereby making the delineation of great significance, for our interpretation of the aforesaid words shall be applicable to election law in all spheres.

3. The instant case is a case of non-disclosure of full particulars of criminal cases pending against a candidate, at the time of filing of nomination and its eventual impact when the election is challenged before the election tribunal. As the factual score is exposited the appellant was elected as the President of Thekampatti Panchayat, Mettupalayam Taluk, Coimbatore District in the State of Tamil Nadu in the elections held for the said purpose on 13.10.2006. The validity of the election was called in question on the sole ground that he had filed a false declaration suppressing the details of criminal cases pending trial against him and, therefore, his nomination deserved to be rejected by the Returning Officer before the District Court Coimbatore in Election O.P. No. 296 of 2006. As the factual matrix would unfurl that Tamil Nadu State Election Commission (TNSEC) had issued a Notification bearing S.O. No. 43/2006/TNSEC/EG dated 1.9.2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories

referred to in Para 5 of the Preamble to the Notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law. It was asserted in the petition that the appellant, who was the President of a cooperative society, on allegations of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in Crime No. 10 of 2001. During investigation, the police found certain other facets and eventually placed eight different charge-sheets, being CCs. Nos. 3, 4, 5, 6, 7, 8, 9 and 10 of 2004 before the Judicial Magistrate-IV, Coimbatore and the Magistrate had taken cognizance much before the election notification. Factum of taking cognizance and thereafter framing of charges in all the eight cases for the offences under Sections 120-B, 406, 408 and 477-A of the Indian Penal Code, 1860 ('IPC' for short) prior to the cut-off date are not in dispute. The appellant had filed a declaration and the affidavit only mentioning Crime No 10 of 2001 and did not mention the details of the charge-sheets filed against him which were pending trial. In this backdrop, the election petition was filed to declare his election as null and void on the ground that he could not have contested the election and, in any case, the election was unsustainable.

4. In the Election Petition, the petitioner mentioned all the eight case by way of a chart. It is as follows:

Sr.No.	**Crime No. 10/01. Section**	**CC No.**	**Complainant**	**Court**
1.	Under Sections 406 & 477-A IPC	3/2004	CCIW/CID	JM IV Coimbatore
2.	Under Section 120 –B r/w Sections 406 & 477-A IPC	6/2004	"	"
3.	Under Sections 408, 406 & 477-A IPC	6/2004	"	"
4.	"	6/2004	"	"
5.	"	7/2004	"	"
6.	Under Section 120 –B r/w Sections 408, 406 & 477-A IPC	8/2004	"	"
7.	"	9/2005	"	"
8.	"	10/2004	"	"

5. After asseverating certain other facts, it was pleaded that the 1st respondent had deliberately suppressed material facts which if declared would enable his nomination papers being rejected. That apart, emphasis was laid on the fact that

the elected candidate had not declared the particulars regarding the criminal cases pending against him.

6. In this backdrop, the election of the first respondent was sought to be declared to be invalid with certain other consequential reliefs. In the counter-statement filed by the elected candidate, a stand was put forth that the election petitioner though was present at the time of scrutiny of the nomination papers, had failed to raise any objection and, in any case, he had mentioned all the necessary details in the nomination papers perfectly. It was further set forth as follows:

> "All the averments stated in the 3rd para of the petition is false and hereby denied. The averment stated that 1st respondent had deliberately omitted to provide the details of charge sheets having been filed against him which have been on file in eight cases is false and hereby denied. It is humbly submitted that this respondent has clearly mentioned about the case pending in Cr. No. 10/2001 pending before the JM No. 4 at page No. 2 in details of candidate. Therefore the above said averments are false, misleading and unsustainable."

7. The Principal District Judge of Coimbatore, the Election Tribunal, adverted to the allegations, the ocular and the documentary evidence that have been brought on record and came to hold that nomination papers filed by the appellant, the first respondent to the Election Petition, deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election as null and void and ordered for re-election of the post of the President in question. The said order was challenged in revision before the High Court.

8. In revision, the High Court referred to the decisions in **Union of India Vs. Association for Democratic Reforms,[1] People's Union for Civil Liberties (PUCL) & Another V. Union of India and Another**[2], Notification issued by the Election Commission of India and the Notification of the State Election Commission, Sections 259 and 260 of the 1994 Act and adverted to the issues whether there was suppression by the elected candidate and in that context referred to the 'Form' to be filled up by a candidate as per the Notification dated 1.9.2006 and opined that an element of sanctity and solemnity is attached to the said declaration, by the very fact that it is required to be in the form of an affidavit sworn and attested in a particular manner. The High Court emphasised on the part of the verification containing the declaration that "nothing material has been concealed". On the aforesaid analysis, the High Court held that the elected candidate had not disclosed the full and complete information. Thereafter, the High Court referred to the authority in ***Association for Democratic Reforms*** (supra), incorporation of Sections 33A and 44A in the 1951 Act, Rule 4A of the Conduct of Election Rules, 1961 and Form 26 to the said Rules, Section 125A of the 1951 Act, the definition of 'Affidavit' as per Section 3(3) of the

General Clauses Act, 1897, the conceptual meaning of Oath, Section 8 of The Oaths Act, 1969 and scanned the anatomy of Sections 259 and 260 of the 1994 Act and the principles that have been set out in various decisions of this Court and opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of 'undue influence' and consequently 'corrupt practice' under Section 259(1)(b) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion of the tribunal though for a different reason.

9. We have heard Ms. V. Mohana, learned counsel for the appellant, Mr. Subramonium Prasad, learned AAG for the State Election Commission, Mr. R. Anand Padmanabhan, learned counsel for the respondent No.1 and Mr. R. Neduamaran, learned counsel for the respondent no.2. Regard being had to the impact it would have on the principle relating to corrupt practice in all election matters as interpretation of the words 'undue influence' due to non-disclosure of criminal antecedents leading to "corrupt practice" under the 1951, Act, we also sought assistance of Mr. Harish N. Salve, learned senior counsel and Mr. Maninder Singh, learned Additional Solicitor General for Union of India.

10. First, we intend, as indicated earlier, to address the issue whether non-disclosure of criminal antecedents would tantamount to undue influence, which is a facet of corrupt practice as per Section 123(2) of the 1951 Act. After our advertence in that regard, we shall dwell upon the facts of the case as Ms. V. Mohana, learned counsel for the appellant has astutely highlighted certain aspects to demonstrate that there has been no suppression or non-disclosure and, therefore, the election could not have been declared null and void either by the Election Tribunal or by the High Court. Postponing the discussions on the said score, at this stage, we shall delve into the aspect of corrupt practice on the foundation of non- disclosure of criminal antecedents.

11. The issue of disclosure, declaration and filing of the affidavit in this regard has a history, albeit, a recent one. Therefore, one is bound to sit in a time-machine. In ***Association for Democratic Reforms*** (supra), the Court posed the following important question:-

> "...In a nation wedded to republican and democratic form of government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for governance of the country, whether, before casting votes, voters have a right to know relevant particulars of their candidates? Further connected question is - whether the High Court had jurisdiction to issue directions, as stated below, in a writ petition filed under Article 226 of the Constitution of India?"

12. To answer the said question, it referred to the authorities in ***Vineet Narain V. Union of India[3], Kihoto Hollohan V. Zachillhu***[4] and opined that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted; that one of the basic structures of our Constitution is "republican and democratic form of government and, therefore, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission; and the phrase "conduct of elections" is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections."

13. After so holding, the Court posed a question whether the Election Commission is empowered to issue directions. Be it noted, such a direction was ordered by the High Court of Delhi and in that context the Court relied upon ***Mohinder Singh Gill V. Chief Election Commissioner[5], Kanhiya Lal Omar V. R.K. Trivedi[6], Common Cause V. Union of India[7]*** and opined thus:

> "If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter - a little man - to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

14. In this regard, a reference was made to a passage from ***P.V. Narasimha Rao V. State (CBI/SPE)[8]***, jurisdiction of the Election Commission and ultimately the Court issued the following directions:

"The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

15. After the said decision was rendered, The Representation of the People (Amendment) Ordinance, 2002, 4 of 2002 was promulgated by the President of India on 24.8.2002 and the validity of the same was called in question under Article 32 of the Constitution of India. The three-Judge Bench in ***People's Union for Civil Liberties (PUCL)*** (supra) posed the following questions:-

"Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy - is it not required that a little voter should know the biodata of his/her would-be rulers, law-makers or destiny- makers of the nation?"

And thereafter,

"Is there any necessity of keeping in the dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape or has acquired the wealth by unjustified means? Maybe, that he is acquitted because the investigating officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them."

And again

"Is there any necessity of permitting candidates or their supporters to use unaccounted money during elections? It assets are declared, would it no amount to having some control on unaccounted elections expenditure?"

16. During the pendency of the judgment of the said case, the 1951 Act was amended introducing Section 33B. The Court reproduced Section 33-A and 33-B, which are as follows:-

"33-A. Right to information.-(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether-

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

33-B. Candidate to furnish information only under the Act and the rules.-

Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

17. Though various issues were raised in the said case, yet we are really to see what has been stated with regard to the disclosure, and the Ordinance issued after the judgment. **M.B. Shah, J.,** in his ultimate analysis held as follows:-

"What emerges from the above discussion can be summarised thus:

> (A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.
>
> It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.
>
> (B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish [pic]any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.
>
> The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.
>
> (C) The judgment rendered by this Court in Assn. for Democratic Reforms has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).
>
> (D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any

substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties.

However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

Being of this view, he declared Section 33-B as illegal, null and void.

18. **P. Venkatarama Reddi, J.** adverted to freedom of expression and right to information in the context of voters' right to know the details of contesting candidates and right of the media and others to enlighten the voter. As a principle, it was laid down by him that right to make a choice by means of a ballot is a part of freedom of expression. Some of the eventual conclusions recorded by him that are pertinent for our present purpose, are:-

"(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

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(3) The directives given by this Court in Union of India v. Assn. For Democratic Reforms were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure there from cannot be countenanced.

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5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure."

19. **Dharmadhikari, J.** in his supplementing opinion, observed thus:

"The reports of the advisory commissions set up one after the other by the Government to which a reference has been made by Brother Shah, J., highlight the present political scenario where money power and muscle power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money power and muscle power the commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the

> present legislation by amending some provisions of the Act here and there, but a much improved elections system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce - the citizen's fundamental "right to information" should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."

20. The purpose of referring to the aforesaid authorities in extenso is to focus how this Court has given emphasis on the rights of a voter to know about the antecedents of a candidate, especially, the criminal antecedents, contesting the election. With the efflux of time, the Court in subsequent decisions has further elaborated the right to know in the context of election, as holding a free and fair election stabilises the democratic process which leads to good governance. In this regard, reference to a recent three-Judge Bench decision in ***Resurgence India V. Election Commission of India & Anr.[9]*** is advantageously fruitful. A writ petition was filed under Article 32 of the Constitution of India to issue specific directions to effectuate the meaningful implementation of the judgments rendered by this Court in ***Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL)*** (supra) and also to direct the respondents therein to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. The Court referred to the background, relief sought and Section 33A, 36 and 125A of the 1951 Act. A reference was also made to the authority in ***Shaligram Shrivastava V. Naresh Singh Patel[10].*** Culling out the principle from the earlier precedents, the three-Judge Bench opined:

> "Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in the Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires".

The Court posed the question whether filing of affidavit stating that the information given in the affidavit is correct, but leaving the contents blank would fulfil the objectives behind filing the same, and answered the question in the negative on the reasoning that the ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India and the citizens are required to have the necessary information in order to make a choice of their voting and, therefore, when a candidate files an affidavit with blank particulars at the time of filing of the nomination paper, it renders the affidavit itself nugatory.

21. It is apt to note here that the Court referred to paragraph 73 of the judgment in ***People's Union for Civil Liberties (PUCL)*** (supra) case and elaborating further ruled thus:

"If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know' which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms (supra)."

22. The Court further held that filing of an affidavit with blank places will be directly hit by Section 125A(i) of the 1951 Act. Ultimately, the Court held:-

> "In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms (supra). Further, the subsequent act of prosecuting the candidate under Section 125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India."

23. The Court summarized its directions in the following manner :

> "(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.
>
> (ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the

citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of ***People's Union for Civil Liberties case (supra)*** will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her."

24. The fear to disclose details of pending cases has been haunting the people who fight the elections at all levels. Fear, compels a man to take the abysmal and unfathomable route; whereas courage, mother of all virtues, not only shatters fears, but atrophies all that come in its way without any justification and paralyses everything that does not deserve to have, locomotion. Democracy nurtures and dearly welcomes transparency. Many a cobweb is woven or endeavoured to be woven to keep at bay what sometimes becomes troublesome. Therefore, Rules 41(2) and (3) and 49-O of the Conduct of Election Rules, 1961 (for short, 'the Rules') came into force, to give some space to the candidates and deny the advantage to the voters. At that juncture, a writ petition under Article 32 of the Constitution of India was filed by the People's Union for Civil Liberties (PUCL)

and another, challenging the constitutional validity of the said Rules to the extent that the said provisions violate the secrecy of voting which is fundamental to free and fair elections and is required to be maintained as per Section 128 of the 1951 Act and Rules 39, 49-M of the Rules. Relevant parts of Rule 41 and Rule 49-O read as follows:

> **"41. Spoilt and returned ballot papers - (1).....**
>
> (2) If an elector after obtaining a ballot paper decides not to use it, he shall return it to the Presiding Officer, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked as 'Returned: cancelled' by the Presiding Officer.
>
> (3) All ballot papers cancelled under sub-rule (1) or sub-rule (2) shall be kept in a separate packet.
>
> xxx xxx xxx
>
> 49-O. Elector deciding not to vote - If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required under sub- rule (1) of Rule 49-L decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the Presiding Officer and the signature or thumb impression of the elector shall be obtained against such remark."

25. Testing the validity of the aforesaid Rules, a three-Judge Bench in ***People's Union for Civil Liberties and Another V. Union of India and Another[11]*** after dwelling upon many a facet opined thus:

> "Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the [pic]growth of a healthy democracy in the country.
>
> The "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound

candidate. This situation palpably tells us the dire need of negative voting."

26. Ultimately, the Court declared Rules 41(2) and (3) and Rule 49-O of the Rules as ultra vires the Section 128 of the 1951 Act and Article 19(1)(a) of the Constitution to the extent they violate the secrecy of voting and accordingly directed the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA).

27. The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents of a candidate a requisite for making informed choice. It has been held by **Shah, J. In People's Union of Civil Liberties** (supra) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution.

28. Speaking about the concept of voting, this Court in ***Lily Thomas V. Speaker of Lok Sabha[12]***, has ruled that:-

> ".....Voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question [and that] 'right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well'."

29. Emphasising on the choice in **People's Union for Civil Liberties (NOTA case),** the Court has expressed thus:-

> **"55.** Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalise themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfil one of its objective, namely, wide participation of people.
>
> **56.** Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to

cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons.

57. Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realise that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity.

58. The direction can also be supported by the fact that in the existing system a dissatisfied voter ordinarily does not turn up for voting which in [pic]turn provides a chance to unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one. Furthermore, a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them."

30. Having stated about the choice of a voter, as is requisite in the case at hand, we are required to dwell upon the failure to disclose the criminal cases pending against a candidate and its eventual impact; whether it would come within the concept of undue influence and thereby corrupt practice as per Section 123(2) of the 1951 Act. To appreciate the said facet, the sanctity of constitutional democracy and how it is dented by the criminalisation of politics are to be taken note of. The importance of constitutional democracy has been highlighted from various angles by this Court in ***S. Raghbir Singh Gill V. S. Gurcharan Singh Tohra[13], S.S. Bola V. B.D. Sardana[14], State of U.P. V. Jai Bir Singh[15], Reliance Natural Resources Ltd., V. Reliance Industries Ltd.[16], Ram Jethmalani V. Union of India[17] and State of Maharahtra V. Saeed Sohail Sheikh[18].***

31. In a constitutional democracy, we are disposed to think that any kind of criminalisation of politics is an extremely lamentable situation. It is an anathema to the sanctity of democracy. The criminalisation creates a concavity in the heart of democracy and has the potentiality to paralyse, comatose and strangulate the purity of the system. In ***Dinesh Trivedi V. Union of India[19],*** a three-Judge Bench while dealing with the cause for the malaise which seems to have stricken

Indian democracy in particular and Indian society in general, one of the primary reasons was identified as criminalisation of politics. The ourt referred to the report of Vohra Committee and observed thus:

> "...In the main report, these various reports have been analysed and it is noted that the growth and spread of crime syndicates in Indian society has been pervasive. It is further observed that these criminal elements have developed an extensive network of contacts with bureaucrats, government functionaries at lower levels, politicians, media personalities, strategically located persons in the non-governmental sector and members of the judiciary; some of these criminal syndicates have international links, sometimes with foreign intelligence agencies. The Report recommended that an efficient nodal cell be set up with powers to take stringent action against crime syndicates, while ensuring that it would be immune from being exploited or influenced."

In the said case, the Court further observed:

> "We may now turn our focus to the Report and the follow-up measures that need to be implemented. The Report reveals several alarming [pic]and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997."

32. In ***Anukul Chandra Pradhan V. Union of India and others[20],*** the Court was dealing with the provisions made in the election law which excluded persons with criminal background and the kind specified therein, from the elections as candidates and voters. In that context, the Court held thus:

> ".....The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcomed and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation.

> Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object."

Be it stated, the Court did not accept the challenge to the constitutional validity of sub-Section 5 of Section 62 of the 1951 Act which was amended to provide that no person shall vote at any election if he is confined in prison, whether under a sentence of imprisonment, or under lawful confinement, or otherwise or is in the lawful custody of the police. A proviso was carved out to exclude a person subjected to preventive detention under any law for the time being in force.

33. Recently, in ***Manoj Narula V. Union of India[21],*** the Constitution Bench harping on the concept of systemic corruption, has been constrained to state thus:

> **"12**. It is worth saying that systemic corruption and sponsored criminalisation can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonised concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences. There are recommendations given by different committees constituted by various Governments for electoral reforms. Some of the reports that have been highlighted at the Bar are (i) Goswami Committee on Electoral Reforms (1990), (ii) Vohra Committee Report (1993), (iii) Indrajit Gupta Committee on State Funding of Elections (1998), (iv) Law Commission Report on Reforms of the Electoral Laws (1999), (v) National Commission to Review the Working of the Constitution (2001), (vi) Election Commission of India - Proposed Electoral Reforms (2004), (vii) the Second Administrative Reforms Commission (2008), (viii) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

> **13.** Vohra Committee Report and other reports have been taken note of on various occasions by this Court. Justice J.S. Verma Committee Report on Amendments to Criminal Law has proposed insertion of Schedule 1 to the 1951 Act enumerating offences under IPC befitting the category of "heinous" offences. It recommended that Section 8(1) of the 1951 Act should be amended to cover, inter alia, the offences listed in the proposed Schedule 1 and a provision should be engrafted that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Sections 190(1)(a), (b) or (c) of the Code of Criminal Procedure or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal."

34. Criminalisation of politics is absolutely unacceptable. Corruption in public life is indubitably deprecable. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. Commenting on corruption, the court in **Niranjan Hemchandra Sashittal V. State of Maharashtra[22]**, was constrained to say thus:

> "It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys [pic]societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

35. The Constitution Bench in ***Subramanian Swamy V. CBI[23],*** while striking down Section 6-A of the Delhi Special Police Establishment Act, 1946, observed thus:

> "Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate

> of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."
>
> And thereafter:
>
> "Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from [pic]equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation."

36. In this backdrop, we have looked and posed the question that whether a candidate who does not disclose the criminal cases in respect of heinous or serious offences or moral turpitude or corruption pending against him would tantamount to undue influence and as a fallout to corrupt practice. The issue is important, for misinformation nullifies and countermands the very basis and foundation of voter's exercise of choice and that eventually promotes criminalisation of politics by default and due to lack of information and awareness. The denial of information, a deliberate one, has to be appreciated in the context of corrupt practice. Section 123 of the 1951 Act deals with corrupt practices. Sub-Section 2 of Section 123 deals with undue influence. The said sub-Section reads as follows:

> "(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right:
>
> Provided that-
>
> without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-
>
> threatens any candidate or any elector, or any person in whom a candidate or an elector interest, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

induces or attempt to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

37. Section 259 of the 1994 Act deals with grounds for declaring elections to be void. Section 259(1) is as follows:

"259. Grounds for declaring elections to be void.- (1) Subject to the provisions of sub-section (2), if the District Judge is of opinion-

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or,

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or

(c) that any nomination paper has been improperly rejected, or that the result of the election insofar as it concerns a returned candidate has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void."

38. Section 260 deals with corrupt practices. Sub-Sections (1) and (2) of Section 260 read as follows:

> "260. **Corrupt practices** - The following shall be deemed to be corrupt practice for the purposes of this Act:-
>
> (1) Bribery as defined in Clause (1) of Section 123 of the Representation of People Act, 1951. (Central Act XLIII of 1951)
>
> (2) Undue influence as defined in Clause (2) of the said section."

39. From the aforesaid provisions, it is clear as day that concept of undue influence as is understood in the context of Section 123(2) of the 1951 Act has been adopted as it is a deemed conception for all purposes. Thus, a candidate is bound to provide the necessary information at the time of filing nomination paper and for the said purpose, the Returning Officer can compel the candidate to furnish the relevant information and if a candidate, as has been held in **Resurgence India** (supra), files an affidavit with a blank particulars would render the affidavit nugatory. As has been held in the said judgment if a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is liable to be rejected. It has been further directed in the said case that the candidate must make a minimum effort to explicitly remark as 'Nil' or 'Not Applicable' or 'Not Known' in the columns and not to leave the particulars blank. It is because the citizens have a fundamental right to know about the candidate, for it is a natural right flowing from the concept of democracy. Thus, if a candidate paves the path of adventure to leave the column blank and does not rectify after the reminder by the Returning Officer, his nomination paper is fit to be rejected. But, once he fills up the column with some particulars and deliberately does not fill up other relevant particulars, especially, pertaining to the pendency of criminal cases against him where cognizance has been taken has to be in a different sphere.

40. Mr. Harish Salve, learned senior counsel, who was requested to assist the Court, would unequivocally submit that it would come within the arena of corrupt practice. The propositions that have been presented by the learned Amicus Curiae are as follows:

> A. The notion of what constitutes the free exercise of any electoral right cannot be static. The exercise of electoral rights in a democracy is central to the very existence of a democracy. The notion of the free exercise of any electoral right is thus not something that can be ossified - it must evolve with the constitutional jurisprudence and be judged by contemporary constitutional values.

B. The disclosure by a candidate of his character antecedents was premised by this Court on the right of an elector to know - which right flows from the right to the informed exercise of an electoral right.

C. Section 123(2) of the 1951 Act necessarily implies that any influence on the mind of the voter that interferes with a free exercise of the electoral right is a corrupt practice. Misleading voters as to character antecedents of a candidate in contemporary times is a serious interference with the free exercise of a voter's right.

D. In the context of disclosure of information, if the falsity or suppression of information relating to the criminal antecedents of a candidate is serious enough to mislead voters as to his character, it would clearly influence a voter in favour of a candidate. This Court should take judicial notice of the problem of criminalization of politics - which led this Court to ask Parliament to seriously consider ameliorative changes to the law.

E. Section 123 of the 1951 Act defines "undue influence" in terms of interference with the free exercise of an electoral right. This result, i.e., interference with the free exercise of an electoral right, may apply to a person or a body of persons. As clarified in Ram Dial v. Sant Lal, (1959) 2 SCR 748, Section 123 does not emphasise the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause.

F. It is not every failure to disclose information that would constitute an undue influence. In the context of criminal antecedents, the failure to disclose the particulars of any charges framed, cognizance taken, or conviction for any offence that involves moral turpitude would constitute an act that causes undue influence upon the voters.

G. Purity of public life has its own hallowedness and hence, there is emphasis on the importance of truth in giving information. Half truth is worse than silence; it has the effect potentiality to have a cacophony that can usher in anarchy.

Learned Amicus Curiae has commended us to certain paragraphs from ***Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) and Manoj Narula*** (supra).

41. Mr. Maninder Singh, learned Additional Solicitor General, who was requested to assist us, has submitted that to sustain the paradigms of constitutional governance, it is obligatory on the part of the candidate to strictly state about the criminal cases pending against him, especially, in respect of the offences which are heinous, or involve moral turpitude or corruption. He would submit, with all fairness at his command, that for democracy to thrive, the 'right to know' is paramount and if a maladroit attempt is made by a candidate not to disclose the pending cases against him pertaining to criminal offences, it would have an impact on the voters as they would not be in a position to know about his antecedents and ultimately their choice would be affected. Learned ASG would urge that as the non-disclosure of the offence is by the candidate himself, it would fall in the compartment of corrupt practice.

42. Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu and learned counsel for private respondents have supported the contentions raised by Mr. Harish Salve and Mr. Maninder Singh.

43. Ms. V. Mohana, learned counsel for the appellant would submit that the High Court has fallen into error by treating it as a corrupt practice. It is her submission that as a matter of fact, there has been no non- disclosure because the appellant had stated about the crime number, and all other cases are ancillary to the same and, in a way, connected and, therefore, non-mentioning of the same would not bring his case in the arena of non-disclosure. That apart, learned counsel would contend that the appellant has read upto Class X and he had thought as the other cases were ancillary to the principal one, and basically offshoots, they need not be stated and, therefore, in the absence of any intention, the concept of undue influence cannot be attracted. Learned counsel would urge that though there was assertion of the registration of cases and cognizance being taken in respect of the offences, yet the allegation of corrupt practices having not mentioned, the election could not have been set aside. To buttress her submissions, she has commended us to the decisions ***in Mahadeo V. Babu Udai Pratap Singh & Ors.[24], Baburao Patel & Ors. V. Dr. Zakir Hussain & Ors.[25], Jeet Mohinder Singh V. Harminder Singh Jassi[26], Govind Singh V. Harchand Kaur[27], Mangani Lal Mandal V. Bishnu Deo Bhandari[28], and Shambhu Prasad Sharma V. Charandas Mahant[29],***

44. At this stage, we think it condign to survey certain authorities how undue influence has been viewed by this Court and the relevant context therein. In **Ram Dial v. Sant Lal[30]** while discussing about the facet of undue influence, the three-Judge Bench distinguished the words of English Law relating to undue influence by stating that the words of the English statute lay emphasis upon the individual aspect of the exercise of undue influence. Thereafter, the Court proceeded to state about the undue influence under the Indian law by observing thus:

> "...The Indian law, on the other hand, does not emphasize the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English courts, based on the words of the English statute, which are not strictly in pari materia with the words of the Indian statute, cannot, therefore, be used as precedents in this country."
>
> [Emphasis added]

After so stating, the Court considered the submission that a religious leader has as much the right to freedom of speech as any other citizen and, that, therefore, exhortation in favour of a particular candidate should not have the result of vitiating the election.

Elaborating further, it has been held:

> "..... the religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him. He has a right to express his opinion on the individual merits of the candidates. Such a course of conduct on his part, will only be a use of his great influence amongst a particular section of the voters in the constituency; but it will amount to an abuse of his great influence if the words he uses in a document, or utters in his speeches, leave no choice to the persons addressed by him, in the exercise of their electoral rights. If the religious head had said that he preferred the appellant to the other candidate, because, in his opinion, he was more worthy of the confidence of the electors for certain reasons good, bad or indifferent, and addressed words to that effect to persons who were amenable to his influence, he would be within his rights, and his influence, however great, could not be said to have been misused. But in the instant case, as it appears, according to the findings of the High Court, in agreement with the Tribunal, that the religious leader practically left no free choice to the Namdhari electors, not only by issuing the hukam or farman, as contained in Exh. P-1, quoted above, but also by his speeches, to the effect that they must vote for the appellant, implying that disobedience of his mandate would carry divine displeasure or spiritual censure, the case is clearly brought within the purview of the second paragraph of the proviso to Section 123(2) of the Act."

In view of the aforesaid analysis, the Court dismissed the appeal and affirmed the decision of the High Court whereby it had given the stamp of approval to the order of Election Tribunal setting aside the appellants election.

45. In **Baburao Patel** (supra), the Court while dealing with the challenge to the Presidential Election, addressed to the issue pertaining to undue influence. The Court observed:

> "We may in this connection refer to Section 123(2) of the Representation of the People Act 1951 which also defines "undue influence". The definition there is more or less in the same language as in Section 171-C of the Indian Penal Code except that the words "direct or indirect" have been added to indicate the nature of interference. It will be seen that if anything, the definition of "undue influence" in the Representation of the People Act may be wider. It will therefore be useful to refer to cases under the election law to see how election tribunals have looked at the matter while considering the scope of the words "undue influence"."

46. The Court referred to the authority in ***R.B. Surendra Narayan Sinha V.Amulyadhone Roy[31]*** where the question arose whether by issuing a whip on the day of election requesting the members to cast their preference in a particular order, the leader of a party exercises undue influence and the answer was given in the negative. A reference was made to ***Linge Gowda V. Shivananjappa[32],*** wherein it has been held that a leader of a political party was entitled to declare the public the policy of the party and ask the electorate to vote for his party without interfering with any electoral right and such declarations on his part would not amount to undue influence under the 1951 Act. In ***Mast Ram V. S. Iqbal Singh[33],*** the legitimate exercise of influence by a political party or an association should not be confused with undue influence. After referring to various authorities, the Court opined thus:

> "It will be seen from the above review of the cases relating to undue influence that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but is proper use of the Minister's right to ask the public to support candidates belonging to the Minister's party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as the Minister only asks the electors to vote for a particular candidate belonging to his party and puts forward before the

> public the merits of his candidate it cannot be said that by merely making such request to the electorate the Minister exercises undue influence. The fact that the Minister's request was addressed in the form of what is called a whip, is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated."

47. In ***S.K. Singh V. V.V. Giri[34],*** the majority while interpreting Section 18 of the Presidential and Vice-Presidential Elections Act, 1952 (for short, 'the 1952 Act') in the context of Section 171-C I.P.C., expressed thus:

> "..... In our opinion, if distribution of the pamphlet by post to electors or in the Central Hall is proved it would constitute "undue influence" within Section 18 and it is not necessary for the petitioners to go further and prove that statements contained in the pamphlet were made the subject of a verbal appeal or persuasion by one member of the electoral college to another and particularly to those in the Congress fold."

After so stating, the Court drew distinction between Section 18 of the 1952 Act and Section 123 of the 1951 Act. It referred to Chapter IX A of the Indian Penal Code, 1860 which deals with offences relating to elections and adverted to the issue of undue influence at elections as enumerated under Section 171-C. The argument that was advanced before the Court was to the following effect:

> "...the language of Section 171-C suggests that undue influence comes in at the second and not at the first stage, and therefore, it can only be by way of some act which impedes or obstructs the elector in his freely casting the vote, and not in any act which precedes the second stage i.e. during the stage when he is making his choice of the candidate whom he would support. This argument was sought to be buttressed by the fact that canvassing is permissible during the first stage, and, therefore, the interference or attempted interference contemplated by Section 171-C can only be that which is committed at the stage when the elector exercises his right i.e. after he has made up his mind to vote for his chosen candidate or to refrain from voting. It was further argued that the words used in Section 171-C were "the free exercise of vote" and not "exercise of free vote". The use of those words shows that canvassing or propaganda, however virulent, for or against a candidate would not amount to undue influence, and that under influence can only mean some act by way of threat or fear or some adverse consequence administered at the time of casting the vote."

Repelling the said contention, the Court held thus :

> "We do not think that the Legislature, while framing Chapter IX-A of the Code ever contemplated such a dichotomy or intended to give such a narrow meaning to the freedom of franchise essential in a representative system of Government. In our opinion the argument mentioned above is fallacious. It completely disregards the structure and the provisions of Section 171-C. Section 171-C is enacted in three parts. The first sub-section contains the definition of "undue influence". This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-section (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)". It is well settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the Privy Council in King-Emperor v. Sibnath Banerj[35]."

After so stating, the Court proceeded to lay down as follows:-

> "It follows from this that we have to look at sub-section (1) as it is without restricting its provisions by what is contained in sub-section (2). Sub-section (3) throws a great deal of light on this question. It proceeds on the assumption that a declaration of public policy or a promise of public action or the mere exercise of a legal right can interfere with an electoral right, and therefore it provides that if there is no intention to interfere with the electoral right it shall not be deemed to be interference within the meaning of this section. At what stage would a declaration of public policy or a promise of public action act and tend to interfere? Surely only at the stage when a voter is trying to make up his mind as to which candidate he would support. If a declaration of public policy or a promise of public action appeals to him, his mind would decide in favour of the candidate who is propounding the public [pic]policy or promising a public action. Having made up his mind he would then go and vote and the declaration of public policy having had its effect it would no longer have any effect on the physical final act of casting his vote.
>
> Sub-section (3) further proceeds on the basis that the expression "free exercise of his electoral right" does not mean that a voter is

not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. They may propound their programmes, policies and views on various questions which are exercising the minds of the electors. This exercise of the right by a candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of the electoral right. What does, however, attempt to interfere with the free exercise of an electoral right is, if we may use the expression, "tyranny over the mind". If the contention of the respondent is to be accepted, it would be quite legitimate on the part of a candidate or his supporter to hypnotise a voter and then send him to vote. At the stage of casting his ballot paper there would be no pressure cast on him because his mind has already been made up for him by the hypnotiser.

It was put like this in a book on Elections:

"The freedom of election is two-fold; (1) freedom in the exercise of judgment. Every voter should be free to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency; (2) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation."[36]

We are supported in this view by the statement of Objects and Reasons attached to the bill which ultimately resulted in the enactment of Chapter IX-A. That statement explains in clear language that "undue influence was intended to mean voluntary interference or attempted interference with the right of any person to stand or not to stand as or withdraw from being a candidate or to vote or refrain from voting, and that the definition covers all threats of injury to person or property and all illegal methods of persuasion, and any interference with the liberty of the candidates or the electors". "The Legislature has wisely refrained from defining the forms interference may take. The ingenuity of the human mind is unlimited and perforce the nature of interference must also be unlimited."

[Emphasis supplied]

48. In ***Bachan Singh V. Prithvi Singh[37],*** there was a publication of posters bearing the caption "Pillars of Victory" with photographs of the Prime Minister, Defense Minister and Foreign Minister. It was contended before this Court that

the publication of the poster not only amounted to the exercise of "undue influence" within the contemplation of Section 123(2) but also constituted an attempt to obtain or procure assistance from the members of the armed forces of the Union for furtherance of the prospects of returned candidate's election within the purview of Section 123(7). The Court, treating the contention as unsustainable held thus:

> "Doubtless the definition of "undue influence" in sub-section (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix "undue" indicates that there must be some abuse of influence. "Undue influence" is used in contra-distinction to "proper influence". Construed in the light of the proviso, clause (2) of Section 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed, such proper and peaceful persuasion is the motive force of our democratic process.

We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted to a threat of injury or undue inducement of the kind inhibited by Section 123(2)."

49. In ***Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra[38],*** a three-Judge Bench speaking through ***Beg, J***., about undue influence had to say this:

> "Section 123(2), gives the "undue influence" which could be exercised by a candidate or his agent during an election a much wider connotation than this expression has under the Indian Contract Act. "Undue influence", as an election offence under the English law is explained [pic]as follows in Halsbury's Laws of England, Third Edn., Vol. 14, pp. 223-24(para 387):
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> "A person is guilty of undue influence, if he directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts, or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting.
>
> A person is also guilty of undue influence if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting."

It will be seen that the English law on the subject has the same object as the relevant provisions of Section 123 of our Act. But, the provisions of Section 123(2), (3) and (3-A) seem wider in scope and also contain specific mention of what may be construed as "undue influence" viewed in the background of our political history and the special conditions which have prevailed in this country.

We have to determine the effect of statements proved to have been made by a candidate, or, on his behalf and with his consent, during his election, upon the minds and feelings of the ordinary average voters of this country in every case of alleged corrupt practice of undue influence by making statements. We will, therefore, proceed to consider the particular facts of the case before us.

xxxxx xxxxx xxxxx

To return to the precise question before us now, we may repeat that what is relevant in such a case is what is professed or put forward by a candidate as a ground for preferring him over another and not the motive or reality behind the profession which may or may not be very secular or mundane. It is the professed or ostensible ground that matters. If that [pic]ground is religion, which is put on the same footing as race, caste, or language as an objectionable ground for seeking votes, it is not permissible. On the other hand, if support is sought on a ground distinguishable from those falling in the prohibited categories, it will not be struck by

Section 123 of the Act whatever else it may not offend. It is then left to the electorate to decide whether a permissible view is right or wrong."

50. In ***Aad Lal v. Kanshi Ram[39],*** while deliberating on undue influence as enshrined under Section 123(2) of the 1951 Act, it has been held thus:

> "It has to be remembered that it is an essential ingredient of the corrupt practice of "undue influence" under sub-section (2) of Section 123 of the Act, that there should be any "direct or indirect interference or attempt to interfere" on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, "with the free exercise of any electoral right". There are two provisos to the sub- section, but they are obviously not applicable to the controversy before us. It was [pic]therefore necessary, for the purpose of establishing the corrupt practice of "undue influence", to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right."

51. At this stage, it is useful to clarify that the provisos to Section 123(2) are, as has been postulated in the provision itself, without prejudice to the generality of the said clause. The meaning of the said phraseology has been interpreted in ***Shiv Kripal Singh*** (supra). In this context, we may profitably quote a passage from ***Om Prakash & Ors. V. Union of India & Ors.[40]***

> "It is therefore contended relying on sub-section (2) that inasmuch as no fraud or false representation or concealment of any material fact has been alleged or proved in this case, the Chief Settlement Commissioner cannot exercise the revisionary power under Section 24. This contention in our view has no validity. It is a well established proposition of law that where a specific power is conferred without prejudice to the generality of the general powers already specified, the particular power is only illustrative and does not in any way restrict the general power. The Federal Court had in Talpade's case indicated the contrary but the Privy Council in King Emperor v. Sibnath Banerjee Indian Appeals - Vol. 72 p. 241 observed at page 258:
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> > "Their Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of subsections (1) and (2) of Section 2 of the Defence of India Act, and counsel [pic]for the respondents in the present appeal was unable to support that statement, or to maintain that Rule 26 was invalid. In the opinion of

> Their Lordships, the function of sub-section (2) is merely an illustrative one; the rule- making power is conferred by sub-section (1) and 'the rules' which are referred to in the opening sentence of sub-section (2) are the rules which are authorised by, and made under, sub-section (1); the provisions of sub- section (2) are not restrictive of sub-section (1) as, indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)'."

52. Similar view has been expressed in ***V.T. Khanzode and Ors. V. Reserve Bank of India and Anr.[41], D.K. Trivedi & Sons V. State of Gujarat[42], State of J&K V. Lakhwinder Kumar[43], and BSNL V. Telecom Regulatory Authority of India[44].*** Thus, the first part of Section 123(2) is not restricted or controlled by the provisos.

53. From the aforesaid authorities, the following principles can be culled out:-

(i) The words "undue influence" are not to be understood or conferred a meaning in the context of English statute.

(ii) The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.

(iii) If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.

(iv) The words "direct or indirect" used in the provision have their significance and they are to be applied bearing in mind the factual context.

(v) Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.

(vi) The structure of the provisions contained in Section 171-C of IPC are to be kept in view while appreciating the expression of 'undue influence' used in Section 123(2) of the 1951 Act. The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.

(vii) Freedom in the exercise of judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.

(viii) There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.

(ix) The concept of undue influence applies at both the stages, namely, pre- voting and at the time of casting of vote.

(x) "Undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up.

(xi) Free exercise of electoral right has a nexus with direct or indirect 3interference or attempt to interfere.

54. The aforesaid principles are required to be appreciated regard being had to the progression of the election law, the contemporaneous situation, the prevalent scenario and the statutory content. We are absolutely conscious, the right to contest an election is neither a fundamental right nor a common law right. Dealing with the constitutional validity of Sections 175(1) and 177(1) of the Haryana Panchayati Raj Act, 1994, the three-Judge Bench in ***Javed V. State of Haryana[45]*** opined thus:

> "Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right - a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.
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> Reiterating the law laid down in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency[46] and Jagan Nath v. Jaswant Singh[47] this Court held in Jyoti Basu v. Debi Ghosal[48]:
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> > "8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an

election. Statutory creations they are, and therefore, subject to statutory limitation."

55. The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. And the ground of 'undue influence' is a part of corrupt practice.

56. Section 100 of the 1951 Act provides for grounds for declaring election to be void. Section 100(1) which is relevant for the present purpose reads as under:

"100. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

The High Court shall declare the election of the returned candidate to be void."

57. As is clear from the provision, if the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. The said view has been laid down in ***M. Narayan Rao V. G. Venkata Reddy & Others[49] and Harminder Singh Jassi*** (supra).

58. At this juncture, it is necessary to elucidate on one essential aspect. Section 100(1)(d)(ii) stipulates that where the High Court is of the opinion that the result of the election has been materially affected by any corrupt practice, committed in the interest of the returned candidate by an agent, other than his election agent, the High Court shall declare the election of the returned candidate to be void. This stands in contra distinction to Section 100(1)(b) which provides that election of a returned candidate shall be declared to be void if corrupt practice has been committed by a returned candidate or his election agent or by any other person with his consent or with the consent of the returned candidate or his election agent. Thus, if the corrupt practice is proven on the foundation of Section 100(1)(b), the High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(d)(ii).

59. In this context, we may refer to the authority in ***Samant N. Balkrishna and Anr. V. George Fernandez and Others[50], wherein Hidayatullah, C.J.,*** speaking for the Court opined thus:

> "If we were not to keep this distinction in mind there would be no difference between Section 100(1)(b) and 100(1)(d) insofar as an agent is concerned. We have shown above that a corrupt act per se is enough under Section 100(1)(b) while under Section 100(1)(d) the act must directly affect the result of the election insofar as the returned candidate is concerned. Section 100(1)(b) makes no mention of an agent while Section 100(1)(d) specifically does. There must be some reason why this is so. The reason is that an agent cannot make the candidate responsible unless the candidate has consented or the act of the agent has materially affected the election of the returned candidate. In the case of any person (and he may be an agent) if he does the act with the consent of the returned candidate there is no need to prove the consent of the returned candidate and there is no need to prove the effect on the election."

60. In ***Manohar Joshi V. Nitin Bhaurao Patil and Anr.[51],*** a three-Judge Bench reiterated the principle by stating that:

> "The distinction between clause (b) of sub-section (1) and sub-clause (ii) of clause (d) therein is significant. The ground in clause

(b) provides that the commission of any corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent by itself is sufficient to declare the election to be void. On the other hand, the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent (without the further requirement of the ingredient of consent of a returned candidate or his election agent) is a ground for declaring the election to be void only when it is further pleaded and proved that the result of the election insofar as it concerns a returned candidate has been materially affected."

61. The distinction between the two provisions, as has been explained by this Court is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(b) is established, the election has to be declared void. No other condition is attached to it. Keeping this in view, we are required to advert to the fundamental issue whether non- disclosure of criminal antecedents, as has been stipulated under Section 33A and the Rules framed under the 1951 Act, would tantamount to corrupt practice and if so, how is it to be proven.

We have already referred to the facet of undue influence in some decisions of this Court. Emphasis has been laid by Mr. Salve, learned amicus curiae, on influence on the mind of the voter that interferes with the free exercise of the electoral right and how such non-disclosure or suppression of facts can be a calculated act to interfere with such right. The undue influence as has been mentioned under Section 123(2) uses the words 'direct or indirect'. The Court has drawn distinction between legitimate canvassing and compulsion on the electorate. Emphasis has been given to the ingenuity of the human mind which is unlimited and how the nature of interference can be unlimited. The ostensibility of the ground has been taken into consideration. In this context, we think it apt to reproduce Section 171-C that deals with undue influence at elections. The said provision reads as follows:

"171C - Undue influence at elections

(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever--

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

The said provision has been referred to by the Constitution Bench in ***Shiv Kripal Singh's*** case.

62. At this juncture, it is fruitful to refer to Notes on Clauses which are relevant for the present purpose when the Bill No. 106 of 1950 was introduced. It reads as follows:

"Clauses 121 to 133 deal with certain offences with respect to elections. It may be pointed out that Chapter IX-A of the Indian Penal Code already contains provisions for punishment for the corrupt practices of bribery, undue influence and personation at elections. "Bribery", "undue influence" and "personation" as defined in the said Chapter do not differ materially from the descriptions of such practices contained in clause 118 of the Bill which have been reproduced from Part I of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, and from the electoral rules which have been in force since 1921. The said Chapter IX-A also contains provisions for punishment for false statements and for illegal payments in connection with an election and for failure to keep election accounts. It has, therefore, been considered necessary to include in this Bill any provision for the corrupt practices and other electoral offences already dealt with in the Indian Penal Code. Further, it would not be possible to omit those provisions from the Indian Penal Code and include them in this Bill, as they apply not only in relation to an election in Parliament, or to the Legislature of a State, but also to every other kind of election, such as, election to Municipalities, District Boards and other local

> authorities. Accordingly, only provisions with regard to certain other electoral offences have been included in these clauses."

63. In ***Shiv Kripal Singh*** (supra), as has been stated earlier, the Court had referred to the objects and reasons attached to the Bill, which ultimately resulted in enactment of Chapter IX-A of the I.P.C.

64. In ***Charan Lal Sahu V. Giani Zail Singh and Anr.[52],*** the Court after referring to Section 171C opined thus:

> "The gravamen of this section is that there must be interference or attempted interference with the "free exercise" of any electoral right. "Electoral right" is defined by Section 171-A(b) to mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election....."

65. Similarly, in ***Baburao Patel*** (supra), the Court has compared Section 123(2) which defines undue influence, more or less, in the same language as in Section 171-C IPC except the words "direct or indirect" which have been added into the nature of interference. In the said case while dealing with the definition of Section 171-C IPC, the Court has observed thus:

> "It will be seen from the above definition that the gist of undue influence at an election consists in voluntary interference or attempt at interference with the free exercise of any electoral right. Any voluntary action which interferes with or attempts to interfere with such free exercise of electoral right would amount to undue influence. But even though the definition in sub-s. (1) of s. 171-C is wide in terms it cannot take in mere canvassing in favour of a candidate at an election. If that were so, it would be impossible to run democratic elections. Further sub- s. (2) of s. 171-C shows what the nature of undue influence is though of course it does not cut down the generality of the provisions contained in sub-section (1). Where any threat is held out to any candidate or voter or any person in whom a candidate or voter is interested and the threat is of injury of any kind, that would amount to voluntary interference or attempt at interference with the free exercise of electoral right and would be undue influence. Again where a person induces or attempts to induce a candidate, or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, that would also amount to voluntary interference with the free exercise of the electoral right and would be undue influence. What is

contained in sub-s. (2) of S. 171-C is merely illustrative. It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely canvassing it would not be undue influence. As sub-section (3) of s. 171-C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence."

66. Regard being had to the aforesaid position of law and the meaning given under Section 123(2) of the 1951 Act to "undue influence", we may refer to Section 33-A of the 1951 Act. Section 33-A of the 1951 Act, which has been introduced w.e.f. 24.08.2002, requires a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent jurisdiction. Sub-Section 2 of Section 33-A of the 1951 Act requires the candidate or his proposer, as the case maybe, at the time of delivery to the Returning Officer an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-Section (1). It need no special emphasis to state that giving a declaration by way of an affidavit duly sworn by the candidate has its own signification.

67. This Court had issued certain directions in ***Association for Democratic Reforms*** (supra) and ***People's Union for Civil Liberties (PUCL)*** (supra). Section 33-A which has been reproduced earlier is relatable to furnishing of an information in respect of an offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction. At this stage, it is appropriate to refer to Section 169 of the 1951 Act, the same being pertinent in the context. It reads as under:

"Section 169 - Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the form, of affidavit under sub-section (2) of section 33A;

(aa) the duties of presiding officers and polling officers at polling stations;

(aaa) the form of contribution report;

(b) the checking of voters by reference to the electoral roll;

(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;

(c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;

(d) the manner in which votes are to be given by a presiding officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duly at a polling station at which he is not entitled to vole;

(e) the procedure to be followed in respect of the lender of vote by a person representing himself to be an elector after another person has voted as such elector;

(ee) the manner of giving and recording of voles by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;

(f) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

(gg) the procedure as to counting of votes recorded by means of voting machines;

(h) the safe custody of ballot boxes, voting machines, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;.

(i) any other matter required to be prescribed by this Act."

68. Rule 4A has been inserted in Conduct of Election Rules, 1961 ('for short, 1961 Rules) w.e.f. 3.9.2002. Rule 4A reads as follows:

"4A. Form of affidavit to be filed at the time of delivering nomination paper - The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub- section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

As per the aforesaid Rule, the affidavit is required to be filed in Form 26. For the present purpose, the relevant part is as follows:-

"FORM 26

(See rule 4A)

Affidavit to be filed by the candidate alongwith nomination paper before the returning officer for election to .....(name of the House) from .....constituency (Name of the Constituency)

X - X – X

(5) I am /am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge (s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case(s) is /are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more :-

(a) Case/First Information Report No./ Nos. together with complete details of concerned Police Station/District/State	
(b) Section(s) of the concerned Act(s) and short description of the offence(s) for which charged	
(c) Name of the Court, Case No. and	

date of order taking cognizance:	
(d) Court(s) which framed the charge(s)	
(e) Date(s) on which the charge(s) was/were framed	
(f) Whether all or any of the proceedings(s) have been stayed by any Court(s) of competent jurisdiction	

(ii) The following case(s) is /are pending against me in which cognizance has been taken by the court other than the cases mentioned in item (i)above:-

(a) Name of the Court, Case No. and date of order taking cognizance:	
(b) The details of cases where the court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken	
(c) Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)	

(6) I have been/have not been convicted, of an offence(s) [other than any offence (s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 of the Representation of the People Act, 1951 (43 of 1951)] and sentenced to imprisonment for one year or more. If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

In the following case, I have been convicted and sentenced to imprisonment by a court of law:

(a) The Details of cases, section(s) of the concerned Act(s) and description of the offence(s) for which convicted	
(b) Name of the Court, Case No. and date of order(s):	
(c) Punishment imposed	
(d) Whether any appeal was/has been filed against the conviction order. If so, details and the present status of the appeal: “	

69. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Section 33(1) (i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in Clause 5(i) of Form 26. Apart from the aforesaid, Clause 6 of Form 26 deals with conviction.

70. The singular question is, if a candidate, while filing his nomination paper does not furnish the entire information what would be the resultant effect. In ***Resurgence India*** (supra), the Court has held that if a nomination paper is filed with particulars left blank, the Returning Officer is entitled to reject the nomination paper. The Court has proceeded to state that candidate must take the minimum effort to explicitly remark as 'Nil' or 'Not Applicable' or 'Not known' in the columns. In the said case, it has been clarified that para 73 of ***People's Union for Civil Liberties (PUCL)*** case will not come in the way of Returning Officer to reject the nomination paper when the affidavit has been filed with blank particulars. It is necessary to understand what has been stated in para 73 of ***People's Union for Civil Liberties (PUCL)*** case, how it has been understood and clarified in Resurgence India (supra). Para 73 of ***People's Union for Civil Liberties (PUCL)*** case reads as follows:

> "While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the

> light of directions issued in Assn for Democratic Reforms case and as provided under the Representation of the People Act and its third Amendment."

In ***Resurgence India*** (supra), the aforequoted said paragraph has been explained thus:

> "The aforesaid paragraph, no doubt, stresses on the importance of filing of affidavit, however, opines that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified since in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. This Court was of the opinion that if sufficient time is provided, the candidate may be in a position to produce proof to contradict the objector's version. The object behind penning down the aforesaid reasoning is to accommodate genuine situation where the candidate is trapped by false allegations and is unable to rebut the allegation within a short time. Para 73 of the aforesaid judgment nowhere contemplates a situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns."

71. Both the paragraphs when properly understood relate to the stage of scrutiny of the nomination paper. In this context, a question may arise if a candidate fills up all the particulars relating to his criminal antecedents and the nomination is not liable for rejection in law, what would be the impact. At the stage of scrutiny, needless to say, even if objections are raised, that possibly cannot be verified by the Returning Officer. Therefore, we do not intend to say that if objections are raised, the nomination paper would be liable for rejection. However, we may hasten to clarify that it is not the issue involved in the present case. The controversy which has emanated in this case is whether non-furnishing of the information while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, regard being had to the concept of undue influence. We have already referred to the authorities in ***Association for Democratic Reforms*** (supra) and ***People's Union for Civil Liberties (NOTA case),*** (supra). Emphasis on all these cases has been given with regard to essential concept of democracy, criminalisation of politics and preservation of a healthy and growing democracy. The right of a voter to know has been accentuated. As a part of that right of a

voter, not to vote in favour of any candidate has been emphasised by striking down Rules 41(2), 41(3) and 49-O of the Rules. In ***Association for Democratic Reforms*** (supra), it has been held thus:

> "For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens - voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational [pic]qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided - its result, if pending - whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters."
>
> [Emphasis supplied]

72. In ***People's Union for Civil Liberties (NOTA case),*** (supra), emphasis has been laid on free and fair elections and it has been opined that for democracy to survive, it is fundamental that the best available man should be chosen as the people's representative for proper governance of the country and the same can be at best be achieved through persons of high moral and ethical values who win the elections on a positive vote. Needless to say, the observations were made in the backdrop of negative voting.

73. In ***Manoj Narula*** (supra) the court, while discussing about democracy and the abhorrent place the corruption has in a body polity, has observed that a democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalisation of politics as it corrodes the legitimacy of the collective ethos,

frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the government of the people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in ***Indira Nehru Gandhi v. Raj Narain[53],*** stated that "democracy" as an essential feature of the Constitution is unassailable. The said principle was reiterated in ***T.N. Seshan, CEC of India v. Union of India[54] and Kuldip Nayar v. Union of India[55].*** It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and also an embodiment of constitutional philosophy.

74. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like MCOCA, U.P. Goonda Act, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be

called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

75. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of "undue influence" relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between "undue influence" and "proper influence". The former is totally unacceptable as it impinges upon the voter's right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute "undue influence". The said pronouncements were before the recent decisions in ***PUCL*** (supra), ***PUCL (NOTA)*** (supra) and ***Association of Democratic Reforms*** (supra) and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in Sections 33, 33A and Rules have been incorporated.

76. In this backdrop, we have to appreciate the spectrum of "undue influence". In ***PUCL*** (supra) Venkattarama Reddi, J. has stated thus:

> "Freedom of voting as distinct from right to vote is thus a [pic] species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom".

77. In ***Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh[56],*** the Court observed that:

> "Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character".

78. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in ***People's Union for Civil Liberties (NOTA case),*** can opt not to vote for any candidate. The requirement of a disclosure,

especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issue of the notification till the declaration of the result. This position has been clearly settled in ***Hari Vishnu Kamath V. Ahmad Ishaque and others[57], Election Commission of India V. Shivaji[58] and V.S. Achuthanandan V. P.J. Francis and Another[59].*** We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

79. At this juncture, it will be appropriate to refer to certain instructions issued from time to time by the Election Commission of India. On 2.7.2012, the Election Commission of India has issued the following instructions:

"To

The Chief Electoral Officer of all
States and UTs.

Sub:- Affidavit filed by candidates along with their nomination papers-dissemination thereof.

Sir/Madam,

Please refer to the Commission's instructions regarding dissemination of information in the affidavits filed by the candidates along with the nomination papers. The Commission has, inter alia, directed that copies of affidavits should be displayed on the notice board of RO/ARO, and in cases where offices of RO and ARO are outside the boundary of the constituency concerned, copies of affidavits should be displayed in the premises of a prominent public office within the limits of the constituency. Further, affidavits of all contesting candidates are required to be uploaded on the website of the CEO.

2. There are complains at times that in the absence of adequate publicity/awareness mechanism, the general public is not sensitized about the availability of the affidavits filed by the candidates with the result that the affidavits do not fully serve the intended purpose of enabling the electors to know the

background of the candidates so as to enable them to make an informed choice of their representative.

3. The Commission has directed that, at every election, press release should be issued at the State and District level stating that affidavits of the candidates are available for the electors to see and clearly mentioning in the Press release of the DEO place (s) at which copies of the affidavits have been displayed. The press release should also make it clear that the affidavits can also be viewed on the website, and the path to locate them on the website should also be mentioned.

4. Please bring these instructions to the notice of all DEOs, ROs and other authorities concerned for compliance in future elections.

Yours faithfully,

(K.F. WILFRED)
PRINCIPAL SECRETARY"

80. In continuation, some further instructions were issued on 12.10.2012. The relevant paragraph is reproduced as follows:

> "Now the Commission has reviewed the above instruction and has decided that the affidavit filed by all candidates, whether set up by the recognized political parties or unrecognized political parties or independents shall be put up on the website soon after the candidates file same and within 24 hours in any event. Even if any candidate withdraws his candidature, the affidavit already uploaded on the website shall not be removed."

81. At this juncture, it is also relevant to refer to the circular dated 12.6.2013 which deals with complaints/counter affidavits filed against the statements in the affidavits and dissemination thereof. It is condign to reproduce the relevant para:

> "From the year 2004 onwards, the affidavits of candidates are being uploaded on the website of the CEO. However, the same is not done in respect of counter affidavits filed, if any. The Commission has now decided that henceforth, all counter affidavits (duly notarized) filed by any person against the statements in the affidavit filed by the candidate shall also be uploaded on the website alongwith the affidavit concerned. Such uploading should also be done within 24 hours of filing of the same."

82. Recently on 3.3.2014, the Commission has issued a circular no. 3/ER/2013/SDR Vol.V to the Chief Electoral Officers of all States and Union Territories relating to affidavits filed by candidates and dissemination thereof. We think it appropriate to reproduce the same in toto as it has immense significance.

"As per the existing instructions of the Commission the affidavits filed by the candidates with the nomination paper are uploaded on the website of the CEO and full hard copies of affidavits are displayed on the notice board of the Returning Officer for dissemination of information. In case the office of the ARO is at a place different from the office of the RO, then a copy each of the affidavits is also displayed on the notice board in ARO's office. If the offices of the both RO and ARO are outside the territorial limits of the constituency, copies of the affidavits are to be displayed at a prominent public place within the constituency. Further, if any one seeks copies of the affidavits from the RO, copies are to be supplied.

2. There have been demands from different quarters seeking wider dissemination of the information declared in the affidavits filed by the contesting candidates, for easier access to the electors. Accordingly, views of the CEOs were sought in this regard. The responses received from the various Chief Electoral Officers have been considered by the Commission. The response received from CEOs showed that most of the CEOs are in favour of displaying the abstracts part of the affidavit as given in PART-II of the affidavit in Form 26, in different public officers in the constituency.

3. The Commission after due consideration of the matter has decided that for wider dissemination of information, apart from existing mode of dissemination of information, as mentioned in para I above, the Abstract Part-II of the affidavit (given in part B of Form 26) filed by the contesting candidates shall be displayed at specified additional public offices, such as (I) Collectorate, (20) Zila Parishad Office (3) SDM Office (4) Panchayat Samiti office (i.e. Block Office) (5) office of Municipal Body or bodies in the constituency (6) Tahsil/Taluka office and (7) Panchayat Office. This shall be done within 5 days of the date of withdrawal of candidature. In the Collectorate and Zila Parishad Office, abstracts of affidavits of all candidates in all constituencies in the District shall be displayed. Abstracts of one constituency should be displayed together and not in scattered manner. Similarly, if there are more than one constituency in a Sub-Division, all abstracts of all candidates in such constituencies shall be displayed in SDM's office.

Kindly convey these directions to all DEOs, ROs, SDMs etc. For elections to Lok Sabha Legislative Assembly and Legislative

Council constituencies. These instructions will not apply to elections to Council of States and State Legislative Council by MLAs as only elected representatives are electors for these elections."

83. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr. Salve, it is more dangerous, for the electorate are denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in ***S.P. Chengalvaraya Naidu (Dead) By LRs V. Jagannath (Dead) By LRs & Others[60].*** While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, are not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non- disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

84. Having held that, we are required to advert to the factual matrix at hand. As has been noted hereinbefore, the appellant was involved in 8 cases relating to embezzlement. The State Election Commission had issued a notification. The relevant part of the said notification reads as under:-

"1. Every candidate at the time of filing his nomination paper for any election or casual election for electing a member or Members or Chairperson or Chairpersons of any Panchayat or Municipality, shall furnish full and complete information in regard to all the five matters referred in paragraph-5 of the preamble, in an Affidavit or Declaration, as the case may be, in the format annexed hereto:-

Provided that having regard to the difficulties in swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an Affidavit, file before the Returning Officer a declaration in the same format annexed to this order:

2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a

Commissioner of Oaths appointed by the High Court of the State or before an Officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case, may be, by any candidate shall be considered to be violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non- furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available to all other candidate on demand and to the representatives of the print and electronic media.

5. If any rival candidate furnished information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election Commission in the Annexure shall be delivered to the candidates along with the forms of nomination papers as part of the nomination papers."

85. We have also reproduced the information that is required to be given. Sections 259 and 260 of the 1994 Act makes the provisions contained under Section 123 of the 1951 Act applicable. Submission of Ms. V. Mohana, learned counsel for the appellant is that there was no challenge on the ground of corrupt practice. As we find the election was sought to be assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, there is no need to advert to the authorities which are cited by the learned counsel for the appellant that it has no material particulars and there was no ground for corrupt practice. In fact, in a way, it is there. The submission of the learned counsel for the appellant that he has passed up to Class X and, therefore, was not aware whether he has to give all the details as he was under the impression that all the cases were one case or off-shoots of the main case. The aforesaid submission is noted to be rejected. Therefore, we are of the view that the High Court is justified in declaring that the election as null and void on the ground of corrupt practice.

86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non- disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature.

87. Before parting with the case, we must put on record our unreserved appreciation for the valuable assistance rendered by Mr. Harish N. Salve, learned senior counsel and Mr. Maninder Singh, learned Additional Solicitor General for Union of India.

88. Ex consequent, the appeal, being sans substance, stands dismissed with costs, which is assessed at Rs.50,000/-.

....., J.
(Dipak Misra)
....., J.
(Prafulla C. Pant)

(2015) 16 Supreme Court Cases 248: 2015 SCC Online SC 1097

In the Supreme Court of India

(BEFORE DR.AK. SIKRI AND UDAY U. LALIT, JJ.)

STATE OF WEST BENGAL AND OTHERS … Appellants;

Versus

PRANOY ROY AND OTHERS ... Respondents.

Civil Appeals Nos. 4867 of 2015 -, decided on May 25, 2015

Election – Local Government/Bodies/Municipalities/ Panchayats/ Autonomous and other Bodies – Composition/Constitution of – Direction to hold election in respect of Seven urban local bodies within period of two months – Modification of – Reconstitution of said seven local bodies in process.

-- Held, once municipal bodies are reconstituted, term of new members as per proposed election would end fresh election would be required to be held – Thus, holding of election as per High Court's direction would be of no use – State Commission directed to hold elections immediately after reconstitution and determination of wards which was to be accomplished by 30.06.2015 – if required, State Commission could solicit police force from central Government for ensuring conduct of fair and impartial election – W.B. State Election Commission Act, 1994 (34 of 1994) – S.8 – W.B. Municipal Elections Act, 1994 (8 of 1994), Ss. 36 (3) and 14(3)

Advocates who appeared in this case :

Kapil Sibil, Salman Khurshid and L.N Rao, Senior Advocates (Kabir Shankar Bose, Lokender Malik, Ms Kanika Singh and Sarvesh Singh Baghel, Advocates) for the Appellants;

Arijit Mazumdar and Abhinav Mukerji, Advocates, for the Respondents;

Anil B. Divan, Senior Advocate (Pijush K.Roy, Ms Kakali Roy, Ms Mahima Sareen and Rajan K. Chourasia, Advocates) for Respondents 2 and 3;

Rajiv Nanda, Ajay Sharma, R.K.Verma and B.V Balaram Das, Advocates, for Respondent 4;

Dipak Bhattacharya and V.K.Sidharthan, Advocates, for the Intervenor.

ORDER

1. Leave granted. We have heard the learned counsel for the parties including Mr Anil B.Divan, learned Senior Counsel for the State Election Commission.

2. Writ Petition No.6063. W/15 was filed as public interest litigation in the High Court of Calcutta. In that writ petition the petitioners had primarily challenged the vires of Section 8 of the West Bengal State Election Commission Act, 1994 and Section 36 (3) of the West Bengal Municipal Elections Act, 1994.

3. The writ petition has been decided by the High Court vide judgement dated 16.04.2015. In so far as challenge to the vires of the aforesaid provisions is concerned, the same has been repelled and the writ petition dismissed to that extent. However, at the same time, taking note of the fact that elections to seven urban local bodies have not been held so far though term of few is already completed and of rest

of them is about to be over, the Court has given the direction to the State Election Commission to forth initiate steps for holding elections to the said seven urban local bodies. It is coupled with further direction that entire election process be completed within two months from the date of the order, in accordance with the procedure contemplated under the relevant statute.

4. The appellant herein as well as the State Election Commission had filed civil application seeking modifications of the aforesaid directions on the ground that as far as these seven urban local bodies are concerned, process of constitution/reconstitution of the municipal areas was underway and therefore it was not possible to hold the election in terms of directions contained in the order dated 16.04.2015 passed in the said writ petition. These applications have also been dismissed by the High Court vide order dated 15.05.2015.

5. In these appeals the aforesaid directions contained in the order dated 16.04.2015 read with order dated 15.05.2015 are challenged. It is thus clear that only challenge pertains to the directions to hold the election in respect of the said seven urban local bodies within a period of two months.

6. It is not in dispute that the matter of reconstitution of the said seven local bodies is in process. That was the reason that otherwise the elections have already been held in respect of other constituencies, which are 92 in number, leaving these seven municipalities. The reason given by the appellants was that once the municipalities are reconstituted, then in accordance with the provisions of Section 14(3) of the Act the elected Municipal Councillor would no more remain in the office and as per the said provision the function of the municipality will have to be discharged by designating such person or persons as the administrative or the Board of Administrators which sought to be appointed by the State Government by notification. It would inevitably lead to holding of fresh elections once again within few months itself.

7. It is a matter of record that the term of three municipal bodies has already come to an end and therefore fresh elections are due. It is also a matter of record that in respect of four other municipal bodies the term is expiring in June, 2014. At the same time it is also a matter of record that by notifications issued in February and May 2015, exercise with reference to reconstitution of these municipal bodies has already been started.

8. We find from the impugned judgement of the High Court that the High Court has directed holding of the elections primarily on the ground that once the term was coming to an end, the exercise of reconstitution of the municipal bodies should have been started by the State Government much earlier and its initiating this process at the fag end or after the term was over shows lack of bona fides on the part of the Government. To that extent the High Court may be right. However, at the same time

we feel that it should not have been a ground to direct to hold the elections within a period of two months as the same is not going to serve any useful purpose. Even if elections are held, the term of the new bodies so constituted shall hardly last for few weeks or few months. The moment the said municipal bodies are constituted, the term of the new members, as per the proposed election, would come to an end and fresh elections will have to be held. Therefore, holding of the elections, at this stage would not be of any use.

9. Mr Kapil Sibal and Mr Salman Khurshid, learned Senior Counsel appearing for the appellants pointed out that the exercise of reconstitution of these municipal bodies is at an advanced stage and is going to be over by 15.06.2015.

10. This Court in State of Maharashtra v. Jalgaon Municipal Council though emphasised that the elections of the Municipal Corporations should be conducted before the expiry of the term of the existing tenure, but at the same time it noted certain exceptional circumstances under which such elections could be dererred. One of the circumstances specifically taken note of by the Court was reconstitution of the municipal bodies as is clear from the following passage in the said judgement: (SCC pp.752 & 761, para 21 & 41)

> "21. Having heard the learned counsel for the parties at length on thus aspect we are of the opinion that the said hiatus is an unavoidable event which must take place in the Article 243-U by the learned counsel for the respondents in this context is misconceived. The use of the expression 'a municipality' in clause (3) of Article 243-U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a consequence of the term of the previous municipality coming to an end. Article 243-U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243-U (3) cannot be pressed into service to base a submission on that an election to constitute a Municipal Corporation is required to be completed before the expiry of duration of a Municipal Council.
>
> 41. It is unfortunate that the litigation stalled the process of the Municipal Corporation of the city of Jalgaon being constituted. The expenditure, the time and the energy of State machinery which was intended to be avoided by the State Government came to be wasted and the elections had to be held for constituting the successor Municipal Council, as on the day the Municipal Council is in place. In as much as it has been held that the process for constituting the

> Municipal Corporation of the city of Jalgaon in place of the Municipal Council does not suffer from any infirmity up to the stage to which it has proceeded, the State Government may now take a final decision and issue a final notification depending on the formation of its opinion. The process of consultation within the meaning of proviso to Section 6(1) of the MR Municipal Councils Act shall now be completed if not already done. Needless to say the objections preferred by the Municipal Council of Jalgaon and 239 other objections shall be considered and disposed of in accordance with law, if not already done."

11. Mr. Divan, learned Senior Counsel appearing for the State Commission, though resisted the petition initially, but after some arguments he fairly states that in view of the aforesaid ground and having regard to the statement given by the learned Senior Counsel on behalf of the appellants that there would be reconstitution of these bodies by 15.06.2015, the State Commission is ready to wait till the end of June, 2015 so that fresh election process in respect of reconstituted municipal bodies is undertaken after the said reconstituted exercise is complete within the time undertaken.

12. Even after there is a reconstitution of the Municipal bodies, the State Government will have to determine the number of wards in terms of Section 8 of the West Bengal State Election Commission Act, 1994. It is stated at the Bar by Mr.Kapil Sibal, learned Senior Counsel, that this would also be accomplished by 30.06.2015.

13. The stages which are required for holding the election thereafter are:

(1) to delimit municipal areas into the ward as per Sections 3 and 29 of the West Bengal Municipal Elections (Reservation of Seats) Rules, 1995;

(2) determination of reservation of seats; and

(3) issuance of notification for holding the election under the relevant statutes.

These steps are to be taken by the State Election Commission as primacy to hold the election rests with the State Election Commission.

14. Thus, after the exercise is completed in the manner mentioned above, by 30.06.2015, by the State Government, the State Commission shall start its exercise for holding election in the manner mentioned above immediately thereafter. At that time if the State Commission needs police force to conduct fair and impartial election it can always send requisition for this purpose to the Central Government.

15. The appeals are disposed of. In case of any difficulty parties are at liberty to approach the Court for necessary directions.

(2016) 13 Supreme Court Cases 389 : 2016 SCC Online SC 554

In the Supreme Court of India

(BEFORE KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ)

THOTA VENKATESWARA RAO ….. Appellants;

Versus

STATE ELECTION COMMISSION AND OTHERS ..... Respondents.

Civil Appeals Nos. 4796 OF 2016 – WITH Nos.4797 of 2016 – and 4798 of 2016 --, decided on May 3, 2016

Constitution of India – Art.226 – Remand of matter by High Court to competent authority – If justified – Matter mainly involving question(s) of law.

-- High Court in writ appeals framing three questions for determination – One of those questions was a question of law, which, if it would have been answered, would have hardly left anything to be decided further – But, considering that the authority concerned failed to exercise its jurisdiction, High Court remitting the matter to that authority to address the said three questions.

-- Held, High Court should have addressed the question of law raised before it rather than referring it to the authority concerned – Judgement of High Court set aside accordingly – Direction issued to High Court to decide the matters on questions framed in writ appeals – Election – Municipal Elections – Andhra Pradesh Municipal Rules, 2005 – R. 6(8) (i) – Disqualification – Dispute as to disqualification in terms of R. 6 (8) (i) of Andhra Pradesh Municipal Rules, 2005 – Practice and Procedure – Remand/Transfer.

(Paras 2 to 5)

Advocates who appeared in this case:

Basava Prabhu S. Patil, Senior Advocate (G.Subba Rao, Chinmay Deshpande, Guntur Pramod Kumar and Prashant Chaudhary, Advocate) for the appellant;

Annam D.N. Rao, A. Subba Rao, A.Venkatesh, Sudipto Sircar, Ms Ankita Chaddha, Rahul Mishra, Guntur Prabhakar and Ms Tatini Basu, Advocates, for the Respondents.

The judgement of the Court was delivered by

KURIAN JOSEPH, J. – Leave granted. The appellant are aggrieved by the Judgement dated 11.12.2014 in Thota Venkiateswara Rao v. State Election Commission and judgment dated 12.12.2014 in Naggisetti Muralikrishna v. State Election Commission. Essentially the dispute pertains to the disqualification of the appellants in terms of Rule 6 (8) (i) of the Andhra Pradesh Municipal Rules, 2005. In the course of hearing of the appeals, the Division Bench framed the following questions:

1. Whether the appellant – writ petitioners belong to any recognised political party or not;

2. If not, whether the aforesaid mischief of law will be applicable;

3. Whether the ratio decided by this Court in the aforesaid judgements is applicable to these cases or not.

2. According to the High Court, the Presiding Officer has failed to exercise his jurisdiction and hence, the matter has been remitted to the Officer to address the three questions.

3. Question 3 appears to be a question of law and once that question is answered, according to the appellants, there is hardly anything that remains to be considered. According to the learned counsel, the question of law is covered in their favour by a decision of the division Bench of the Andhra Pradesh in Singam Satyanarayana v. Zilla Parishad, Ranga Reddy.

4. Having considered the rival contentions, we are of the view that the High Court should have addressed the question of law raised before it rather than referring it to the decision of the Presiding Officer in the election proceedings.

5. The learned counsel appearing on both sides also submit that leaving open all the contentions the matters may be remitted to the High Court. We set aside the impugned judgement dated 11.12.2014 and direct the High Court to decide the matters on the questions framed in the writ appeals. The impugned judgement dated 12.12.2014 in Naggisetti Muralikrishna v. State Election Commission is also set aside and the matter is remitted to the High Court for consideration on merits on the three questions formulated in writ appeals. In terms of the order passed by this Court, the stay on suspension of membership will continue in the meanwhile.

6. We make it clear that we have not considered the matters on merits and it will be open to both sides to raise all the available contentions before the High Court. The High Court is requested to dispose of the appeals expeditiously and preferably within a period of three months.

7. In view of the above observations and directions, appeals are disposed of. No Costs.

(2015) 12 Supreme Court Cases 169 : (2016) 1 Supreme Court Cases (Civ) 411:

2015 SCC Online SC 787

In the Supreme Court of India

(BEFORE JASTI CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ)

SMITA SUBHASH SAWANT … Appellants;

Versus

JAGDEESHWARI JAGDISH AMIN AND OTHERS .. Respondents.

Civil Appeals Nos. 6848 of 2015 -, decided on September 4, 2015

A. Municipalities – Bombay Municipal Corporation Act, 1888 (3 of 1888) – Ss.33(1), 28(k), 10 and 32 – Limitation period for filing election petition – "Within ten days from the date on which the list prescribed under cl.(k) of S.28 was available for sale or inspection" – Delay of one day in filing election petition – Condonation of delay – If permissible

-- Immediately after declaration of election of appellant in Form 21-C under R.103 of Municipal Corporation of Greater Mumbai Conduct of Election Rules, 2006, list was prepared by Returning Officer same day in terms of S.28(k) and was made available to parties including voters of the ward – Held, that date must be taken as starting point of limitation of ten days – Date of publication of names of elected candidates of all wards in official Gazette as per Ss. 10 and 32 and R.104 of 2006 Rules cannot be date of commencement of limitation period – when in absence of Rules under S.28(k) for payment of fees prescribed for supply of copy of list and for its inspection, if there appears any ambiguity, interpretation should be, as far as possible, in a manner which may benefit elected candidate rather than election petition.

-- In present case, list under S. 28(k) was prepared by the Returning Officer immediately after the declaration of the result of the election on 17.02.2012 and it satisfied all the requirements of S.28(k) – It was made available for sale

or/and inspection on 17.02.2012 to all including the candidates immediately after declaration of the result and handling over of the certificates in Form 21-C to both the candidates by the Returning Officer – Limitation to file election petition would begin from 17.02.2012 and it will be up to 27.02.2012, -- It was, therefore, necessary for R-1 (election petitioner) to have filed the election petition on any day between 17.02.2012 to 27.02.2012. Since the election petition was filed on 28.02.2012, a date beyond 27.02.2012, it was liable to be dismissed as being barred by limitation – in the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law.

-- Municipal Corporation of Greater Mumbai Conduct of Election Rules, 2006 – Rr. 103 and 104 – Election – Election Petition – Limitation period – Condonation of delay – When permissible – Interpretation of Statutes –

Particular Statutes or provisions – Election statutes and rules – Interpretation in favour of election candidate

Anandilal v. Ram Narain (1984) 3 SCC 561, relied on

B. Interpretation of Statutes – Basic Rules – Plain or ordinaly meaning – When language of Statute is plain and clear same must be given effect to, without adding, substituting or ignoring and word used therein.

If the language of a statute is plain, simple, clear and unambiguous then the words of a statute have to be interpreted by giving them their natural meaning. The court cannot read any words which are not mentioned in the section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section.

Advocates who appeared in this case:

Vinay Navare, Satyajeet Kumar, Keshav Ranjan, Gwen K.B and Ms Abha R. Sharma, Advocates, for the Appellent;

Sudhanshu S. Chaudhari, Vatsalya Vigya, Vijay Kumar, Ms.Aparna Jha, Jayashree Wad, Ashish Wad, Sangram Singh Bhonsle, Ms Parmota Majumdar and M/s J.S. Wad & Co., Advocates, for the Respondents.

The Judgement of the Court was delivered by

ABHAY MANOHAR SAPRE, J.—Leave granted. This appeal is directed against the final judgement and order dated 09.02.2015 passed by the High Court of Judicature at Bombay in Writ Petition No.9388 of 2014 which arises out of the judgement and

order dated 24.09.2014 passed by the Court of Small Causes at Bombay in Municipal Election Petition No.129 of 2012 holding that the election petition filed by Respondent 1 herein questioning the appellant's election as a Councillor or Brihan Mumbai Municipal Corporation from Ward No.76 is within the period of limitation prescribed under Section 33 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the Act").

2. In order to appreciate the issue involved in this appeal, it is necessary to state a few relevant facts. The election schedule for the General Election 2012 of Councillors under the Act was published by Notification dated 02.02.2012 declaring the date of poll as 16.02.2012 and counting of votes on 17.02.2012.

The said notification also declared that the list of elected candidates along with total number of valid votes polled by them will be published in the Government Gazette on or before 21.02.2012 as required under the provisions of Sections 10, 28(k) and 32 of the Act.

3. The appellant and Respondent 1 herein contested the election from Ward No.76 for Municipal Corporator. The election was held on 16.02.2012 and after counting, which took place on 17.02.2012, the Election Officer declared the appellant herein to have been elected as a Municipal Officer in favour of the appellant herein in Form 21-C as per Rule 103 of the Municipal Corporation of Greater Mumbai Conduct of Election Rules, 2006 (hereinafter referred to as "the Rules") on 17.02.2012. Thereafter on 21.02.2012, the Municipal Commissioner published the Official Gazette declaring the names of the candidates election from all the 227 wards of the Municipal Corporation with the names of their political parties and the votes polled by them as per Section 10 and Section 32(i) of the Act and Rule 104 of the Rules.

4. Challenging the election of the appellant herein, on 28.02.2012, Respondent 1 filed Election Petition No.129 of 2012 in the Court of Chief Judge, Small Cause Court, Mumbai. After service of notice, the appellant herein appeared before the Chief Judge and filed written statement contesting inter alia on the ground that the said election petition filed by Respondent 1 herein was barred by limitation as provided in Section 33(1) of the Act. According to the appellant, the election petition was required to be filed within 10 days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection as provided in Section 33(1) of the Act. It was contended that since in this case, the list was published and was available for sale or inspection on 17.02.2012, hence, the limitation to file election petition was up to 27.02.2012 as prescribed under Section 33(1) of the Act whereas the election petition was filed on 28.02.2012 by the election petition. It was, therefore, barred by limitation and hence liable to be dismissed as being barred by time. She also filed an application before the Chief Judge praying for framing the issue of limitation as a preliminary issue. Initially, the Chief Judge praying for rejected the said application but thereafter by order dated 30.07.2013

issued direction to order dated 24.09.2014, the Chief Judge held that the election petition was within limitation. He accordingly entertained the election petition filed by Respondent 1 herein for being tried on merits.

5. Aggrieved by the said judgement, the appellant herein approached the High Court of Bombay by way of WP No.9388 of 2014. By judgement and order dated 09.02.2015, the learned Single Judge of the High Court dismissed the petition and upheld the judgement of the Chief Judge. The High Court also held that the election petition filed by Respondent 1 herein is within limitation as prescribed under Section 33(1) of the Act.

6. Against the said judgement, the present appeal has been filed by way of special leave.

7. Heard Mr Vinay Navare, learned counsel for the appellant and Mr.Sudhanshu S.Chaudhari, learned counsel for Respondent 1, Ms Jayashree Wad, learned counsel for Respondent 2 and Mr Vijay Kumar, learned counsel for Resondent No.3.

8. The learned counsel for the appellant while assailing the legality and correctness of the impugned order reiterated the submissions, which were urged by him before the courts below. According to the learned counsel, both the courts below erred in holding that the election petition filed by Respondent 1 herein (election petitioner) is within limitation as prescribed under Section 33(1) of the Act. In other words, it was his submission that both the courts below should have held that the election petition filed by Respondent 1 herein was beyond the period of limitation and in consequences was liable to be dismissed as being barred by limitation.

9. Elaborating the aforementioned submissions, the learned counsel contended that in order to decide the question of limitation and how it will apply to the facts of the case in hand, two sections are relevant, namely, Section 33(1) and Section 28(k) of the Act. The learned counsel contended that Section 33(1) prescribes limitation of 10 days for filing the election petition and the period of 10 days has to be counted from the date on which the list prescribed under Section 28(k) of the Act is available for sale or inspection.

10. The learned counsel pointed out that the election in question was held on 16.02.2012 and counting of votes was done on 17.02.2012 followed by declaration of election result declaring the appellant to have won the election and finally issuance of certificates of the election result as required under Rule 103 of the Rules in the prescribed format herein) on the same day i.e. 17.02.2012 by the Returning Officer. Similarly, it was pointed out that the list of the ward was also made available for sale or/and inspection on 17.02.2012 to all including the candidates immediately after declaring of the result and handing over of the certificates in Form 21-C to both the candidates by the Returning Officer. The learned counsel thus contended that in the light of these admitted facts, the limitation to file election petition began from

17.02.2012 as prescribed under Section 33(1) and ended on 27.02.2012. Since the election petition was filed by Respondent 1 on 28.02.2012, it was liable to be dismissed as being barred by limitation.

11. In reply, the learned counsel for Respondent 1 while supporting the reasoning and the conclusion of the High Court, contended that the view taken by the High Court is just and proper and hence it does not call for any interference by this Court. It was his submission that the limitation to file election petition began from 21.02.2012, this being the date on which the gazette publication of election results in the Official Gazette was published by the Election Commissioner as required under Section 10 read with Section 32 of the Act and Rule 104 of the Rules. According to the learned counsel, 10 days' period prescribed for limitation therefore began from 21.02.2012 and ended on 02.03.2012. The learned counsel, therefore, urged that the election petition filed by the election petitioner (Respondent 1) on 28.02.2012 was within limitation and hence was rightly held to be within time for being tried on merits.

12. Having heard the learned counsel for the parties and on perusal of the record of the case including their written submissions, we find force in the submissions of the learned counsel for the appellant.

13. The question which arises for consideration in this appeal is whether the election petition filed by Respondent 1 against the appellant under Section 33(1) of the Act before the Chief Judge is within limitation as prescribed under Section 33(1) of the Act ?

14. Section 28(k) and Section 33(1) of the Act, which are relevant for deciding the aforesaid question, read as under:

> "28. (k) the State Election Commissioner shall, as soon as may be declare the result of the poll, specifying the total number of valid votes given for each candidate, and shall cause lists to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate. In accordance with such rules as the State Election Commissioner may frame for the purpose and on payment of such fee as may be prescribed by him a copy of such list shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward.
>
> 33. Election petitions to be heard and disposed of by Chief Judge of the Small Cause Court.—(1) If the qualification of any person declared to be election for being councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Election Commissioner of a nomination or of the improper reception of refusal of a vote, or for any other cause or if the validity of the election of a person is

> questioned on the ground that he has committed a corrupt practice within the meaning of Section 28-F, any person enrolled in the municipal election roll may, at any time, within ten days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection apply to the Chief Judge of the Small Cause Court. If the application is for a declaration that any particular candidate shall deemed to have been elected, the applicant shall make parties to his application all candidates who although not declared election, have, according to the results declared by the State Election Commissioner under Section 32, a greater number of votes than the said candidate, and proceed against them in the same manner as against the said candidate."

15. The question is – what is the true meaning of the words "any person enrolled in the municipal election roll may, at any time, within ten days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection apply to the Chief Judge of the Small Cause Court" occurring in Section 33(1) of the Act ?

16. A plain reading of the aforementioned words shows that the period of 10 days prescribed for filing the election petition begins from "the date" on which the list prescribed under clause (k) of Section 28 of the Act was available for sale or inspection. In other words, the starting point of limitation for filing the election petition for counting 10 days is "the date" on which the list prescribed under clause (k) of Section 28 of the Act was available for sale or inspection. Therefore, in order to see as to when the list was prepared and made available for sale or inspection, it is necessary to read Section 28(k) of the Act.

17. Section 28(k) of the Act provides that the State Election Commissioner shall, as soon as may be, declare the result of the poll, specifying the total number of the valid votes given for each candidate and shall cause lists to be prepared for each ward, specifying the names of all candidates and the number of valid votes given to each candidate. It also confers power on the State Election Commissioner to frame rules for payment of such fee as may be prescribed by him for supply of a copy of such list to any candidate of the ward and for its inspection by any voter of the ward.

18. It is pertinent to mention here that till date the State Election Commissioner has not framed any rules as required under Section 28(k) of the Act.

19. Section 29 empowers the State Government to frame rules for the conduct of election on the subjects specified in clauses (a) to (i). In addition, the State is also empowered to make rules on other subjects regarding conduct of election as it may think proper. The State has accordingly framed rules called the Municipal Corporation of Greater Mumbai Conduct of Election Rules, 2006.

20. Rule 2(q) of the Rules defines “Returning Officer” as an officer appointed as such under Rule 3. Rule 3 enables the Municipal Commissioner designate to nominate any officer of the State Government not below the rank of the Deputy Collector or of the Corporation not below the rank of Assistant Municipal Commissioner as the Returning Officer for the purpose of conducting the election. Rule 103 provides that the Returning Officer shall complete and certify the return of election in Form 21-C and send the signed copies thereof to the Municipal Commissioner and State Election Commissioner. Rule 104 inter alia provides for grant of certificate of election to returned candidate as required under Section 32 and also empowers the State Election Commission to publish the result in the Official Gazette.

21. At the outset, we consider it apposite to state that if the State Election Commissioner has failed to frame the rules for proper implementation of the functions set out in Section 28(k) of the Act and due to that reason, there appears to be some kind of ambiguity noticed in its interpretation, then in our considered opinion, such provision should be interpreted as far as possible in a manner which may benefit the elected candidate rather than the election petition.

22. This Court in Anandilal v. Ram Narain had the occasion to construe Section 15 of the Limitation Act. While construing the said section, the learned Judge A.P. Sen, J speaking for the Bench observed in para 10 (SCC p.567)

> “10. ... It is also true that in construing statutes of limitation considerations of hardship and anomaly are out of place. Nevertheless, it is, we think, permissible to adopt a beneficent construction of a rule of limitation if alternative constructions are possible”

Our observations made above are also in line keeping in view this principal.

23. This we have said because we find that the High Court in para 30 has held that since no rules have been framed and there appears to be some ambiguity in applying Section 28(k), therefore, in such circumstances while interpreting such provision, its benefit must go to election petitioner (defeated candidate) rather than to the elected candidate. We do not agree with the High Court on this issue as in our opinion it should be the other way round as held by us supra.

24. On a perusal of the impugned judgement, we find that the High Court in para 23 has held that the list was prepared by the Returning Officer immediately after the declaration of the result of the election on 17.02.2012 and it satisfied all the requirements of Section 28(k) of the Act. The High Court therefore held that the list was issued under Section 28 (k) of the Act.

25. We are in agreement with this finding of the High Court as in our opinion also, the list prepared by the Returning Officer on 17.02.2012 was in conformity with all the requirements specified in Section 28(k) of the Act.

26. The next question that needs to be examined is on which date such list was available for sale or inspection to the voter of the ward. To decide this question, we consider it apposite to read the evidence adduced by the parties on this issue in the affidavits:

26.1 This is what the appellant (Restpondent 3 in the election petition) said on affidavit on this issue:

> "5. I say that the election result of Ward No.76 of Mumbai Municipal Corporation was declared by the Returning/Election Officer on 17.02.2012 at about 12.30 p.m. I say that after the counting was over the election officer prepared list of votes polled by each contesting candidate as prescribed under clause (k) of Section 28 of the Mumbai Municipal Corporation Act which is a same list annexed hereto as Ext. A and also annexed as Ext. E to the election petition. I say that the said election result as contemplated under Section 28(k) of the MMC Act was available for sale and inspection since 17.02.2012. I say that the petitioner and his election agent and his counting agents who were present in the counting hall during counting of votes, took inspection of the election result declared by the Returning/Election Officer prepared as per Section 28(k) of the MMC Act. I say that thereafter the copy of the election result was taken by the petitioner on 17.02.2012 itself which is annexed as Ext. E to the election petition.
>
> 6. * * *
>
> 7. I say that on the date of counting i.e. on 17.2.2012, I was present in the counting hall and the petitioner was also present in the counting hall with her election agent and counting agents. I further say that after counting was completed on the same day, the concerned Election Officer had published the election result as prescribed under Section 28(k) of the MMC Act and gave inspection and copies of the result to all the candidates present on 17.02.2012. I say that the petitioner himself took the inspection of the result on the same say i.e. 17.02.2012 and thereafter collected the copy of the result sheet as declared by the Election Officer under Section 28(k) of the Mumbai Municipal Corporation Act. The copy of the same is filed by the petitioner and marked as exhibit 'E' to the election petition."

26.2 So far as the election petitioner is concerned, she did not deny much less categorically the statement of the appellant quoted above in her affidavit and instead said as under:

> "3. I say that insofar as preliminary issue framed by this Hon'ble Court in regard to the limitation is considered, I say that result of the Municipal Elections in question was declared on 17.02.2012. My advocate, therefore, has taken up the matter with Respondent 1 Corporation so as to ascertain as to when, the list prescribed under clause (k) of Section 28 has been made available for sale and inspection by his letter dated 23.02.2012. Accordingly, the Deputy Election Officer of Respondent 1 Corporation by its letter dated 28.02.2012 informed my advocate that gazette notification under Sections 10 to 32 of the MMC Act was published in Government Gazette on 21.02.2012. I hereby produce original letter dated 28.02.2012 addressed by the Deputy Election Officer attached to Respondent 1 as Document 1. I, therefore, pray that the said letter issued by Respondent 1 through its Deputy Election Officer be read into as evidence in relation to the preliminary issue framed by this Hon'ble Court.
>
> 4. I thus, say that Respondent 1 notified result of the election in the Official Gazette by its Notification dated 21.02.2012 as required under Section 28(k) of the Municipal Corporation of Greater Mumbai.
>
> 5. I, therefore, say that since the abovesaid gazette notification was published on 21.02.2012, election petition filed by me is within limitation considering Section 33(1) of the said Act."

27. After reading the aforesaid two statements of the parties, we have no hesitation in holding that the list prescribed under Section 28(k) was made available to all the parties including the voter of the ward on question on 17.02.2012 by the Returning Officer. This we say so for the reasons that firstly, there is no ground much less sufficient ground to disbelieve the sworn testimony of the appellant wherein she said that the appellant and Respondent 1 herein (election petitioner) including their voting agents and other persons were throughout present in-person on 17.02.2012 during the counting of votes. Indeed, counting of votes is always done in presence of the candidates and their agents and in this case also it was done in presence of the candidates, who contested the election. Secondly, as soon as the results were announced on 17.02.2012, the appellant and Respondent 1 herein were given their respective certificates in Form 21-C as prescribed in Rule 103 of the Rules by the Returning Officer. Thirdly, Respondent 1 herself inspected the list prepared by the Returning Officer, which she could not do unless the list was made available for inspection on 17.02.2012 by the Returning Officer. Fourthly, the Returning Officer

could not have announced the results unless he had first prepared the list specifying therein the necessary details which were required for declaring the result of election and lastly, there was no reason for not making the list available to the voter on 17.02.2012 and keep withholding when it was prepared on that day itself by the Returning Officer for declaration of the result of the election.

28. When we read the statement of Respondent 1 (election petitioner) extracted supra, we find that she did not deny her presence on the whole day on 17.02.2012 nor she denied what was specifically stated by the appellant in her affidavit. All that Respondent 1 herein said was that on 23.02.2012, her advocate wrote a letter to the Corporation as to when the list would be available and the Corporation by letter dated 28.02.2012 informed her that the gazette notification under Sections 10 and 32 of the Act was published on 21.02.2012. On this basis, Respondent 1 claimed that limitation to file election petition would begin from 21.02.2012 and not from 17.02.2012.

29. The learned counsel for Respondent 1, therefore relying upon the aforesaid statement, made attempt to contend that the limitation would begin, as held by the High Court in her favour from 21.02.2012, for filing the election petition which is the date on which the election results were declared and then were published in the Official Gazette as provided in Section 10 read with Section 32 of the Act and hence 10 days will have to be counted from 21.02.2012. The learned counsel, thus submitted that the election petition filed by Respondent 1 on 28.02.2012 was within limitation because 10 days period prescribed under Section 33(1) ended on 02.03.2012.

30. We do not agree with this submission. It is, in our opinion, wholly misplaced in the facts of the case. Firstly, Section 33(1) only mentions Section 28(k) and does not refer to any other section much less Section 10 or/and Section 32 for deciding the issue of limitation. In other words, Section 33(1) is controlled by Section 28(k) only and not by any other section of the Act for deciding the issue of limitation. Secondly, if the intention of the legislature was to calculate the period of limitation from the date of issuance of the Official Gazette as provided in Section 10 and/or Section32, as contended by the learned counsel for Respondent 1, then instead of mentioning Section 28(k), the legislature would have mentioned Section10 and/or Section 32 in Section 33(1) of the Act. However, it was not done. The legislative intention, therefore, appears to be clear leaving no ambiguity therein by including Section 28(k) only and excluding Sections 10 and 32 in Section 33(1).

31. It is a settled principal of rule of interpretation that the court cannot read any words which are not mentioned in the section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well settled rule of interpretation is that if the language of a statute is plain, simple, clear and unambiguous then the words of a

statute have to be interpreted by giving them clear natural meaning (see principles of statutory Interpretation by G.P. Singh, 9th Edn., pp.44-45.) Our interpretation of Section 33(1) read with Section 28(k) is in light of this principle.

32. We accordingly, hold that the list prescribed under Section 28(k) was available for inspection and sale to the voters of the ward in question of 17.02.2012. In view of this finding, the limitation to file election petition would begin from 17.02.2012 and it will be up to 27.02.2012. In other words, period of limitation of 10 days prescribed for filing the election petition is Section 33(1) of the Act would begin from 17.02.2012 and it would be up to 27.02.2012.

33. It was, therefore, necessary for Respondent 1 (election petitioner) to have filed the election petition on any day between 17.02.2012 to 27.02.2012. Since the election petition was filed on 28.02.2012, a date beyond 27.02.2012, it was liable to be dismissed as being barred by limitation. In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law. Indeed, no such argument was advances by the learned counsel for Respondent 1 in this regard.

34. Before parting with the case, we consider it appropriate to observe that the State Election Commissioner would be at liberty to frame rules under Section 28(k) for its proper implementation. Indeed, when the legislature has conferred a rule-making power on the specified authority for proper and effective implementation of Section 28(k) then in our opinion, such power should be exercised by the State Election Commissioner within reasonable time by framing appropriate rules.

35. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the two courts below when both proceeded to hold that the election petition filed by Respondent 1 on 28.02.2012 was within limitation. We accordingly hold that the election petition filed by Respondent 1 out of which this appeal arises was barred by limitation and hence it should have been dismissed as being barred by limitation.

36. The appeal is accordingly allowed: Impugned judgement is set aside. As a consequence, Election Petition No.129 of 2012 filed by Respondent 1 is dismissed as barred by limitation. There shall be no order as to costs.

(2017) 2 Supreme Court Cases 119: 2017 SCC Online SC 126

In the Supreme Court of India

(BEFORE JASTI CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ)

SLP (C) No. ……. (CC No. 3350 of 2017)

REENA SURESH ALHAT ……...Petitioner;

Versus

STATE OF MAHARASHTRA AND ANOTHER …….. Respondent.

AND

RESHMA ANIL BHOSALE …….Petitioner;

MAHARASHTRA STATE ELECTION COMMISSION AND OTHERS

Respondents.

SLP (C) No. …. (CC No. 3350 of 2017) with SLP (C) No. 5014 of 2017, decided on February 13, 2017

Constitution of India – Art. 136 – Grant/Dismissal of SLP – Dismissal of SLP – When warranted – Need for Supreme Court to focus on significant and important cases – Exercise of power while entertaining SLPs is purely discretionary – Availability of alternative remedies and mounting pendency of cases coupled with relative insignificance of legal injury, are factors to be weighed while entertaining SLPs

-- Two special leave petitions filed concerning elections to Municipal Corporation of Pune – It was urged that Supreme Court to proceed with matter despite there being constitutional bar and availability of alternative remedy.

-- Negating these contentions, held , (i) elections being held under local law of State Legislature; (ii) result of election not likely to have any effect of affairs of nation, and it is believed that results would not have any repercussion beyond Pune City; (iii) High Court is also a constitutional court subject to appellate jurisdiction of Supreme Court; (iv) petitioners still have forum for determination of their respective rights; (v) appellate jurisdiction is purely discretionary; (vi) increasing pendency of large number of cases in Supreme Court coupled with relative insignificance of legal injury, are certainly factors

which should weigh with Supreme Court while entertaining SLPs – Hence, SLPs dismissed – Election –Elections to Particular Bodies/Offices – Local Government/Bodies/ Municipalities/ Panchayat/Autonomous and Other Bodies- Conduct of Election – Election Petition/Trial – Appeal/Supervisory Jurisdiction – Appellate power of Supreme Court under Art. 136 of Constitution.

Advocates who appeared in this case:

Dushyant Dave, Fai S.Nariman and Basanth R., Senior Advocates (Ashutosh Dubey, A.D.N. Rao, Azeem Samuel, Vipul D., Abhishek Chauhan, V.S.Rawat, Sushil Pandey, Sandeep Deshmukh, Subhash Jadhav, Ankur Chawla, Arunabh Chaudhary, Ms Kanika Singh, Kalyani Lal, R.K. Mohit Supta, Sangram Singh, V. Tomar, Nar Hari Singh, Sanajy Kharde, Pratul Bhadale and Kaartik Ashok Advocated) for the appearing parties.

The order of the court was delivered by

Jasti Chelameswar, J. – Permission to file special leave petition is granted. These two matters arise out of the Maharashtra Municipal Corporation Act, 1949 (59 of 1949). The petitioners in these two SLPs are candidates at the ongoing elections to the Municipal Corporation of Pune. Aggrieved by certain action taken by the respondents, two writ petitions came to be filed in the High Court of Bombay, one by the petitioner in SLP (Civil) ….CC No. 3350 of 2017 and the other by Respondent 4 in SLP (Civil) No. 5014 of 2017.

2. Reena Suresh Alhat's nomination was rejected by an order dated 4.2.2017. She challenged the rejection of her nomination by a writ petition. The writ petition was dismissed by the High Court by an order under challenge dated 7.2.2017 on the twin grounds of a constitutional bar and the existence of an alternative remedy.

3. In the case of Reshma Anil Bhosale, the dispute is regarding the allotment of a symbol. The petitioner claimed to be a candidate sponsored by Bhartiya Janata Party. The said symbol was allotted to the petitioner by an order of the respondent dated 8.2.2017. One of the contesting candidates questioned the allotment of the election symbol of BJP by filing a writ petition. Rule nisi was issued and by an interim order of the High Court, the order of the Election Commission allotting the symbol in favour of Reshma Anil Bhosale was stayed.

4. Hence , these two special leave petitions.

5. It was passionately urged by the learned Senior Counsel appearing in both the matters that this Court ought to examine the question of law involved in the petitions because these elections at the grass root level are of great importance in the civic administration of Pune. By the impugned orders, the High Court deprived the petitioners of their valuable electoral rights. Though the petitioners have an

alternative remedy to challenge the election of returned candidates, such a remedy is time consuming and in the process a substantial (if not the entire) portion of the term of the office would expire and, therefore, this Court is bound to examine the cases on merits.

6. The remedy under Article 136 is a discretionary remedy though it does not mean that the discretion should be exercised whimsically. The learned counsel for the petitioners relied upon a judgment of the Constitution Bench in Mohinder Singh Gill V. Chief Election Commissioner in support of the submission that in appropriate cases, this court ought to interfere in certain specified circumstances in the election process notwithstanding the fact that the aggrieved candidate would have an opportunity to question the election at a later point of time by filing an election petition.

7. On the other hand, the caveator (one of the contesting candidates, respondents in SLP (C) No. 5014 of 2017) relying upon a judgment of this Court in Election Commission of India v. Ashok Kumar argued that this Court clearly laid down the circumstances in which interference would be justified and the case on hand does not fall within the parameters indicated therein.

8. We see no reason to entertain the SLPs for the following reasons:

8.1 The elections in question pertain to a local body under a local law of the State Legislature. The result of the election is most unlikely to have any effect on the affairs of this nation. We are even inclined to believe that the result of the election would not have any repercussions beyond Pune City.

8.2 The High Court is also a constitutional court, subject of course to the appellate jurisdiction conferred on this Court by law.

8.3 The petitioners would still have a forum for adjudication of their respective rights and granting appropriate relief if they can successfully establish the infringement of their legal rights.

8.4 The appellate jurisdiction conferred by the Constitution under Article 136 is purely discretionary.

8.5 The pendency of huge number of matters in this Court coupled with the relative insignificance (from the point of view of the nation) of the injury to the petitioners herein are certainly factors which should weigh with this Court before entertaining these applications.

9. We are only reminded of a caution given by Frankfuter, J. in Ferguson v. Moore McCormack Lines In. (SCC Online US SC paras 52 & 55)

> "52. The Court may or may not be "doing justice" in the four insignificant cases it decides today; it certainly is doing injustice to the significant and important cases on the calendar and to its own role as the supreme judicial body of the country.
>
> 55. Unless the Court vigorously enforces its own criteria for granting review of cases, it will inevitably face an accumulation of arrears or will dispose of its essential business in too hurried and therefore too shallow a way."

10. We regret our inability to examine the issues involved in these two cases. The special leave petitions are dismissed.

(2016) 2 Supreme Court Cases 640 : 2015 SCC Online SC 816

In the Supreme Court of India

AIR 2016 SC 597

(BEFORE JASTI CHELAMESWAR AND ABHAY MANOHAR SAPRE, jj)

Civil Appeal No. 7115 of 2015

EDARA HARIBABU …Appellant;

Versus

TULLURI VENKATA NARASIRAM AND OTHERS…. Respondents

With

Civil Appeal No. 7116 of 2015 and SLPs (C) Nos. 5896-97 of 2015

MUDAVATH MANTHRU NAIK .. Petitioner;

Versus

EDARA HARIBABU AND OTHERS … Respondents

Civil Appeal No. 7115 of 2015 with No. 7116 of 2015 and SLPs (C) Nos. 5896-97 of 2015, decided on September 15, 2015

A. Election – Eligibility/Qualification/Disqualification/Recall/Removal of Candidate – Judicial Interference/Review – Interim stay on disqualification of elected candidate until disposal of election petition, passed by court-Nature and efficacy of – Assumption/Resumption of elected office by such elected candidate cased on such stay of disqualification – Interference with – Propriety

- **Zila Parishad Territorial Constituency (ZPTC) Member holding office of Chairperson, Zila Praja Parishads (ZPP) – Challenge to – High Court by impugned interim order dated 10.12.2014 directing Vice-Chairperson of ZPP to discharge functions of Chairperson until further orders in view of appellant's disqualification as ZPTC Member and consequently as Chairperson, ZPP vide order dated 11.8.2014 passed by Presiding Officer, finding that until and unless order of disqualification was set aside it remained**

operative – Single Judge of High Court by order dated 07.11.2014 suspending proceedings dated 11.8.2014

- **Held, effect of order dated 07.11.2014 was that appellant's disqualification was kept in abeyance till disposal of election petition – Besides, Single Judge of High Court simultaneously in other pending writ petitions by separate interim orders had stayed order dated 12.8.2014 by which Vice-Chairperson of ZPP was asked to assume charge of Chairperson – Thus, there was no legal impediment for appellant to assume post of Chairperson, ZPP which he did assume on 08.11.2014 – In such circumstances Division Bench of High Court ought to have dismissed interlocutory applications as having been rendered in fructuous because prayer made therein was to restrain appellant from assuming office of Chairperson and asking Vice-Chairperson to assume charge of Chairperson – Division Bench erred in doing so since it failed to see that so long as final adjudication was not done in accordance with law on merits in the election petitions, District Court (Election Court under relevant statute) was vested with power to pass appropriate interim orders in relation to impuged action under S.22-A, A.P Panchayat Raj Act, 1994 – It also failed to appreciate that once petitions filed by appellant were allowed on 07.11.2014 by suspending proceedings dated 11.08.2014, respondents had no option but to allow appellant to function as Chairman of ZPP – Impugned order directing removal of appellant from post of Chairperson and asking Vice-Chairperson to take over charge of Chairperson in his place not only untenable but perverse too.**

- **Election Petition/Trial – Jurisdiction in respect of Election petition/Trial – Interim/Interlocutory orders/Injunctions/stay – inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis – Nature and efficacy of an interim order pending final adjudication – Constitution of India – Art. 226 – Civil Procedure Code, 1908 – Or. 39Rr. 1 & 2, Or. 43 R.1(r) and Or. 41 R. 5 Andhra Pradesh Panchayat Raj Act, 1994 (13 of 1994), S. 22-A**

B. Constitution of India – Act. 136 – Interim/Interlocutory orders – Interference with Scope – Perverse and unreasonable order of High Court.

-- High Court by impugned interim order dated 10.12.2014 directing Vice-Chairperson of ZPP to discharge functions of Chairperson until further orders in view of appellant's disqualification as ZPTC member and consequently as Chairperson, ZPP vide order dated 11.8.2014 passed by Presiding Officer finding that until and unless order of disqualification was set aside it remained operative – Held, reasoning given by High Court being perverse and legally unsustainable being against settled principles of law laid down by Supreme Court, interference with such order called for regardless of nature of order

impugned in appeal – Election – Eligibility/Qualification/Disqualification/ Recall/Removal of Candidate – Judicial Interference/Review.

The appellant was the duly elected member of Zila Parishad Territorial Constituency ("ZTPC") who had contested the election as a candidate of Telugu Desam Party ("TDP").

On 12.07.2014, the District Collector-cum-Presiding Officer (Respondent 2) was informed that one T (respondent 1) has been appointed as whip on behalf of TDP in relation to the election to the office of Chairperson and Vice-Chairperson ZPP of the District. Thereafter two whips were issued by T directing all the ZPTC members belonging to TDP to vote in favour of M for the office of Chairperson, and in favour of P for the office of Vice-Chairperson.

According to the appellant, when the whips were issued he was not present in the district, and hence, as such he neither received not was served with copy of two whips which were alleged to have been issued. He also alleged that his signature acknowledging receipt of the said whips was either forged or fabricated.

On 13.07.2014, the elections to the said offices were conducted by the District Collector-cum-Presiding Officer. The appellant, however, contested the election to the office of Chairperson, ZPP, as an "independent candidate" and cast his vote in his own favour of one B, an independent candidate for the office of Vice-Chairperson. The appellant won the election and was accordingly declared elected as the Chairperson by one vote defeating, the candidate proposed by TDP as a candidate to the post of Chairperson.

This led to filling of a complaint by T (Respondent 1) alleging inter alia that the appellant cast his vote in the said election in violation of the whips issued by TDP.

On 16.07.2014, a show-cause notice was issued to the appellant and considering the explanation submitted by him, by order dated 11.8.2014 Presiding Officer and District Collector, disqualified the appellant as the member of ZPTC, and directed him to vacate the office of the Chairperson, ZPP. On 12-8-2014, CEO, ZPP, directed B Vice-Chairperson to temporarily take over the charge of the office of Chairperson until a new Chairperson was duly elected.

The appellant challenged the order dated 11.8.2014 by filling petition in the High Court which was dismissed. Liberty was granted to the petitioner to approach the District Court by taking recourse to the remedy available under Section 181-A of the Act.

Accordingly the appellant approached the 1st Additional District Judge challenging the order dated 11.08.2014 and also prayed for grant of ad interim injunctions for suspending said order. The interim applications were dismissed on 07.10.2014. Aggrieved thereby, appellant filed writ petitions in the High Court.

In view of the disqualification of the appellant herein, a representation was submitted on 28.08.2014 to the State Election Commission and the District Collector-cum-Presiding Officer for conducting fresh elections. Since the said application was not being considered by the State Election Commission, a writ petition was filed before the High Court.

The Single Judge heard all the petitioners together and by common order dated 07.11.2014, allowed the petition filed by the appellant and quashed the order date 7.10.2014 passed by the 1st Additional District Judge. The Single Judge then suspended the proceedings dated 11.08.2014 by which the appellant was disqualified as ZPTC member and consequently as Chairperson of ZPP. So far as WP No. 30799 of 2014, which was filed for conducting fresh election in view of the disqualification of the appellant, was concerned, it was dismissed.

The appellant accordingly on 8.11.2014 resumed the office of Chairperson and took over the charge of the office of the Chairperson ZPP.

One R aggrieved by order dated 12.8.2014 filed a writ petition bearing WP No. 31113 of 2014 before the High Court. The writ petition was allowed by the Single Judge on 12.11.2014 and proceedings dated 12.08.2014 were suspended subject to further orders.

In the meantime T (Respondent 1) filed writ appeals before the High Court challenging the order dated 7.11.2014 passed by the Single Judge.

On 25.11.2014, One L filed WP No. 36421 of 2014 seeking suspension of proceedings dated 12.8.2014 of CEO directing the Vice-Chairperson to act as the Chairperson which was already the subject matter of pending writ petition No. 31113 of 2014. On 26.11.2014, the appellant filed an application for bringing on record the documents to show that he has already resumed the office as the Chairperson pursuant to the final order dated 7.11.2014 passed by the Single Judge and has been functioning since 8.11.2014. He, therefore, contended that there arise no occasion to allow anyone to resume the post of Chairperson and secondly, no vacancy arises for the post of Chairperson at least till the final disposal of the main election petitions pending before the District Court.

The High Court, in the meantime, by order dated 28.11.2014 in WP No. 36241 of 2014 suspended the proceedings dated 12.08.2014 of CEO by which he had directed the Vice-Chairperson to act as Chairperson, as was already done in identical Writ Petition No. 31113 of 2014 by order dated 12.11.2014. Two writ appeals bearing WAs Nos. 1484-85 of 2014 were preferred there against.

On 01.12.2014, the appellant filed an application inter alia praying for considering the additional documents in support of his contention that there is no vacancy for the post of Chairperson. By the impugned interim order dated

10.12.2014, the Division Bench directed the Vice-Chairperson to discharge the functions of the Chairperson until further orders and further restrained the respondents from filling up the vacancy of Chairperson. Hence, the instant appeals.

The short question which arises for consideration in instant appeals in whether the Division Bench was justified in allowing the applications filed in pending writ appeals and issuing mandatory directions ?

Allowing the appeals, the Supreme Court

Held:

It was directed by the Division Bench that the Vice-Chairperson until further orders would discharge the functions of the Chairperson; and further the official respondents were restrained from taking any steps to fill up the vacancy which resulted because of disqualification order. The aforementioned directions were based on following two findings viz. firstly that until and unless the order of disqualification is set aside, it remains operative. Hence, the order of suspension was futile and could not be implemented; secondly some sort of workable interim order was passed keeping in view the balance of convenience, as under the Constitution, there is no express provision that in case of vacancy in the office of Prime Minister, anyone will function as a Prime Minister, as a Head of the Council of Ministers. On the contrary, on the vacancy, the entire Cabinet would stand dissolved. The aforementioned two findings are not legally sustainable for the reasons mentioned infra.

(Para 42)

It is a well settled principle of law that the courts are always vested with inherent and statutory power to stay/restrain the execution of the action impugned in the lis during pendency of the list. These powers are contained in Order 39 Rules 1 and 2, and order 41 Rule 5 of the Code of Civil Procedure, 1908. Hence, the Division Bench was not right in observing that so long as the order of disqualification was not set-aside, it remained operative. The Division Bench failed to see that so long as the final adjudication is not done in accordance with the law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action under Section 22-A of the Act. Moreover, it also failed to appreciate that once writ petitions filed by the appellant herein were allowed on 07.11.2014 by suspending the proceedings dated 11.8.2014, the respondents had no option but to allow the appellant to function as the Chairman of ZPP.

Similarly, the Division Bench was also not right in giving an illustration quoted above in support of the impugned order which is wholly misplaced and has nothing to do with the short question involved herein.

(Para 48)

The Single Judge by order dated 07.11.2014 had stayed the operation of the disqualification order dated 11.08.2014 passed by the District Collector. The effect of the suspension order was that the appellant's disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions. It is also not in dispute that the Single Judge simultaneously in other two pending writ petitions (WP No. 31113 of 2014 and WP No. 36421 of 2014) by separate interim orders one dated 12.11.2014 and other dated 28.11.2014 had stayed the order dated 12.08.2014 by which the Vice-Chairperson of the ZPP was asked to assume the charge of the post of Chairperson and this stay was in operation.

(Paras 49 & 51)

Thus, there was no legal impediment for the appellant to have assumed the post of the Chairperson, ZPP which he did assume on 08.11.2014 pursuant to the order dated 07.11.2014 of the Single Judge. Once the appellant assumed the office of the Chairperson, the Division Bench should have dismissed the interlocutory applications as having rendered infructuous because the prayer made therein, namely, to restrain the appellant from assuming the office of the Chairperson and asking the Vice-Chairperson to assume the charge of the Chairperson was already implemented prior to consideration of the applications and there was no apparent justification to oust the appellant from the post of Chairperson by another interim order.

(Para 52)

The impugned order of the Division Bench in directing removal of the appellant from the post of Chairperson and asking the Vice-Chairperson to takeover the charge of the Chairperson in his place is not only untenable in law but also perverse.

(Para 53)

Now, to the last submission by Respondent I that impugned order being interim in nature, the Supreme Court should not interfere in the same under Article 136 of the Constitution. The submission cannot be accepted for the reason that if reasoning given by the High Court while passing the interim order is perverse and legally unsustainable being against the settled principle of law laid down by the Supreme Court then interference of the Supreme Court in such order is called for regardless of the nature of the order impugned in appeal. Since the reasonings given

by the High Court area wholly unsustainable, being against well settled principle of law, interference by Supreme Court in instant case is called for.

(Para 55 to 57)

The fate of the appellant about his membership and Chairpersonship depends on the outcome of the election petitions which are directed to be decided within three months.

(Paras 58 and 59)

Advocates who appeared in this case:

Y.Tajagopal Rao, Ms Y.Vismair Rao, Hitendra Nath Rath and Prashant Chaudhary, Advocates, for the Appellant;

Ventateswara Rao, Anumolu, Goli Rama Krishna, Shashwat Goel, Prashant Chaudhary and Guntur Prabhakar, Advocates, for the Respondents

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.-

In SLPs (c) No. 36764 and 36773 of 2014

1. Leave granted. These appeals are filed against the common interim order dated 10.12.2014 passed by the High Court of Judicature at Hyderabad for the State of Telengana and the State of Andhra Pradesh in WAMP No. 3416 of 2014 in WA No. 1386 of 2014 and WAMP No. 3418 of 2014 in WA No. 1388 of 2014 whereby while disposing of the applications filed in these appeals, the High Court directed the Vice-Chairperson of Zila Praja Parishad (in short "ZPP"), Prakasam District, Ongole to discharge the functions of the Chairperson for the office of Zila Praja Parishad, Prakasam District, Ongole until further orders.

2. In order to appreciate the issue involved in these appeals, which lie in a narrow compass, it is necessary to state a few relevant facts which were taken from the record of the SLPs.

3. The appellant in the duly elected member of Zila Parishad Territorial Constituency (in short "ZPTC") of Ponnaluru Mandal, Prakasam District. He had contested this election as a candidate of Telugu Desam Party (in short "TDP") for Prakasam District, Ongole. On 26.6.2014, the Election Commission for the State of Andhra Pradesh (in short "the State Election Commission"), Respondent 3 herein, issued orders directing various District Collectors including the District Collector-

cum-Presiding Officer, Prakasam District (Respondent 2 herein) to conduct election to the office of Chairperson and Vice-Chairperson of the Zila Praja Parishads on 5.7.2014.

4. However, the elections to the offices of Chairperson and Vice-Chairperson of ZPP, Prakasam District could not be held on the said date i.e. 5.7.2014, and were accordingly postponed to a later date.

5. On 7.7.2014, an order was issued by the District Collector, Prakasam District (Respondent 4 herein) requesting the State Election Commission (Respondent 3 herein) to hold the election on 13.7.2014.

6. On 9.7.2014, the State President of TDP addressed a letter to the State Election Commission (Respondent 3) informing that one Shri Bonda Uma Maheswara Rao, General Secretary of TDP, is authorized to issue Form A and Form B as prescribed in Rule 22(1) of the Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Members (Co-opted) Chairperson and Vice-Chairperson of Zila Parishad Rules, 2006 (hereinafter referred to as "the Rules") and is also authorized to issue the appointment of whip for the said elections in the State of Andhra Pradesh. Shri Bonda Uma Maheswara Rao then issued Form A dated 10.7.2014 authorising one Shri D.Janardana Rao, the District President of the Prakasam District TDP is issue Form B to the candidates set up by TDP in the aforesaid election in for far as ZPP, Prakasam District was concerned and on the same day he also informed the same to the District Collector-cum-Presiding Officer, Prakasam District, Ongole.

7. On 12.7.2014, Shri D.Janardhana Rao informed the District Collector-cum-Presiding Officer (Respondent 2) that Shri Tulluri Venkata Narasimham (Respondent 1) has been appointed as whip on behalf of TDP in relation to the election to the offices of Chairperson and Vice-Chairperson of ZPP of Prakasam District. Shri Tulluri Venkata Narasimham (Respondent 1) then issued a whip on 12.7.2014 directing all the ZPTC members belonging to TDP to vote in favour of Shri Manne Ravindra for the office of Chairperson. In the next day i.e. 13.7.2014, Respondent 1 issued another whip directing all TDP members of the ZPTC to vote in favour of Smt. P.Koteswaramma for the office of Vice-Chairperson.

8. According to the appellant, when the whip was issued, the appellant was not present in Ongole but was at Hyderabad from 7.7.2014 to 12.07.2014. It was for this reason, the appellant alleged that he neither received nor served with the copy of two whips which were alleged to have been issued. He also alleged that his signature acknowledging receipt of the said whips was either forged or fabricated.

9. On 13.07.2014, the said elected were conducted by the District Collector-cum-Presiding Officer. The appellant, however, contested the election to the office of Chairperson, ZPP, Prakasam District as an "independent candidate" and case his

vote in his own favour and in favour of one Shri N.Balaji, an independent candidate for the office of Vice-Chairperson. The appellant won the election and was accordingly declared elected as the Chairperson by one vote defeating Shri Manne Ravindra, the candidate proposed by TDP as a candidate to the post of Chairperson.

10. This led to filling of a complaint by Shri Tulluri Venkata Narasimham (Respondent 1) against the appellant on 14.7.2014 before the District Collector-cum-Presiding Officer (Respondent 2) alleging inter alia that he was appointed as a whip by TDP in relation to the said election held on 13.07.2014 and that the appellant cast his vote in the said election in violation of the whips issued by TDP on 12.7.2014 and 13.7.2014.

11. On 16.7.2014, a show-cause notice was issued to the appellant calling upon his to show cause as to why action should not be taken against him for violating the directions issued in the whips and why he should not be disqualified as per GOMs No. 173 dated 10.5.2014 and Section 22(5) of the Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as "the Act")

12. The appellant submitted his explanation on 4.8.2014 stating inter alia that he had not violated the whips. It was also his case that he had not received any whip and his signatures on the whips.' Receipts were either fake or fabricated by someone. He also stated that he was at Hyderabad from 7.7.2014 to 12.7.2014 and hence did not receive the alleged whips even if issued. He, therefore, prayed the District Collector-cum-{residing Officer (Respondent 2) to conduct, a detailed inquiry in the matter.

13. By order dated 11.8.2014, in Rc. No. P1/4598-Indirect Election/13, The Presiding Officer and District Collector, Prakasam District, Ongole disqualified the appellant as the member of ZPTC, Ponnaluru and directed him to vacate the office of the Chairperson, ZPP, Prakasam, District Ongole.

14. On 12.8.2014, the Chief Executive Officer (in short "CEO"), ZPP, Ongole by proceedings in Rc No. P1/4959/2014, directed Shri N.Balaji, Vice-Chairperson to temporarily take over the charge of the office of Chairperson until a new Chairperson is duly elected.

15. Challenging the order dated 11.8.2014 passed by the Presiding Officer and District Collector, Prakasam District, Ongole, the appellant filed WP No. 23541 of 2014 before the High Court. Vide order dated 22.8.2014 [1], the High Court dismissed the petition granting liberty to the petitioner therein to approach the District Court by taking recourse to the remedy available under Section 181-A of the Act.

16. The appellant accordingly filed EOP No. 8 of 2014 and EOP No. 9 of 2014 before the 1st Additional District Judge, Ongole against the order dated 11.8.2014 passed by the Presiding Officer on the grounds pleaded therein. He also filed IA No.

1697 of 2014 in EOP No. 8 of 2014 and IA No. 1684 of 2014 in EOP No. 9 of 2014 to grant ad interim injunction by suspending the order dated 11.8.2014 passed by the Presiding Officer, Ongole in Rc No. P1/4598-Indirect Election/B. By orders dated 7.10.2014, the 1st Additional District Judge dismissed the said IAs and declined to grant injunction prayed by the appellant.

17. Questioning the order dated 7.20.2014 passed by the 1st Additional District Judge, Ongole in IA No. 1697 of 2014 in EOP No. 8 of 2014 and IA No. 1684 of 2014 in EOP No. 9 of 2014, the appellant filed WPs Nos. 30790-91 of 2014 before the High Court of Judicature at Hyderabad for the State of Telengana and the State of Andhra Pradesh.

18. In view of the disqualification of the appellant herein, a representation was submitted by Mr. Garinipudi Steeven and 24 others on 28.8.2014 to the State Election Commission and the District Collector-cum-Presiding Officer for conducting fresh elections. Since the said application was not being considered by the State Election Commission, the abovesaid petitioners filed WP No. 30799 of 2014 before the High Court.

19. The learned Single Judge of the High Court heard WPs No. 30790-91 and 30799 of 2014 together and by common order dated 7.11.2014 [2], allowed WPs Nos. 39790-91 of 2014 filed by the appellant herein and quashed the order dated 7.10.2014 passed by the 1st Additional District Judge. The Learned Single Judge then suspended the proceedings dated 11.8.2014 by which the appellant was disqualified as ZPTC member and consequently as Chairperson of ZPP. So far as WP No. 30799 of 2014 , which was filed for conducting fresh election in view of the disqualification of the appellant herein, was concerned, it was dismissed.

20. On 8.11.2014, the appellant addressed a letter to CEO, ZPPs, Prakasam District, Ongole informing him that the order dated 11.8.2014 passed by the District Collector-cum-Presiding Officer, Prakasam District regarding disqualification of his membership as ZPTC and also Chairperson of ZPP was suspended vide order dated 7.11.2014 passed by the Learned Single Judge of the High Court in Edara Haribabu v. Collector[2] and hence the appellant be allowed to resume the office of the Chairperson, ZPP, Prakasam District.

21. The appellant accordingly on 8.11.2014 resumed the office of Chairperson and took over the charge of the office of the Chairperson, ZPP, Prakasam District and started conducting various meetings and took various decision.

22. To complete the narration of the facts, it may here be mentioned that one Rajendra Prasad, felt aggrieved of the order dated 12.8.2014 passed by CEO in Rc. No. P1/4959/2014, by which Mr. N.Balaji, Vice-Chairperson was temporarily allowed to take over the charge of the office of Chairperson consequent upon

declaration of the appellant's disqualification for the post of Chairperson and filed a writ petition bearing WP No. 31113 of 2014 before the High Court.

23. Vide order dated 12.11.2014[3], the Learned Single Judge of the High Court allowed WP No. 31113 of 2014 filed by M.Rajendra Prasad and suspended the proceedings dated 12.8.2014 subject to further orders.

24. In the meantime, Shri Tulluri Venkata Narasimham, Respondent 1 herein filed WAMP No. 3416 of 2014 in WA No. 1386 of 2014 and WAMP No. 3418 of 2014 in WA No. 1388 of 2014 before the High Court challenging the order dated 7.11.2014[2] passed by the Learned Single Judge.

25. On 12.11.2014, the Chief Executive Officer (CEO), ZPP addressed a letter in Rc. No. P1/4598. High Court Cases /2013 to the Commissioner, Panchayat Raj and Rural Development stating that pursuant to the order dated 7.11.2014[2], passed by the High Court, the appellant has resumed that office of the Chairperson, ZPP, Prakasam District on 8.11.2014. However, Respondent 1, on his part informed that he had preferred an appeal against the order dated 7.11.2014[2] before the High Court. Though there was no interim order passed in the writ appeals filed by Respondent 1 herein before the High Court yet CEO sought clarifications from the Commissioner on his issue as to what should be done in the case.

26. On 13.11.2014, the appellant, was constrained to send a legal notice to CEO to ensure compliance with the order dated 7.11.2014 passed by the learned Single Judge and cooperate with the appellant to enable him to discharge the duties as Chairperson and forthwith withdraw the clarification letter dated 12.11.2014 sent by him to the Commissioner, which according to the appellant was not at all necessary.

27. On 14.11.2014, the appellant also addressed a letter to the Commissioner against CEO and Dy. CEO and requested him to take disciplinary action against them. By letter dated 15.11.2014, the Commissioner informed the Secretary to the Government that the appellant has resumed the office of the Chairperon from 8.11.2014.

28. On 25.1.2014, one Shri Lakshminarayana filed WP No. 36421 of 2014 seeking suspension of proceedings dated 12.8.2014 of CEO directing the Vice-Chairperson to act as the Chairperson which was already the subject matter of pending Writ Petition No. 31113 of 2014. On 26.11.2014, the appellant filed an application for bringing on record the documents to show that he has already resumed the office as the Chairperson pursuant to the final order dated 7.11.2014 passed by the learned Single Judge in Edara Haribabu v. Collector[2] and has been functioning since 8.11.2014. He, therefore, contended that there arise no occasion to allow anyone to resume the post of Chairperson and secondly, no vacancy arises for the post of Chairperson at least till the final disposal of the main election petitions pending before the District Court.

29. The High Court, in the meantime, by order dated 28.11.2014 in WP No. 36241 of 2014 suspended the proceedings dated 12.8.2014 of CEO by which he had directed the Vice-Chairperson to act as Chairperson, as was already done in identical Writ Petition No. 31113 of 2014 by order dated 12.11.2014[3].

30. Against the said order i.e. order dated 12.11.2014 passed in Marella Rajendra Prasad v. State of A.P[3] and order dated 28.11.2014 passed in Writ Petition No. 36241 of 2014, two writ appeals bearing WAs Nos. 1484-85 of 2014 were preferred.

31. On 01.12.2014, the appellant filed application bearing WAMP No. 3690 of 2014 in WA No. 1386 of 2014 and WAMP No. 3691 of 2014 in WA No. 1388 of 2014 inter alia praying for considering the additional documents in support of his contention that there is no vacancy for the post of Chairperson.

32. By the impugned interim order dated 10.12.2014 passed in WAMP No. 3416 of 2014 in WA No. 1386 of 2014 and WAMP No. 3418 of 2014 in WA No. 1388 of 2014, the Division Bench directed the Vice-Chairperson to discharge the functions of the Chairperson until further orders and further restrained the respondents from filling up the vacancy of Chairperson. The Division Bench also directed the District Judge to decide the pending elections petitions within three months and posted the appeals for hearing after two months.

33. Against the aforesaid interim order, the appellant has filed these appeals by way of special leave before this Court.

34. Mr. P.P.Rao, Learned Senior Counsel, appearing for the appellant while assailing the legality and correctness of the impugned order contended that the Division Bench of the High Court erred in allowing the interlocutory applications filed by Respondent 1 herein and giving impugned directions. He submitted that in the light of well reasoned order passed by the learned Single Judge allowing the writ petitions filed by the appellant herein and keeping his disqualifications of membership/Chairpersonship under suspension till disposal of the election petitions, both intra-court appeals and applications had virtually become infructuous and hence were liable to be dismissed as such.

35. The learned Senior Counsel then contended that no prima facie case was made out for passing the impugned order because the appellant herein had already resumed the office of the Chairperson on8.11.2014pursuance to the order dated 7.11.2014[2]passed by the learned Single Judge.

36. The learned counsel pointed out that once the appellant resumed the post of the Chairperson pursuant to order passed by the learned Single Judge, the only direction that should have been given while disposing of the appeal/application by the Division Bench was to decide the appellant's election petitions by the 1st Additional District Judge, Ongole on merits expeditiously.

37. The learned counsel further contended that even assuming that the High Court could go into the merits of the controversy, though it should not have, yet it was the appellant who was able to make out prima facie case as was rightly held by the learned Single Judge in his favour when he allowed appellant's writ petition arising out of the interim order of the Additional District Judge.

38. Referring to Rules 21 and 22, the learned counsel contended that the alleged whips issued by TDP in relation to the election in question were not legal because it did not satisfy the requirements of the twin rules. The learned counsel while criticising the manner in which the Division Bench recorded certain findings against the well settled principles of law and contended that the impugned order besides being interim in nature is wholly legally unsustainable and hence deserved to be set aside.

39. In contra, Mr. A.K.Ganguli, learned Senior Counsel appearing for Respondent 1, while supporting the impugned order contended that the same being interim in nature, no interference is called for under Article 136 of the Constitution of India.

40. Having heard the learned counsel for the parties and on perusal of the record of the case and the written submissions, we find force in the submissions of the learned Senior Counsel for the appellant.

41. The short question, which arises for consideration in these appeals is whether the Division Bench was justified in allowing the applications filed in pending writ appeals and was, therefore, justified in issuing mandatory directions?

42. The impugned directions read as under:-

> "We, therefore, direct the Vice-Chairperson, until further orders of this Court, to discharge the functions of the Chairperson in terms of the aforesaid legal provisions. However, we restrain all the official respondents from taking any steps or further steps to fill up the vacancy which resulted because of the disqualification order.
>
> It would be ideal if the District Judge decided the matter pending on his file within three months instead of six months from the date of communication of this order.
>
> These two appeals will come up for hearing two months hence.
>
> WAMPs are ordered accordingly."

The aforementioned directions are based on following two finding recorded by the High Court:

> "We are of the opinion that until and unless the order of disqualification is set aside, it remains operative. Unlike the Court,

> the Collector has no power to grant an order of injunction. In our view, of course, prima facie, the order of suspension of the learned trial judge in the above legal and factual scenario is futile and cannot even be implemented.
>
> …We think that some out of workable interim order was passed keeping in view the balance of convenience, as under the Constitution, there is no express provision that in case of vacancy in the office of Prime Minister, anyone will function as a Prime Minister as a Head of the Council of Ministers. On the contrary, on the vacancy, the entire Cabinet would stand dissolved."

In our considered opinion, the aforementioned two findings are not legally sustainable for the reasons mentioned infra.

43. It is a well settled principle of law that the courts are always vested with inherent and statutory power to stay/restrain the execution of the action impugned in the lis during pendency of the lis. These powers are contained in Order 39 Rules 1 and 2, and Order 41 Rule 5 of the Code of Civil Procedure, 1908.

44. This court in Mulraj v. Murti Raghunathji Maharaj[4] had the occasion to take note of this well-settled principle wherein K.N. Wanchoo, J. speaking for the Bench explained the subtle distinction between the grant of injunction and stay and explained the effect of both including consequence after their termination.

45. Keeping in view this well-settled principle, which we need not elaborate herein, we are of the view that the Division Bench was not right in observing that s long as the order of disqualification was not set-aside, it remained operative.

46. In our considered view, the Division Bench failed to see that so long as the final adjudication is not done in accordance with law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action under Section 22-A of the Act which read as under:-

> "22-A Bar of Jurisdiction.- No order passed or proceedings taken under the provisions of this Act, shall be called in question in any court, in any suit, or application and no injunction shall be granted by any court except District Court in respect of any action taken or about to be taken in pursuance of any power conferred by or under this Act."
>
> *(emphasis supplied)*

47. The Division Bench also failed to appreciate that once writ petitions filed by the appellant herein were allowed on 7.1.2014[2] by suspending the proceedings

dated 11.8.2014, the respondents had no option but to allow the appellant to function as the Chairman of ZPP.

Similarly, the Division Bench was also not right in giving an illustration quoted above in support of the impugned order. In our opinion, the illustration is wholly misplaced and has nothing to do with the short question involved herein.

49. Now coming to the issue, we find that indisputably though the District Court declined to grant any injunction to the appellant for grant of any interim order in his favour but the learned Single Judge by order dated 7.11.2014 in Edara Haribabu v. Collector[2] had stayed the operation of the disqualification order dated 11.8.2014 passed by the District Collector.

50. In our considered opinion, the effect of the suspension order dated 7.11.2014[2] of the learned Single Judge was that the appellant's disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions.

51. It is also not in dispute that the learned Single Judge simultaneously in other two pending writ petitions (WP No. 31113 of 2014 and WP No. 36421 of 2014) by separate interim orders one dated 12.11.2014[3] and other dated 28.11.2014 had stayed the order dated 12.8.2014 by which the Vice-Chairperson of the ZPP was asked to assume the charge of the post of Chairperson and this stay was in operation.

52. In the light of these undisputed facts, we are of the view that there was no legal impediment for the appellant to have assumed the post of the Chairperson, ZPP, Prakasam District, which he did assume on 8.11.2014 pursuant to the order dated 7.11.2014[2] of the learned Single Judge. Once the appellant assumed the office of the Chairperson, the Division Bench should have dismissed the interlocutory applications as having rendered infructuous because the prayer made therein, namely, to restrain the appellant from assuming the office of the Chairperson and asking the Vice-Chairperson to assume the Charge of the Chairperson was already implemented prior to consideration of the applications and there was no apparent justification to oust the appellant from the post of Chairperson by another interim order.

53. Though the learned Senior Counsel for the appellant also urged the issues relating to legality of the whip issued by TDP contending inter alia that it was not in conformity with the requirements of the Rules, etc but we refrain from going into this question at this stage in these appeals for the simple, reason that these issued are sub judice in the election petitions and hence need to be tried by the District Judge

on merits in accordance with law as directed by the learned Single Judge vide order dated 7.11.2014.

54. Though the learned Senior Counsel for the appellant also urged the issues relating to legality of the whip issued by TDP contending inter alia that it was not in conformity with the requirements of the Rules, etc. but we refrain from going into this question at this stage in these appeal for the simple reason that these issues are sub judice in the in the election petitions and hence need to be tried by the District Judge on merits in accordance with law as directed by the learned Single Judge vide order dated 7.11.2014[2].

55. This takes us to the last submission urged by the learned Senior Counsel for Respondent 1 that impugned order being interim in nature, this Court should not interfere in the same under Article 136 of the Constitution of India. We do not agree with this submission.

56. In our considered view, if we find that the reasoning given by the High Court while passing the interim order is perverse and legally unsustainable being against the settled principle of law laid down by this Court then interference of this Court in such order is called for regardless of the nature of the order impugned in appeal.

57. In this case, having noticed that the two reasonings extracted above are wholly unsustainable being against the well settled principle of law, it is necessary for this court to interfere.

58. The fate of the appellant about his membership and Chairpersonship would depend upon the outcome of the election petitions.

59. Let the election petitions be decided within 3 months as an outer limit from the date of his Court.

60. In view of foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. As a consequence, all the pending appeals/petitions before the High Court also stand finally disposed of in the light of this judgment because there remains nothing for the High Court now to decide in pending appeals/writ petitions.

SLPs (c) Nos. 5896-97 of 2015

61. In view of the detailed judgment passed in the appeals arising out of SLPs (C) Nos. 36764 and 36773 of 2014[5], these special leave petitions stand disposed of accordingly.

Senior woman voer being taken to the Polling Booth

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 975 of 2017

Reserved on: 26.5.2017.

Decided on: 29th May, 2017

Raju Thakur …Petitioner.

Versus

State Election Commission and others …Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting? 1 Yes

For the Petitioner: **Mr. B.C. Negi, Senior Advocate, with Mr. Nitin Thakur, Advocate.**

For the Respondents: **Mr. Dilip Sharma, Senior Advocate, with Ms. Nishi Goel, Advocate, for respondents No. 1 and 2. Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. V.S. Chauhan, Additional Advocate Generals, Mr. Kush Sharma and Mr. Puneet Rajta, Deputy Advocate Generals, for respondent No.3.**

Justice Tarlok Singh Chauhan, Judge:

Aggrieved by the order passed by respondent No.1 on 9.5.2017 (Annexure P-2) whereby the elections to the Shimla Municipal Corporation have been postponed, the petitioner has filed the instant writ petition for the following substantive reliefs:

> "i) Issue a writ of certiorari to quash Annexure P-2 i.e. office order dated 09.05.2017.
>
> ii) Issue a writ of mandamus directing the respondent authorities not to implement Annexure P-2 i.e. office order dated 09.05.2017.

iii) Issue a writ of mandamus directing the respondent authorities to conduct election on time and to constitute a duly elected Shimla Municipal Corporation on or before 04.06.2017.

iv) Issue a writ of mandamus directing the concerned authorities to initiate appropriate necessary disciplinary proceedings against erring officials and qua removal of the present incumbent heading respondent No.1."

Certain undisputed facts may be noticed.

2. The previous elections to Municipal Corporation, Shimla were held in May, 2012 and the Municipal Corporation was constituted on 4.6.2012 with a term of five years which admittedly is due to expire on 4.6.2017, on which date a new elected body is required to be constituted as per the mandate of law.

3. This position is not even disputed by respondent No.1, who in its reply has admitted that the term of the Municipal Corporation is going to expire on 4.6.2017. However, it is submitted that the Deputy Commissioner, Shimla in the capacity of Electoral Registration Officer (respondent No.2) vide letter dated 30.3.2017 was asked by respondent No.1 to get the draft electoral rolls verified. The schedule for the preparation of electoral rolls was also issued and sent vide letter dated 11.4.2017. This exercise of verification of the electoral rolls was started by respondent No.2 and thereafter even the draft electoral rolls were published on 11.4.2017 for calling objections. However, a very large number of complaints were received regarding errors in such rolls not only from the various political parties like Bhartiya Janta Party (BJP), Communist Party of India (Marxist) (CPM) (Annexures R-1/3 and R-1/4), but even the Municipal Corporation had passed unanimous resolution (Annexure R-1/5) requesting that the date for filing objections and suggestions be extended. In the meanwhile, this Court also in its order dated 27.4.2017 in CWP No. 815 of 2017 directed the acceptance of complaints on Sunday the 30th April, 2017 and on Monday the 1st May, 2017. This direction was fully carried out and it was still expected that the polls would be held timely.

4. The respondent No.2 completed the process and even published the final electoral rolls on 5.5.2017. However, the political parties as also certain interested persons were still not satisfied with the final electoral rolls and again made numerous complaints annexed with the reply as Annexures R-1/7 to R-1/14. Discrepancies in the electoral rolls were even highlighted by the print media. Thus, it became absolutely clear that there were still errors in the electoral rolls and efforts to correct them in time had not succeeded.

5. It was with a view to check this situation that the Election Commission of India (office of the Chief Electoral Officer, H.P.) was requested vide letter dated 5.5.2017 to intimate the office of respondent No.1 the total number of voters enrolled in

Legislative Assembly segments relatable to the area of Municipal Corporation, Shimla. The Chief Electoral Officer informed that total number of such electors as per their record as on 1.1.2017 was 85,546 and it appeared that this was much lower than the number of voters published in the electoral rolls for the Shimla Municipal Corporation on 5.5.2017 which was 88,167.

6. It was further averred that while some difference always remains, yet in the instant case the difference was substantial and moreover, 2200 applications were still pending decision. Therefore, taking into consideration the entirety of the facts and circumstances, respondent No.1 issued order dated 9.5.2017 (Annexure P-2) with a view to ensure that the elections are conducted in a free and fair manner as is expected of respondent No.1 and the same reads thus:

" MUNICIPAL CORPORATION
ELECTIONS

STATE ELECTION COMMISSION HIMACHAL PRADESH

No. SEC-13-96/2017-III-764 dated the 9th May, 2017.

ORDER

Whereas this Commission had directed the Electoral Registration Officer-cum-Deputy Commissioner, Shimla district, to undertake the process for preparation of electoral rolls of the Municipal Corporation Shimla vide Notification No. SEC-13-96/2017-III-568-79 dated 11th April, 2017.

And whereas the Electoral Registration Officer-cum Deputy Commissioner, Shimla district had prepared and notified the electoral rolls of Municipal Corporation Shimla on 5.5.2017, which shows the number of the electors as 88167. As this appeared on the higher side, the Chief Electoral Officer, H.P. (which is an office of Election Commission of India) was requested to inform the number of electors in the Legislative Assembly Constituency areas relatable to the Municipal Corporation Shimla. The CEO, HP had on 05.05.2017 informed the total number of electors enrolled by them was 85546 for the Municipal Corporation area. Considering that both the electoral rolls were prepared with reference to the same qualifying date i.e. 01.01.2017, the difference was on the higher side. Though some difference always occurs, but this difference is substantial, keeping in mind that further around 2200 applications were still pending with the Revising Authorities. A report was accordingly sought from the ERO-cum-Deputy Commissioner Shimla district.

And whereas the ERO-cum-Deputy Commissioner Shimla vide letter No. SML-LFA-Election(300)/2017-2033 dated 08th May, 2017 has reported inter-alia that the some areas which falls under Gram Panchayat(s) had got included inadvertently.

And whereas this Commission has also received many complaints from political parties, the Mayor/Councillors of Municipal Corporation Shimla and the public regarding discrepancies in the electoral rolls such as that the electors are not appearing in the relevant wards, address of the electors is incomplete, names of many eligible electors have been left out and many persons have got included in the electoral rolls who are not so entitled.

Keeping in view the above, the Commission has reached the conclusion that in the interest of fair and smooth elections, it will be appropriate to correct the electoral rolls. Therefore, the State Election Commission, in exercise of the powers vested in it under Article 243ZA of the Constitution of India, Section 9 of the Himachal Pradesh Municipal Corporation Act, 1994 read with Rule 24 of the Himachal Pradesh Municipal Corporation Election Rules, 2012 hereby directs special revision of the electoral rolls of Municipal Corporation Shimla as per following programme:-

> Sr.No. Exercise to be undertaken Period 1. Verification of electors already enrolled in the final electoral rolls and receipt of claims and objections by the Revising Authorities. 15.05.2017 To 24.05.2017 2, Preparation of list of voters whose names are proposed for addition/deletion/correction. 24.05.2017 To 29.05.2017 3. Service of notices to such electors by the Revising Authorities. 30.05.2017 To 03.06.2017 4. Disposal of cases by the Revising Authorities. 05.06.2017 To 12.06.2017 5. Appeal by the aggrieved voters to the ERO-cum-Deputy Commissioner Shimla. Within three days from the passing of order by Revising Authorities. 6. Disposal of appeals. Within three days from the filing of appeals. 7. Preparation of supplementary lists-II and insertion of corrections 23.06.2017. in the finally published electoral rolls.
>
> By Order State Election Commissioner
> Himachal Pradesh."

7. It was after the incorporation of Part IXA in the Constitution of India vide 74th Amendment Act, which came into force from 1.6.1993 that the municipalities as institution of self governance were given the constitutional status.

8. For adjudication of this lis, it is Article 243U of the Constitution of India that is of utmost importance and reads thus:

> "243U. Duration of Municipalities, etc. - (1) Every Municipality, 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: Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality 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 Municipality 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 Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would leave continued under, clause (1) had it not been so dissolved." 9. Section 5 of the Himachal Pradesh Municipal Corporation Act, 1994 prescribes the duration of Municipal Corporation and reads thus:

"5. Duration of Corporation.- (1) The Corporation, unless sooner dissolved under section 404 of this Act, shall continue for five years from the date appointed for its first meeting.

(2) An election to constitute the Corporation shall be completed –

(a) before the expiry of its duration specified in sub-section (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 Corporation would have continued is less than six months, it shall not be necessary to hold any election under this section for constituting the Corporation for such period.

(3) A Corporation constituted upon its dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Corporation would have continued under sub-section (1) had it not been so dissolved."

10. Section 9 of the Himachal Pradesh Municipal Corporation Act, relates to the Election to the Corporation and reads thus:

"9. Election to the Corporation.--(1) The superintendence, direction and control of the preparation of electoral rolls, delimitation of wards, reservation and allotment of seats by rotation for, and the conduct of all elections of the Corporation, shall be vested in the State Election Commission.

(2) The Government as well as the Corporation shall, when so requested by the State Election Commission, make available to the Commission such staff [material and monetary resources] as may be necessary for the discharge of the functions conferred on the State Election Commission by subsection (1).

(3) The Commission shall frame its own rules and lay down its own procedure."

11. The superintendence, direction and control of the preparation of electoral rolls, delimitation of wards, reservation and allotment of seats by rotation for, and the conduct of all elections to the Municipalities, are vested in the State Election Commission referred to in Article 243K, subject to the provisions of the Constitution, the Legislature of a State has been conferred with power to make provision with respect to all matters relating to, or in connection with, elections to the Municipalities as would be evident from Article 243ZA of the Constitution, which reads thus:

"243ZA. Elections to the Municipalities.- (1) 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.
> (2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

12. The State Legislature in furtherance to Part IXA of the Constitution has incorporated the Municipal Corporation Act, 1994 and Municipal Corporation Election Rules, 2012. Chapter-II therein deals with Delimitation and Reservation of Wards, Chapter IV deals with Electoral Rolls, Chapter VI deals with conduct of elections and Chapter VIII deals with counting of votes and declaration of results.

13. For the adjudication of this petition, the provisions relevant are contained in Rules 22, 23, 24 and 33, which read thus:

> "22. Disposal of claims and objections: (1) On the date, time and place fixed under the provisions of rule 20, the Revising Authority shall hear and decide within 10 days or such shorter period as may be specified by the Commission the claims and objections under the provisions of these rules, and shall record his decision in the registers in Forms 7, 8 and 9 as the case may be.
> (2) Copy of the order relating to the objection shall be given on payment of Rs.15/- to the claimant against receipt and objector immediately, if he is present. Otherwise he can get the copy of the same on payment of Rs.25/- in cash against receipt.
> (3) Any person aggrieved by an order passed under the provisions of sub-rule (1), may, within 3 days from the date of the order, file an appeal to Electoral Registration Officer, who shall as far as practicable, within a week, decide the same.
> (4) If it appears to the Electoral Registration Officer that due to inadvertence or error during the preparation of draft Electoral rolls, names of electors have been left out of the Electoral roll or the names of dead persons or persons who ceased to be or are not ordinarily resident in the ward or part thereof have been included in the Electoral roll or certain voters have been shown in the wrong ward or polling station and that remedial action is required to be taken under this sub-rule, shall within seven days from the date of publication of draft Electoral roll –

(a) prepare a list of the name and other particulars of such electors;

(b) exhibit on the notice board of his office a copy of the list together with a notice as to the date(s) and place(s) at which the matter of inclusion of the names in Electoral roll or deletion of the names from the Electoral roll shall be considered; and

(c) after considering any verbal or written objection that may be preferred, decide whether all or any of the names may be included in or deleted from the Electoral roll.

(23) Final publication of Electoral roll. – (1) The Revising Authority as soon as it has disposed of all the claims or objections presented to it, shall forward the same alongwith the register of such claims or objections and the orders passed by it thereon to the Electoral Registration Officer, who shall cause the Electoral roll to be corrected in accordance with such orders or the orders passed on appeal by him under sub-rule (3) of rule 22 and corrections consequential to sub-rule (4) of rule 22, as the case may be, and shall publish the final Electoral roll, on a date fixed by the Commission by making a complete copy thereof available for inspection and display a notice thereof in Form-17 in his office and also in the offices of the Corporation and the Tehsil concerned. (2) On such publication, the Electoral roll with or without amendments shall be the electoral roll of the ward or part thereof and shall come into force from the date of its publication under this rule.

(24) Special Revision of Electoral rolls. – Notwithstanding anything contained in rule 23, the Commission may at any time, for the reasons to be recorded, direct a special revision for any ward or part thereof in such a manner as it may think fit:

Provided that, subject to, other provisions of these rules, the Electoral rolls for the wards or part thereof as in force at the time of the issue of any such directions shall continue to be in force until the completion of the special revision, so directed.

(33) Election Programme. – (1) the State Election Commissioner shall frame a programme of general elections of the Corporation or a programme to fill up any casual vacancy in a Corporation or hold election to a Corporation which has been dissolved (hereinafter referred to as “election programme”).

(2) The election programme shall specify the date or dates on, by, or within which –

(i) the nomination papers shall be presented;
(ii) the nomination papers shall be scrutinized:
(iii) a candidate may withdraw his candidature:
(iv) the list of contesting candidates shall be affixed;
(v) the list of polling stations shall be pasted:
(vi) the poll, if necessary shall be held on……..from …….A.M. to …….P.M. (the hours of poll shall not be less than six hours).
(vii) the counting in the event of poll, shall be done ……. (here time and place fixed for the purpose shall also be specified); and
(viii) the result of the election shall be declared.

(3) The election programme shall be published seven days before the date of filing of nomination papers by pasting a copy at the office of the Deputy Commissioner, Tehsil and Corporation and at such other conspicuous places in the Corporation as may be determined by the Deputy Commissioner in this behalf.

(4) The period for filing of nomination papers shall be three working days and the date of scrutiny shall be the next working day from the last date of filing of nomination papers. The date of withdrawal shall be the third working day from the date of scrutiny. The date for affixing the list of contesting candidates shall be the same as fixed for withdrawal of candidature. The list of polling stations shall be published approximately one month before the date of poll or on a date as may be specified by the Commission. The gap between the date of withdrawal and the date of poll shall atleast be ten days and the day of poll shall preferably be a Sunday or any gazetted holiday.

(5) The Commission may be an order amend, vary or modify the election programme.
Provided that unless the Commission otherwise directs, no such order shall be deemed to invalidate any proceedings taken before the date of the order."

14. It would be noticed that the provisions of the local statutes as have been reproduced above, in fact, only follow what has otherwise been provided for by Article 243, more particularly Article 243U. Therefore, it is the interpretation of Article 243U, upon which the entire adjudication of the instant lis hinges.

15. Having set-out the relevant provisions of law, we would now deal with the rival contentions of learned counsel for the parties.

16. Mr. B.C. Negi, Senior Advocate, assisted by Mr. Nitin Thakur, Advocate, learned counsel for the petitioner would vehemently argue that the order dated 9.5.2017 (Annexure P-2) cannot withstand judicial scrutiny as it has been issued in violation of the provisions of Article 243U of the Constitution as interpreted by the Constitutional Bench of the Hon'ble Supreme Court in Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad and others (2006) 8 SCC 352. While, on the other hand, Mr. Shrawan Dogra, learned Advocate General, assisted by Mr. V.S. Chauhan, learned Additional Advocate General would vehemently argue that it was on account of bonafide reasons as already set out hereinabove that the respondent No.1 was compelled to postpone the elections or else the same could not have been held in a free and fair manner as many of the electors would have been deprived of their right of franchise and vote to elect their representatives.

We have heard learned counsel for the parties and have gone through the material placed on record.

17. At the outset, we may notice that the petitioner has not raised or levelled directly or indirectly or even tactically any allegations of malafide and, therefore, we would presume that the impugned order was issued bonafidely.

18. However, nonetheless the question that still remains open for consideration is whether the action of the respondents conforms to the law laid down in Kishansing Tomar's case (supra).

19. In order to appreciate this point, it would be necessary to first refer to the decision itself.

20. Kishansing Tomar was the Chairman of the Standing Committee of the Ahmedabad Municipal Corporation, to which the elected body was constituted for the relevant period pursuant to an election held in October, 2000 and its term was due to expire on 15.10.2005. He apprehended that the authorities may delay the process of election to constitute the new municipal body and therefore filed a writ petition before the Gujarat High Court on 23.8.2005. The Ahmedabad Municipal Corporation filed an affidavit before the High Court stating that it was the responsibility of the State Election Commission to conduct the elections in time. The State Election Commission in a separate affidavit in reply submitted that under the provisions of the Bombay Provincial Municipal Corporation Act, 1949, the State Government had issued a notification on 8.6.2005 determining the wards for the city of Ahmedabad by which the total number of wards had been increased from 43 to 45 and therefore, in view of the increase in the number of wards, the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmedabad in accordance with the provisions of the Bombay Provincial Municipal Corporation (Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994. It was alleged by the Commission that it was required to consult the political parties to carry out the delimitation of the wards and that it would take at least six months time for completing the process of election and the Commission could act only after the State Government issued the notification. The State Government produced a chart showing the detailed steps taken by the State Government at various stages culminating in the issue of notification dated 8.6.2005.

21. Kishansing Tomar contended before the learned Single Judge that in view of Article 243U of the Constitution, the authorities were bound to complete the process at the earliest and the elections should have been held before the expiry of the term of the existing Municipal Corporation. However, the learned Single Judge accepted the timeframe suggested by the State Election Commission and directed that it should be strictly followed and the process of elections must be completed by 31st December, 2005, and that no further extension for holding the elections would be permissible.

22. Aggrieved by the decision of the learned Single Judge, Sh. Kishansing Tomar filed LPA before the High Court and the learned Division Bench of the High Court upheld the order passed by learned Single Judge and further held that the timeframe given by the State Election Commission was perfectly justified and the Election Commission was directed to begin and complete process as per the dates given in its affidavit and accordingly the L.P.A. was dismissed.

23. It was in this background that Kishansing Tomar approached the Hon'ble Supreme Court wherein the main thrust of his argument was that in view of various provisions contained in Part IXA of the Constitution of India, it was incumbent on the

part of the authorities to complete the process of election before the expiry of the period of five years from the date appointed for first meeting of the Municipality. Whereas, the case of the State Election Commission was that every effort was made by it to conduct the elections before the stipulated time, but due to unavoidable reasons, the elections could not be held and the preparation of the electoral rolls and the increase in the number of wards had caused delay in the process of election and under such circumstances the delay was justified in conducting the elections.

24. The Hon'ble Supreme Court after setting out in detail the relevant provisions of the Constitution of India contained in Articles 243U, 243ZA, 243S and 243T as also the provisions of the Bombay Provincial Municipal Corporations Act, 1949 held as under:

> "12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Seventy Fourth Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before the Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a Constitutional status to such bodies and to ensure regular and fair conduct of elections. In the statement of objects and reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:
>
> > "In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.
>
> Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for :

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to :

(a) the functions and taxation powers, and
(b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections.
(iii) ensuring timely elections in the case of supersession; and
(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for ---

** ** ** **

(f) fixed tenure of 5 years for the Municipality and re- election within a period of six months of its dissolution."

13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this Article, the duration of the Municipality is fixed for a term of five years and it is stated that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a Municipality shall be completed - (a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date or its dissolution. Therefore, the constitutional mandate is that election to a Municipality shall be completed before the expiry of the five years' period stipulated in Clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A Proviso is added to Sub-clause (3) Article 243-U that in case of dissolution, the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period. It is also specified in Clause (4) of Article 243-U that a Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1) had it not been so dissolved.

14. So, in any case, the duration of the Municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243-U.

15. The counsel for the respondents contended that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and under such circumstances the provisions of Article 243-U could not be complied with stricto sensu.

16. A similar question came up before the Constitution Bench of this Court in Special Reference No. 1 of 2002 with reference to the Gujarat Assembly Elections matter. The Legislative Assembly of the State of Gujarat was dissolved before the expiration of its normal duration. Article 174(1) of the Constitution provides that six months shall not intervene between the last sitting of the Legislative Assembly in one session and the date appointed for its first sitting in the next session and the Election Commission had also noted that the mandate of Article 174 would require that the Assembly should meet every six months even after dissolution of the House and that the Election Commission had all along been consistent that normally a Legislative Assembly should meet at least every six months as contemplated by Article 174 even where it has been dissolved. As the last sitting of the Legislative Assembly of the State of Gujarat was held on 3.4.2002, the Election Commission, by its order dated 16.8.2002, had not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat and observed that the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December, 2002 and therefore the mandate of Article 174(1) of the Constitution of India to constitute a new Legislative Assembly cannot be carried out. The Reference, thus, came up before this Court.

17. Speaking for the Bench, Justice Khare, as he then was, in paragraph 79 of the Answer to the Reference, held : (SCC p.288)

> “79.However, we are of the view that the employment of the words "on an expiration" occurring in Sections 14 and 15 of the Representation of the People Act, 1951 respectively show that the Election Commission is required to take steps for holding election immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for. Yet, there is another indication in Sections 14 and 15 of the Representation of People Act that the election process can be set in motion by issuing of notification prior to expiry of six months of the normal term of the House of the People or Legislative Assembly. Clause (1) of Article 172 provides that while promulgation of emergency is in operation, Parliament by law can extend the duration of the Legislative Assembly not exceeding one year at a time and this period shall not, in any case, extend beyond a period of six months after promulgation has ceased to operate…..The aforesaid provisions do indicate that on the premature dissolution of the Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Legislative Assembly."

18. Concurring with the foregoing opinion, Pasayat, J. in paragraph 151, stated as follows : (SCC p.322)

> "151. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex no cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the

> circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Ed., at pp 1962- 63 and Craies on Statue Law, 6th Edn., p.268.) These aspects were highlighted by this Court in Special Reference No. 1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

20. The majority opinion in Lakshmi Charan Sen & Ors. Vs. A.K.M. Hassan Uzzaman & Ors. (1985) 4 SCC 689 held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that Election Commission shall take steps to prepare ::: Downloaded on - 07/06/2017 16:16:33 :::HCHP High Court of H.P. 26 the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.

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 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." (underlining supplied by us).

25. Incidentally, both the parties have relied upon the aforesaid decision and would interpret it in a manner as would best serve them. It is here that the theory of precedents and binding effect of decision assumes significance.

26. It is more than settled that it is the ratio of a case which is applicable and not what logically flows therefrom. A case is only an authority for what it actually decides and not logically flows from it. Observations of court are not to be read as Euclid's theorems nor as provisions of the statutes. These observations must be read in the context in which they appear and judgments of courts are not to be construed as statutes.

27. On the subject of precedents Lord Halsbury, L.C., said in Quinn vs. Leathem, 1901 AC 495:

> *"Now before discussing the case of Allen Vs. Flood (1898) AC1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."*

28. Lord Mac Dermot in London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at P.761), observed:

> *"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."*

29. Lord Reid in Home Office. V. Dorset Yatch Co. (1970 (2) All ER 294) said:

> *"Lord Atkin's speech..is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament."*

30. Lord Morris in Herrington v. British Railways Board, (1972) 2 WLR 537 said:

> *"There is always peril in treating the words of a speech or judgment as though they are worlds in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

31. The following words of Lord Denning in the matter of applying precedents have become locus classicus.

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*
>
> *xxx xxx xxx "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

32. In Ambica Quarry Works v. State of Gujarat and others (1987) 1 SCC 213, the Hon'ble Supreme Court held that the ratio of any decision must be understood in the background of the facts of that case. Relying on Quinn v. Leathem (1901) AC 495, it has been held that the case is only an authority for what it actually decides, and not what logically flows from it.

33. In Krishena Kumar v. Union of India and others (1990) 4 SCC 207, the Constitution Bench of the Hon'ble Supreme Court while dealing with the concept of ratio decidendi, has referred to Caledonian Railway Co. v. Walker's Trustees (1882) 7 App Cas 259:46 LT 826 (HL) and Quinn (supra) and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows:-

> *"The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol.26, para 573)."*
>
> *"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of*

the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

(Emphasis added)

34. In Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697, the Hon'ble Supreme Court has made the following observations:-

"2.....The ratio decidendi of a judgment has to be found out only on reading the entire judgment. Infact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

35. In Union of India v. Amrit Lal Manchanda and another (2004) 3 SCC 75, it has been stated by the Hon'ble Supreme Court that observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

36. In State of Orissa v. Mohd. Illiyas (2006) 1 SCC 275, it has been stated by the Hon'ble Supreme Court thus:-

"12.....According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems

disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

37. In Oriental Insurance Co. Ltd. Vs. Smt. Raj Kumari and Ors.; 2007 (13) SCALE 113, the well known proposition, namely, it is ratio of a case which is applicable and not what logically flows there from is enunciated in a lucid manner by the Hon'ble Supreme Court and it was observed thus:

"10.Relinace on the decision without looking to the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates –(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct," or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an, authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See:State of Orissa v. Sudhansu Sekhar Misra and Ors. (1970) ILLJ 662 SC and Union of India and Ors. V. Dhanwanti Devi and Ors. (1966) 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathern (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in wich such expressions are found and a case is only an authority for what it actually decides."

38. In Som Mittal v. Government of Karnataka (2008) 3 SCC 574 the Hon'ble Supreme Court observed that judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style.

39. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation (See: Arasmeta Captive Power Company Private Limited and another v. Lafarge India Private Limited AIR 2014 SC 525.)

40. Now, adverting to the judgment in Kishansing Tomar's case (supra), it would be noticed that the Hon'ble Supreme Court has categorically observed therein that the very purpose of inserting Part IXA in the Constitution by introducing various provisions as per 74th Amendment Act, 1992 was that in many States the local bodies were not working properly and even the timely elections were not being held and the nominated bodies were continuing for long periods. Even the elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities.

41. The Hon'ble Supreme Court also took into consideration the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies wherein it was recognised that the local bodies in many States had become weak and ineffective on account of a variety of reasons including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies were not able to perform effectively as vibrant democratic units of self-Government. One of the object for introducing the aforesaid provision was to ensuring the regular conduct of elections.

42. In paragraph 14 of the aforesaid judgment, it has been specifically observed by the Hon'ble Supreme Court that duration of the Municipality is fixed as five years from the date of its first meeting and no longer and it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243U.

43. It would further be noticed that a contention had been putforth by the respondent therein before the Hon'ble Supreme Court that due to multifarious reasons, the State Election Commission may not be in a position to conduct the

elections in time and there could be instances where the provisions of Article 243-U like the case before the Hon'ble Supreme Court cannot be complied with stricto sensu.

44. The Hon'ble Supreme Court after considering the contention in light of the earlier Constitution Bench judgment in Special Reference No.1 of 2002 in (2002) 8 SCC 237, held that State Election Commission, should not put forward any excuse based on unreasonable grounds that the election should not be completed in time rather the Election Commission should try to complete the election before the expiration of the duration of five years period as stipulated in Clause (5). Any revision of electoral rolls should be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. It was further clarified that the Election Commission should complete the election process within the aforesaid time and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

45. Learned Advocate General would vehemently argue that the Hon'ble Supreme Court in paragraph 19 of its report has categorically observed that the State Election Commission should not put forward any excuse based on unreasonable grounds that the elections are not being postponed by taking into consideration the certain vested interests. Whereas, this is not the fact situation obtaining in the instant case as the elections have been postponed for reasons that are genuine and bonafide and not even doubted by the petitioner.

46. No doubt, the submission of the learned Advocate General appears to be attractive, however, in light of the Constitution Bench judgment of the Hon'ble Supreme Court in Kishansing Tomar's case (supra), we are unable to accede to his submission. The Hon'ble Supreme Court has in Kishansing Tomar's case (supra) in no uncertain terms makes it clear that it is only in case of certain activities such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstances would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. It has further clarified that even this should be an exceptional circumstance and should not be a regular feature to extend the duration of the municipality. Not only this, it has thereafter unequivocally held that going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects.

47. Reference in this regard can conveniently be made to para 21 of the report which though already stands extracted above, but we still deem it proper to reproduce the same herein also and the same reads thus:

> *"21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period."*

48. Notably, the judgment rendered in Kishansing Tomar's case (supra) was subject matter of consideration before three Judges of the Hon'ble Supreme Court in K.B.Nagur, M.D. (Ayurvedic) vs. Union of India (2012) 4 SCC 483 and the ratio laid down therein (Kishansing Tomar's) case (supra) was culled out in the following manner:

> *" 33. In Kishansing Tomar (supra), this Court while dealing with the question of revision of electoral rolls by the State Election Commission, noticed that the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (9) of Article 243-U of the Constitution and not yield to situations that may be created by vested interests to postpone elections beyond the stipulated time. The State Election Commission shall take steps to prepare the electoral rolls, by following due process of law, but that too, should be done in a timely manner and in no circumstances, shall the elections be delayed so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution.*
>
> *34. Further, while drawing a distinction between severe man-made calamities such as rioting, breakdown of law and order or natural calamities, which could distract the authorities from holding elections to the Municipality and other reasons for delay, this Court noted that*

the former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. This Court laid significant emphasis on the independence of the State Election Commission and expected all other authorities to fully cooperate, and in default, granted liberty to the State Election Commission to approach the High Court and/or the Supreme Court, as the case may be for relief/directions. However, no final or time-bound directions were issued, in the petition above-referred, because election to the Ahmedabad Municipal Corporation in that case had already been 41 held in the meanwhile." (underlining supplied by us).

49. The aforesaid exposition of law culled out from the decision in Kishansing Tomar's case (supra) makes it evidently clear that while drawing a distinction between certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality and other reasons for delay, the Hon'ble Supreme Court had noted that former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election.

50. Indubitably, the exercise of special revision of electoral rolls as is being undertaken by respondent No.1 does not fall within the former category so as to entitle it to postpone the elections. The provisions contained in Article 243U of the Constitution, makes it absolutely clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects.

51. Once the ratio of the aforesaid judgment is absolutely clear, then judicial comity, discipline, concomitance, pragmatism, poignantly point, per force to observe constitutional propriety and adhere to the decision 42 rendered by the Hon'ble Supreme Court in Kishansing Tomar's case (supra).

52. Judicial discipline requires decorum known to law which warrants that appellate directions should be followed in the hierarchical system of court which exists in this country. It is necessary for each lower tier to accept loyally the decisions of the higher tier. After all, the judicial system only works if someone is allowed to have the last word, and if that last word once spoken is loyally accepted. Therefore, we cannot deduce any other ratio of what was decided in Kishansing Tomar's case (supra) in view of the judgment subsequently rendered by the Hon'ble Supreme Court in K.B.Nagur's case (supra).

53. The exercise now being undertaken by respondent No.1 for revision of the electoral rolls cannot rest the process of election and should have been done timely. For it is incumbent upon respondent No.1 and other respondents to carry out the mandate of the Constitution and to see and ensure that a new Municipality is constituted in time and election to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243 (4). The revision of electoral rolls was required to be carried out in time by the respondents and if they have not been carried out within the time frame, then the election has to be conducted on the basis of the existing electoral rolls.

54. In view of the above discussion, the action of the respondents in postponing the election, even though presumed to be bonafide, cannot be countenanced or upheld as the same is contrary to the Constitutional mandate of Article 243U as interpreted by the Constitution Bench of the Hon'ble Supreme Court in Kishansing Tomar's case (supra) and thereafter re-affirmed in K.B.Nagur's case (supra). Accordingly, the order passed by respondent No.1 on 9.5.2017 (Annexure P-2) is quashed and set-aside. \

55. However, even after coming to the aforesaid conclusion we cannot accede to the third prayer made by the petitioner for constituting a duly elected Municipal Corporation on or before 4.6.2017 in view of the provisions contained in the Municipal Corporation Election Rules, 2012, more particularly Rule 33 thereof which provides for the election programme.

56. It is more than settled that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. Situations without precedent demand remedies without precedent. The extra-ordinary situation may call for extra-ordinary response and situational demands.

57. Therefore, in the peculiar facts and circumstances of the case we feel that the following directions shall subserve the ends of justice:

(i) The respondent No.1 shall forthwith and no later than 24 hours of the receipt of this judgment frame a programme for general elections of the Municipal Corporation and take all consequential action so as to ensure that the elections are held no later than 18.6.2017, even if this calls for some deviation of Rule 33 (supra).

(ii) The respondents shall ensure that the new body of duly elected representatives of the Corporation is constituted latest by 19.6.2017.

(iii) The election shall be conducted on the basis of the final electoral rolls published on 05.05.2017 subject to the proviso as contained in Rule 25 of the Himachal Pradesh Municipal Corporation Election Rules, 2012, which reads thus:

"25. Correction of entries in Electoral rolls.- If the Electoral Registration Officer on an application in Form-6 or in Form-18 made to him, or on his own motion, is, satisfied, after such inquiry as he thinks fit, that any entry in the Electoral roll –

(a) is erroneous or defective in any particular;

(b) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident or is otherwise not entitled to be registered in that Election roll, he shall amend or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b), the Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him:

Provided further that an application under this rule at any time after the publication of the election programme under rule 33 shall be made to the Electoral Registration Officer not later than 8 days before the last date fixed for the filing of nomination papers."

(iv) The elected and nominated body of the existing Municipal Corporation shall not be permitted to be in office after 4.6.2017 and it shall further be the duty and responsibility of the State Government to put in place a proper mechanism so as to ensure that the working of the Corporation does not suffer on account of implementation of this judgment.

However, before parting, it is made clear that this judgment shall not be treated as a precedent.

58. The petition is disposed of in the aforesaid terms. The parties are left to bear their own costs. Pending application(s) if any, stands disposed of.

An authenticated copy of this judgment be supplied to respondent No.1 forthwith by the Court Master.

Tarlok Singh Chauhan),
Judge

(Chander Bhusan Barowalia)
29th May, 2017 Judge

Election

Eligibility/Qualification/Disqualification/Recall/Removal of Candidate

Judicial Interference/Review

— **Interim stay on disqualification of elected candidate until disposal of election petition, passed by court — Nature and efficacy of — Assumption/Resumption of elected office by such elected candidate based on such stay of disqualification — Interference with — Propriety** — *ZilaParishad Territorial Constituency (ZPTC) Member holding office of Chairperson, ZilaPrajaParishads (ZPP) — Challenge to — High Court by impugned interim order dt. 10-12-2014 directing Vice-Chairperson of ZPP to discharge functions of Chairperson until further orders in view of appellant's disqualification as ZPTC Member and consequently as Chairperson, ZPP vide order dt. 11-8-2014 passed by Presiding Officer, finding that until and unless order of disqualification was set aside it remained operative — Single Judge of High Court by order dt. 7-11-2014 suspending proceedings dt. 11-8-2014 — Held, effect of order dt. 7-11-2014 was that appellant's disqualification was kept in abeyance till disposal of election petition — Besides, Single Judge of High Court simultaneously in other pending writ petitions by separate interim orders had stayed order dt. 12-8-2014 by which Vice-Chairperson of ZPP was asked to assume charge of Chairperson — Thus, there was no legal impediment for appellant to assume post of Chairperson, ZPP which he did assume on 8-11-2014 — In such circumstances Division Bench of High Court ought to have dismissed interlocutory applications as having been rendered infructuous because prayer made therein was to restrain appellant from assuming office of Chairperson and asking Vice-Chairperson to assume charge of Chairperson — Division Bench erred in doing so since it failed to see that so long as final adjudication was not done in accordance with law on merits in the election petitions, District Court (Election Court under relevant statute) was vested with power to pass appropriate interim orders in relation to impugned action under S. 22-A, A.P Panchayat Raj Act, 1994 — It also failed to appreciate that once petitions filed by appellant were allowed on 7-11-2014 by suspending proceedings dt. 11-8-2014, respondents had no option but to allow appellant to function as Chairman of ZPP — Impugned order directing removal of appellant from post of Chairperson and asking Vice-Chairperson to take over charge of Chairperson in his place not only untenable but perverse too — Election — Elections to Particular Bodies/Offices — Local Government/Bodies/Municipalities/ Panchayats/Autonomous and Other Bodies — Eligibility/Qualification/Disqualification - Judicial interference - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an*

interim order pending final adjudication — Election — Election Petition/Trial — Jurisdiction in respect of Election Petition/Trial — Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Constitution of India — Article 226 — Scope of Judicial review/Interference under Art. 226 — Election matters - Art. 226 - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Civil Procedure Code, 1908 - Or. 39 Rr. 1 & 2, Or. 43 R. 1(r) and Or. 41 R. 5 - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Election — Election Petition/Trial — Appeal/Supervisory Jurisdiction — Election Petition Statutes, Rules, Regulations, Norms, etc. - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Election — Elections to Particular Bodies/Offices — Local Government/Bodies/Municipalities/ Panchayats/ Autonomous and Other Bodies — Andhra Pradesh Panchayat Raj Act, 1994 (13 of 1994) - S. 22-A — Practice and Procedure — Interim/Interlocutory Order/Injunction/Stay/Interim Relief - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Civil Suit — Interim/Interlocutory order/Injunction/stay/Interim Relief - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Election — Election Petition/Trial — Appeal/Supervisory Jurisdiction — Appeal to High Court/Supreme Court in Statutory Jurisdiction under Representation of the People Act, 1951 - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication — Constitution of India — Article 226 — Scope of Judicial review/Interference under Art. 226 — Interim/Interlocutory orders - Art. 226 - Interim/Interlocutory orders/Injunctions/Stay - Inherent and statutory powers of courts to stay/restrain execution of action impugned in lis during pendency of lis - Nature and efficacy of an interim order pending final adjudication

The appellant was the duly elected member of ZilaParishad Territorial Constituency (“ZTPC”) who had contested the election as a candidate of Telugu Desam Party (“TDP”).

On 12-7-2014, the District Collector-cum-Presiding Officer (Respondent 2) was informed that one *T* (Respondent 1) has been appointed as whip on behalf of TDP in relation to the election to the office of Chairperson and Vice-Chairperson ZPP of the District. Thereafter two whips were issued by *T* directing all the ZPTC members belonging to TDP to vote in favour of *M* for the office of Chairperson, and in favour of *P* for the office of Vice-Chairperson.

According to the appellant, when the whips were issued he was not present in the district, and hence, as such he neither received nor was served with copy of two whips which were alleged to have been issued. He also alleged that his signature acknowledging receipt of the said whips was either forged or fabricated.

On 13-7-2014, the elections to the said offices were conducted by the District Collector-cum-Presiding Officer. The appellant, however, contested the election to the office of Chairperson, ZPP, as an "independent candidate" and cast his vote in his own favour and in favour of one *B*, an independent candidate for the office of Vice-Chairperson. The appellant won the election and was accordingly declared elected as the Chairperson by one vote defeating, the candidate proposed by TDP as a candidate to the post of Chairperson.

This led to filing of a complaint by *T* (Respondent 1) alleging inter alia that the appellant cast his vote in the said election in violation of the whips issued by TDP.

On 16-7-2014, a show-cause notice was issued to the appellant and considering the explanation submitted by him, by order dated 11-8-2014 Presiding Officer and District Collector, disqualified the appellant as the member of ZPTC, and directed him to vacate the office of the Chairperson, ZPP. On 12-8-2014, CEO, ZPP, directed *B* Vice-Chairperson to temporarily take over the charge of the office of Chairperson until a new Chairperson was duly elected.

The appellant challenged the order dated 11-8-2014 by filing petition in the High Court which was dismissed. Liberty was granted to the petitioner to approach the District Court by taking recourse to the remedy available under Section 181-A of the Act.

Accordingly the appellant approached the Ist Additional District Judge challenging the order dated 11-8-2014 and also prayed for grant of ad interim injunctions for suspending said order. The interim applications were dismissed on 7-10-2014. Aggrieved thereby, appellant filed writ petitions in the High Court.

In view of the disqualification of the appellant herein, a representation was submitted on 28-8-2014 to the State Election Commission and the District Collector-cum-Presiding Officer for conducting fresh elections. Since the said application was not being considered by the State Election Commission a writ petition was filed before the High Court.

The Single Judge heard all the petitions together and by common order dated 7-11-2014, allowed the petition filed by the appellant and quashed the order dated 7-10-2014 passed by the 1st Additional District Judge. The Single Judge then suspended the proceedings dated 11-8-2014 by which the appellant was disqualified as ZPTC member and consequently as Chairperson of ZPP. So far as WP No. 30799 of 2014, which was filed for conducting fresh election in view of the disqualification of the appellant, was concerned, it was dismissed.

The appellant accordingly on 8-11-2014 resumed the office of Chairperson and took over the charge of the office of the Chairperson, ZPP.

One *R* aggrieved by order dated 12-8-2014 filed a writ petition bearing WP No. 31113 of 2014 before the High Court. The writ petition was allowed by the Single Judge on 12-11-2014 and proceedings dated 12-8-2014 were suspended subject to further orders.

In the meantime *T* (Respondent 1) filed writ appeals before the High Court challenging the order dated 7-11-2014 passed by the Single Judge.

On 25-11-2014, One *L* filed WP No. 36421 of 2014 seeking suspension of proceedings dated 12-8-2014 of CEO directing the Vice-Chairperson to act as the Chairperson which was already the subject-matter of pending Writ Petition No. 31113 of 2014. On 26-11-2014, the appellant filed an application for bringing on record the documents to show that he has already resumed the office as the Chairperson pursuant to the final order dated 7-11-2014 passed by the Single Judge and has been functioning since 8-11-2014. He, therefore, contended that there arise no occasion to allow anyone to resume the post of Chairperson and secondly, no vacancy arises for the post of Chairperson at least till the final disposal of the main election petitions pending before the District Court.

The High Court, in the meantime, by order dated 28-11-2014 in WP No. 36241 of 2014 suspended the proceedings dated 12-8-2014 of CEO by which he had directed the Vice-Chairperson to act as Chairperson, as was already done in identical Writ Petition No. 31113 of 2014 by order dated 12-11-2014. Two writ appeals bearing WAs Nos. 1484-85 of 2014 were preferred thereagainst.

On 1-12-2014, the appellant filed an application inter alia praying for considering the additional documents in support of his contention that there is no vacancy for the post of Chairperson. By the impugned interim order dated 10-12-2014, the Division Bench directed the Vice-Chairperson to discharge the functions of the Chairperson until further orders and further restrained the respondents from filling up the vacancy of Chairperson. Hence, the instant appeals.

The short question which arises for consideration in instant appeals is whether the Division Bench was justified in allowing the applications filed in pending writ appeals and issuing mandatory directions?

Allowing the appeals,

Held :

It was directed by the Division Bench that the Vice-Chairperson until further orders would discharge the functions of the Chairperson; and further the official respondents were restrained from taking any steps to fill up the vacancy which resulted because of disqualification order. The aforementioned directions were based on following two findings viz. firstly that until and unless the order of disqualification is set aside, it remains operative. Hence, the order of suspension was futile and could not be implemented; secondly, some sort of workable interim order was passed keeping in view the balance of convenience, as under the Constitution, there is no express provision that in case of vacancy in the office of Prime Minister, anyone will function as a Prime Minister, as a Head of the Council of Ministers. On the contrary, on the vacancy, the entire Cabinet would stand dissolved. The aforementioned two findings are not legally sustainable for the reasons mentioned infra. (Para 42)

It is a well-settled principle of law that the courts are always vested with inherent and statutory power to stay/restrain the execution of the action impugned in the lis during pendency of the lis. These powers are contained in Order 39 Rules 1 and 2, and Order 41 Rule 5 of the Code of Civil Procedure, 1908. Hence, the Division Bench was not right in observing that so long as the order of disqualification was not set aside, it remained operative. The Division Bench failed to see that so long as the final adjudication is not done in accordance with law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action under Section 22-A of the Act. Moreover, it also failed to appreciate that once writ petitions filed by the appellant herein were allowed on 7-11-2014 by suspending the proceedings dated 11-8-2014, the respondents had no option but to allow the appellant to function as the Chairman of ZPP. (Paras 43 to 47)

Similarly, the Division Bench was also not right in giving an illustration quoted above in support of the impugned order which is wholly misplaced and has nothing to do with the short question involved herein. (Para 48)

The Single Judge by order dated 7-11-2014 had stayed the operation of the disqualification order dated 11-8-2014 passed by the District Collector. The effect of the suspension order was that the appellant's disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions. It is also not in dispute that the Single Judge

simultaneously in other two pending writ petitions (WP No. 31113 of 2014 and WP No. 36421 of 2014) by separate interim orders one dated 12-11-2014 and other dated 28-11-2014 had stayed the order dated 12-8-2014 by which the Vice-Chairperson of the ZPP was asked to assume the charge of the post of Chairperson and this stay was in operation. (Paras 49 and 51)

Thus, there was no legal impediment for the appellant to have assumed the post of the Chairperson, ZPP which he did assume on 8-11-2014 pursuant to the order dated 7-11-2014 of the Single Judge. Once the appellant assumed the office of the Chairperson, the Division Bench should have dismissed the interlocutory applications as having rendered infructuous because the prayer made therein, namely, to restrain the appellant from assuming the office of the Chairperson and asking the Vice-Chairperson to assume the charge of the Chairperson was already implemented prior to consideration of the applications and there was no apparent justification to oust the appellant from the post of Chairperson by another interim order. (Para 52)

The impugned order of the Division Bench in directing removal of the appellant from the post of Chairperson and asking the Vice-Chairperson to take over the charge of the Chairperson in his place is not only untenable in law but also perverse. (Para 53)

Now, to the last submission by Respondent 1 that impugned order being interim in nature, the Supreme Court should not interfere in the same under Article 136 of the Constitution. The submission cannot be accepted for the reason that if reasoning given by the High Court while passing the interim order is perverse and legally unsustainable being against the settled principle of law laid down by the Supreme Court then interference of the Supreme Court in such order is called for regardless of the nature of the order impugned in appeal. Since the reasonings given by the High Court are wholly unsustainable, being against well-settled principle of law, interference by Supreme Court in instant case is called for. (Paras 55 to 57)

The fate of the appellant about his membership and Chairpersonship depends on the outcome of the election petitions which are directed to be decided within three months. (Paras 58 and 59)

Edara Haribabu v. *Tulluri Venkata Narasimham*,
(2016) 2 SCC 640 : (2016) 2 SCC (Civ) 158 : 2015 SCC OnLine SC 816 : (2016) 2 ALD 120 (SC) : AIR 2016 SC 597

Bench Strength **2.** Coram : *JastiChelameswar* and **A.M Sapre**, JJ.
[Date of decision : 15/09/2015]

Mulraj v. MurtiRaghunathjiMaharaj, AIR 1967 SC 1386, relied on EdaraHaribabu v. Collector, 2014 SCC OnLineHyd 871 : (2015) 1 ALD 595, considered

EdaraHaribabu v. State of A.P, WP No. 23541 of 2014, order dated 22-8-2014 (AP); MarellaRajendra Prasad v. State of A.P, WP No. 31113 of 2014, order dated 12-11-2014 (AP), referred to

Constitution of India

Article 136

Scope of Interference under Art. 136

Interim/Interlocutory orders

— **Art. 136 — Interim/Interlocutory orders — Interference with — Scope — Perverse and unreasonable order of High Court** — *High Court by impugned interim order dt. 10-12-2014 directing Vice-Chairperson of ZPP to discharge functions of Chairperson until further orders in view of appellant's disqualification as ZPTC member and consequently as Chairperson, ZPP vide order dt. 11-8-2014 passed by Presiding Officer finding that until and unless order of disqualification was set aside it remained operative — Held, reasoning given by High Court being perverse and legally unsustainable being against settled principles of law laid down by Supreme Court, interference with such order called for regardless of nature of order impugned in appeal — Election — Eligibility/Qualification/Disqualification/Recall/Removal of Candidate — Judicial Interference/Review — Election — Election Petition/Trial — Appeal/Supervisory Jurisdiction — Election Petition Statutes, Rules, Regulations, Norms, etc. - Interim/Interlocutory orders - Interference with - Scope - Perverse and unreasonable order of High Court — Practice and Procedure — Interim/Interlocutory Order/Injunction/Stay/Interim Relief*

The appellant was the duly elected member of ZilaParishad Territorial Constituency ("ZTPC") who had contested the election as a candidate of Telugu Desam Party ("TDP").

On 12-7-2014, the District Collector-cum-Presiding Officer (Respondent 2) was informed that one *T* (Respondent 1) has been appointed as whip on behalf of TDP in relation to the election to the office of Chairperson and Vice-Chairperson ZPP of the District. Thereafter two whips were issued by *T* directing all the ZPTC members belonging to TDP to vote in favour of *M* for the office of Chairperson, and in favour of *P* for the office of Vice-Chairperson.

According to the appellant, when the whips were issued he was not present in the district, and hence, as such he neither received nor was served with copy of two whips which were alleged to have been issued. He also alleged that his signature acknowledging receipt of the said whips was either forged or fabricated.

On 13-7-2014, the elections to the said offices were conducted by the District Collector-cum-Presiding Officer. The appellant, however, contested the election to the office of Chairperson, ZPP, as an "independent candidate" and cast his vote in his own favour and in favour of one *B*, an independent candidate for the office of Vice-Chairperson. The appellant won the election and was accordingly declared elected as the Chairperson by one vote defeating, the candidate proposed by TDP as a candidate to the post of Chairperson.

This led to filing of a complaint by *T* (Respondent 1) alleging inter alia that the appellant cast his vote in the said election in violation of the whips issued by TDP.

On 16-7-2014, a show-cause notice was issued to the appellant and considering the explanation submitted by him, by order dated 11-8-2014 Presiding Officer and District Collector, disqualified the appellant as the member of ZPTC, and directed him to vacate the office of the Chairperson, ZPP. On 12-8-2014, CEO, ZPP, directed *B* Vice-Chairperson to temporarily take over the charge of the office of Chairperson until a new Chairperson was duly elected.

The appellant challenged the order dated 11-8-2014 by filing petition in the High Court which was dismissed. Liberty was granted to the petitioner to approach the District Court by taking recourse to the remedy available under Section 181-A of the Act.

Accordingly the appellant approached the Ist Additional District Judge challenging the order dated 11-8-2014 and also prayed for grant of ad interim injunctions for suspending said order. The interim applications were dismissed on 7-10-2014. Aggrieved thereby, appellant filed writ petitions in the High Court.

In view of the disqualification of the appellant herein, a representation was submitted on 28-8-2014 to the State Election Commission and the District Collector-cum-Presiding Officer for conducting fresh elections. Since the said application was not being considered by the State Election Commission, a writ petition was filed before the High Court.

The Single Judge heard all the petitions together and by common order dated 7-11-2014, allowed the petition filed by the appellant and quashed the order dated 7-10-2014 passed by the 1st Additional District Judge. The Single Judge then suspended the proceedings dated 11-8-2014 by which the appellant was disqualified as ZPTC member and consequently as Chairperson of ZPP. So far as WP No. 30799 of 2014, which was filed for conducting fresh election in view of the disqualification of the appellant, was concerned, it was dismissed.

The appellant accordingly on 8-11-2014 resumed the office of Chairperson and took over the charge of the office of the Chairperson, ZPP.

One *R* aggrieved by order dated 12-8-2014 filed a writ petition bearing WP No. 31113 of 2014 before the High Court. The writ petition was allowed by the Single

Judge on 12-11-2014 and proceedings dated 12-8-2014 were suspended subject to further orders.

In the meantime *T* (Respondent 1) filed writ appeals before the High Court challenging the order dated 7-11-2014 passed by the Single Judge.

On 25-11-2014, One *L* filed WP No. 36421 of 2014 seeking suspension of proceedings dated 12-8-2014 of CEO directing the Vice-Chairperson to act as the Chairperson which was already the subject-matter of pending Writ Petition No. 31113 of 2014. On 26-11-2014, the appellant filed an application for bringing on record the documents to show that he has already resumed the office as the Chairperson pursuant to the final order dated 7-11-2014 passed by the Single Judge and has been functioning since 8-11-2014. He, therefore, contended that there arise no occasion to allow anyone to resume the post of Chairperson and secondly, no vacancy arises for the post of Chairperson at least till the final disposal of the main election petitions pending before the District Court.

The High Court, in the meantime, by order dated 28-11-2014 in WP No. 36241 of 2014 suspended the proceedings dated 12-8-2014 of CEO by which he had directed the Vice-Chairperson to act as Chairperson, as was already done in identical Writ Petition No. 31113 of 2014 by order dated 12-11-2014. Two writ appeals bearing WAs Nos. 1484-85 of 2014 were preferred thereagainst.

On 1-12-2014, the appellant filed an application inter alia praying for considering the additional documents in support of his contention that there is no vacancy for the post of Chairperson. By the impugned interim order dated 10-12-2014, the Division Bench directed the Vice-Chairperson to discharge the functions of the Chairperson until further orders and further restrained the respondents from filling up the vacancy of Chairperson. Hence, the instant appeals.

The short question which arises for consideration in instant appeals is whether the Division Bench was justified in allowing the applications filed in pending writ appeals and issuing mandatory directions?

Allowing the appeals,

Held :

It was directed by the Division Bench that the Vice-Chairperson until further orders would discharge the functions of the Chairperson; and further the official respondents were restrained from taking any steps to fill up the vacancy which resulted because of disqualification order. The aforementioned directions were based on following two findings viz. firstly that until and unless the order of disqualification is set aside, it remains operative. Hence, the order of suspension was futile and could not be implemented; secondly, some sort of workable interim

order was passed keeping in view the balance of convenience, as under the Constitution, there is no express provision that in case of vacancy in the office of Prime Minister, anyone will function as a Prime Minister, as a Head of the Council of Ministers. On the contrary, on the vacancy, the entire Cabinet would stand dissolved. The aforementioned two findings are not legally sustainable for the reasons mentioned infra. (Para 42)

It is a well-settled principle of law that the courts are always vested with inherent and statutory power to stay/restrain the execution of the action impugned in the lis during pendency of the lis. These powers are contained in Order 39 Rules 1 and 2, and Order 41 Rule 5 of the Code of Civil Procedure, 1908. Hence, the Division Bench was not right in observing that so long as the order of disqualification was not set aside, it remained operative. The Division Bench failed to see that so long as the final adjudication is not done in accordance with law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action under Section 22-A of the Act. Moreover, it also failed to appreciate that once writ petitions filed by the appellant herein were allowed on 7-11-2014 by suspending the proceedings dated 11-8-2014, the respondents had no option but to allow the appellant to function as the Chairman of ZPP. (Paras 43 to 47)

Similarly, the Division Bench was also not right in giving an illustration quoted above in support of the impugned order which is wholly misplaced and has nothing to do with the short question involved herein. (Para 48)

The Single Judge by order dated 7-11-2014 had stayed the operation of the disqualification order dated 11-8-2014 passed by the District Collector. The effect of the suspension order was that the appellant's disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions. It is also not in dispute that the Single Judge simultaneously in other two pending writ petitions (WP No. 31113 of 2014 and WP No. 36421 of 2014) by separate interim orders one dated 12-11-2014 and other dated 28-11-2014 had stayed the order dated 12-8-2014 by which the Vice-Chairperson of the ZPP was asked to assume the charge of the post of Chairperson and this stay was in operation. (Paras 49 and 51)

Thus, there was no legal impediment for the appellant to have assumed the post of the Chairperson, ZPP which he did assume on 8-11-2014 pursuant to the order dated 7-11-2014 of the Single Judge. Once the appellant assumed the office of the Chairperson, the Division Bench should have dismissed the interlocutory applications as having rendered infructuous because the prayer made therein, namely, to restrain the appellant from assuming the office of the Chairperson and asking the Vice-Chairperson to assume the charge of the Chairperson was already

implemented prior to consideration of the applications and there was no apparent justification to oust the appellant from the post of Chairperson by another interim order. (Para 52)

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The fate of the appellant about his membership and Chairpersonship depends on the outcome of the election petitions which are directed to be decided within three months. (Paras 58 and 59)

***EdaraHaribabu* v. *TulluriVenkataNarasimham*,**

(2016) 2 SCC 640 : (2016) 2 SCC (Civ) 158 : 2015 SCC OnLine SC 816 : (2016) 2 ALD 120 (SC) : AIR 2016 SC 597

Bench Strength **2.** Coram : *JastiChelameswar* and **A.M Sapre**, JJ.

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Election

Corrupt Practices/Electoral Offences

Undue Influence/Coercion/Fraud

— **Undue influence — Non-disclosure of criminal antecedents of candidate in entirety and in full detail, held, amounts to corrupt practice of undue influence and election of candidate must be set aside on such ground** — *Act of candidate calculated to interfere with "free exercise of any electoral right" of voters — Words "direct or indirect" interference used in S. 123(2) RP Act, 1951 but not used in S. 171-C IPC, held, are significant and to be kept in mind while appreciating expression "undue influence" in S. 123(2) RP Act, 1951, which is to be applied bearing in mind the factual context — Non-disclosure of criminal antecedents of candidate in entirety and in full detail, especially pertaining to serious crimes or those relating to corruption or moral turpitude, as mandated by S. 33-A RP Act, 1951 and Rules, creates impediment in free exercise of electoral rights, hence constitutes corrupt practice of undue influence — Thus, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part of the offences in entirety and in full detail, it would amount to the corrupt practice of undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under S. 100(1)(b) of the 1951 Act once such non-disclosure is established — The question whether such non-disclosure materially affects the election or not will not arise in a case of this nature — Criminalisation of politics being anathema to sanctity of democracy, voters have fundamental right to know in entirety and in full detail, the antecedents of candidates and concealment, suppression or misinformation about their criminal antecedents deprives voters of making informed choice of candidate which eventually promotes criminalisation of politics — Hence, even though appellant had disclosed one criminal case pending against him, he had not disclosed the details of 8 other cases also pending against him — Hence, his election was rightly declared to be null and void — Election — Representation of the People Act, 1951 - Ss. 33-A, 123(2), 100(1)(b) & (d)(ii), 169 and 125-A — Election — Conduct of Election — Conduct of Elections Rules, 1961 - R. 4-A Form 26 — Local Government — Panchayats and ZilaParishads — T.N Panchayats Act, 1994 (21 to 1994) - Ss. 259(1)(b) and 260(2) — Criminal Law — Penal Code, 1860 - S. 171-C - Compared with S. 123(2) of RP Act, 1951 — Constitution of India — Article 19 — Arts. 19(1)(a) & (2) -- Freedom of speech and expression — Constituents of Art. 19(1)(a) — Other Constituents of Art. 19(1)(a) — Know/Information, Right to - Art. 19(1)(a) - Voters' right to know about antecedents of candidates — Election — Conduct of Election — Candidature — Nomination/Nomination Paper — Validity/Invalidity/Scrutiny/ Acceptance/ Rejection/Defects in/Rectification of Nomination/Nomination paper - Non-disclosure of criminal antecedents in nomination paper - Effect — Election — Conduct of Election — Returning Officer — Powers/Functions/Duties of Returning Officer - Non-disclosure of criminal antecedents in nomination paper - Effect — Election — Democracy and General Principles — Criminalization of politics - Non-disclosure of criminal antecedents in nomination paper - Effect — Words and Phrases - "Undue influence direct or indirect", "direct" and "indirect"*

The appellant, who was the President of a cooperative society, on allegations of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in Crime No. 10 of 2001. During investigation, the police found certain other facets and eventually placed eight different charge-sheets, being CCs Nos. 3, 4, 5, 6, 7, 8, 9 and 10 of 2004 before the Judicial Magistrate and the Magistrate took cognizance whereafter charges were framed in all the eight cases for the offences under Sections 120-B, 406, 408 and 477-A IPC.

Subsequently, the appellant filed nomination papers for election of President of Panchayat in the State of Tamil Nadu. Tamil Nadu State Election Commission (TNSEC) had issued a Notification bearing S.O No. 43/2006.TNSEC/EG dated 1-9-2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories referred to in Para 5 of the Preamble to the Notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law.

Accordingly, the appellant filed a declaration and the affidavit but only mentioning Crime No. 10 of 2001 but without mentioning the details of the charge-sheets filed against him which were pending trial.

In the election the appellant was elected as President of the Panchayat. The respondent filed an election petition challenging the validity of the election on the sole ground that the appellant had filed a false declaration suppressing the details of the criminal cases pending trial against him which constituted the corrupt practice of undue influence under Section 260 of the Tamil Nadu Panchayats Act, 1994 and that therefore, his election deserved to be declared null and void. Section 260 of the T.N Act had adopted similar expressions as have been used under Section 123(2) of the Representation of the People Act, 1951.

The Election Tribunal (Principal District Judge) held that the nomination papers of the appellant deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election null and void and ordered for re-election for the post of President of the Panchayat. In revision, the High Court opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of “undue influence” and consequently “corrupt practice” under Section 259(1)(*b*) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion of the tribunal though for a different reason.

Dismissing the present appeal with costs assessed at Rs 50,000,

Held :

In a respectable and elevated constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested. (Para 1)

The crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass root level as well as at the higher levels there is a feeling that “monstrosity” is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values of tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict — “The law”, the mightiest sovereign in a civilised society. (Para 1)

In constitutional democracy, criminalisation of politics is absolutely unacceptable. The criminalisation creates a concavity in the heart of democracy and has the potentiality to paralyse, comatose and strangulate the purity of the system. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. (Paras 33 and 36)

The right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. The ground of “undue influence” is a part of corrupt practices under Section 123 of the RP Act, 1951. Section 123(2) RP Act, 1951 deals with “undue influence” which is a facet of corrupt practice. The two provisos added to Section 123(2) do not take away the effect of the principal or main provision. Section 260(2) of the T.N Panchayats Act, 1994 has adopted “undue influence” as defined in Section 123(2), RP Act. The concept of undue influence as is understood in the context of Section 123(2) of the 1951 Act has been adopted as it is a deemed conception for all purposes. While appreciating the expression “undue influence” in Section 123(2) of the RP Act, 1951, the structure of the provisions contained in Section 171-C IPC are to be kept in view. Section 123(2) of the 1951 Act defines “undue influence”, more or less, in the same language as in Section 171-C IPC except the words “direct or indirect” which have been added into the nature of

interference. Further, the principles pertaining to undue influence are required to be appreciated regard being had to the progression of the election law, the contemporaneous situation, the prevalent scenario and the statutory content. (Paras 41, 58.6, 58.7, 59, 60 and 66 to 70)

The words “undue influence” in Section 123(2) of the RP Act, 1951 are not to be understood or conferred a meaning in the context of English statutes. The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has been contemplated in Section 123(2) of the RP Act, 1951. The basic concept of “undue influence” relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence. Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. The words “direct or indirect” used in Section 123(2) of the RP Act have their significance and they are to be applied bearing in mind the factual context. (Paras 58.1 to 58.4, 58.12, 83 and 86)

The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote. The factum of non-disclosure of the requisite information as regards the criminal antecedents is a stage prior to voting. (Paras 58.10 and 86)

The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. Freedom in the exercise of the judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage. There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. Thus while filing the nomination form, if the requisite information relating the criminal

antecedents is not disclosed, indubitably there is an attempt to suppress, effort to misguide and keep the people in dark. (Paras 82 to 93 and 58.8 to 58.10)

Non-disclosure of the offences creates an impediment in the free exercise of the electoral right. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate. Misinformation nullifies and countermands the very basis and foundation of voter's exercise of choice and that eventually promotes criminalisation of politics by default and due to lack of information and awareness. The denial of information, a deliberate one, thus amounts to the corrupt practice of “undue influence” as defined under Section 123(2) of the RP Act, 1951. (Paras 82 to 93, 94.2, 94.3 and 38)

However, “undue influence” is not to be equated with “proper influence” and, therefore, legitimate canvassing is permissible in a democratic set up. Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated. (Paras 58.11 and 58.5)

The Supreme Court in several decisions has held that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents especially criminal antecedents of a candidate, which is a requisite for making an informed choice. Accordingly, Section 33-A(1) of the RP Act, 1951 requires a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent jurisdiction. The requirement under Section 33-A(2) of giving an affidavit sworn by the candidate in a prescribed form verifying the information specified in Section 33-A(1) has its own signification. Disclosure of criminal antecedents of a candidate, especially pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of the nomination paper as mandated by law is a categorical imperative. Thus, non-furnishing of the information as required under Section 33-A and the Rules while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to the corrupt practice of undue influence. (Paras 29, 71, 79 and 94.1 to 94.3)

When an FIR is filed, a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remains in total darkness about such information. It can be stated with certitude that this can definitely be called

antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body. Thus, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature. (Paras 82, 94.4 and 94.5)

If the corrupt practice is proven on the foundation of Section 100(1)(*b*) of the RP Act, 1951, the Election Tribunal/High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(*d*)(*ii*) of the RP Act, 1951. This distinction between the two provisions is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(*b*) of the RP Act, 1951 is established, the election has to be declared void. No other condition is attached to it. (Paras 63 and 65)

If a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and a corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. It has to be determined in an election petition by the Election Tribunal. If the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. (Paras 91 and 62)

In the present case, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure of eight such cases on his part, it would amount to undue influence and, therefore, the election has to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature. (Paras 93 and 94)

There is no substance in the contention that there was no challenge on the ground of corrupt practice in the election petition, the election was sought to be assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, it cannot be alleged that there were no material particulars and no ground for corrupt practice in the election petition. In a way it is there. Further, the submission that the appellant has passed only up to Class X and therefore, was not aware whether he had to give all the details i.e details as to all the 8 embezzlement cases as he was under the

impression that all the cases were one case or off-shoots of the main case, also deserves to be rejected. (Para 93)

***Krishnamoorthy* v. *Sivakumar*,**
(2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : 2015 SCC OnLine SC 102 : (2015) 5 ALD 62 (SC) : AIR 2015 SC 1921

Bench Strength **2.** Coram : **Dipak Misra** and *Prafulla C. Pant*, JJ.
[Date of decision : 05/02/2015]

S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra, 1980 Supp SCC 53; S.S Bola v. B.D Sardana, (1997) 8 SCC 522; State of U.P v. Jai Bir Singh, (2005) 5 SCC 1 : 2005 SCC (L&S) 642; Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1; Ram Jethmalani v. Union of India, (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310; State of Maharashtra v. Saeed Sohail Sheikh, (2012) 13 SCC 192 : (2012) 4 SCC (Cri) 240; Dinesh Trivedi v. Union of India, (1997) 4 SCC 306; Anukul Chandra Pradhan v. Union of India, (1997) 6 SCC 1; ManojNarula v. Union of India, (2014) 9 SCC 1; NiranjanHemchandraSashittal v. State of Maharashtra, (2013) 4 SCC 642 : (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187; Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36, followed Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; T.N Seshan v. Union of India, (1995) 4 SCC 611; KuldipNayar v. Union of India, (2006) 7 SCC 1; R.B Surendra Narayan Sinha v. Amulyadhone Roy, 1940 IC 30; Linge Gowda v. Shivananjappa, (1953) 6 ELR 288 (Tri); ShaligramShrivastava v. Naresh Singh Patel, (2003) 2 SCC 176; VineetNarain v. Union of India, (1998) 1 SCC 226 : 1998 SCC (Cri) 307; KihotoHollohan v. Zachillhu, 1992 Supp (2) SCC 651; Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405; Kanhiya Lal Omar v. R.K Trivedi, (1985) 4 SCC 628; Common Cause v. Union of India, (1996) 2 SCC 752; P.V Narasimha Rao v. State, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108; Mahadeo v. BabuUdaiPratap Singh, AIR 1966 SC 824; Baburao Patel v. Zakir Hussain, AIR 1968 SC 904; JeetMohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386; Govind Singh v. Harchand Kaur, (2011) 2 SCC 621; Mangani Lal Mandal v. BishnuDeo Bhandari, (2012) 3 SCC 314; Shambhu Prasad Sharma v. Charandas Mahant, (2012) 11 SCC 390, referred to Baburao Patel v. Zakir Hussain, AIR 1968 SC 904; Shiv Kirpal Singh v. V.V Giri, (1970) 2 SCC 567; Javed v. State of Haryana, (2003) 8 SCC 369 : 2004 SCC (L&S) 561; Charan Lal Sahu v. GianiZail Singh, (1984) 1 SCC 390; Ram Dial v. Sant Lal, AIR 1959 SC 855 : 1959 Supp (2) SCR 748; ZiyauddinBurhanuddin Bukhari v. BrijmohanRamdassMehra, (1976) 2 SCC 17; Aad Lal v. Kanshi Ram, (1980) 2 SCC 350; Om Prakash v. Union of India, (1970) 3 SCC 942; V.T Khanzode v. RBI, (1982) 2 SCC 7 : 1982 SCC (L&S) 147; D.K Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20; State of J&K v. Lakhwinder Kumar, (2013) 6 SCC 333 : (2013) 2 SCC (L&S) 527; BSNL v. Telecom Regulatory Authority

of India, (2014) 3 SCC 222; Resurgence India v. Election Commission of India, (2014) 14 SCC 189; People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648; Lily Thomas v. Speaker, Lok Sabha, (1993) 4 SCC 234; Shiv Kirpal Singh v. V.V Giri, (1970) 2 SCC 567; Patangrao Kadam v. PrithvirajSayajirao Yadav Deshmukh, (2001) 3 SCC 594; Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233; Election Commission of India v. Shivaji, (1988) 1 SCC 277; V.S Achuthanandan v. P.J Francis, (1999) 3 SCC 737; S.P Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1; Mast Ram v. S. Iqbal Singh, (1955) 12 ELR 34 (Tri); Bachan Singh v. Prithvi Singh, (1975) 1 SCC 368; Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294; People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399; Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238; Manohar Joshi v. Nitin BhauraoPatil, (1996) 1 SCC 169; JeetMohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386; M. Narayana Rao v. G. Venkata Reddy, (1977) 1 SCC 771, relied on N.P Ponnuswami v. Returning Officer, AIR 1952 SC 64; JaganNath v. Jaswant Singh, AIR 1954 SC 210; JyotiBasu v. Debi Ghosal, (1982) 1 SCC 691; KeshavTalpade v. King Emperor, (1943) 5 FCR 49; King Emperor v. Sibnath Banerji, (1944-45) 72 IA 241 : AIR 1945 PC 156, cited Nanak Chand, Law and Practice of Elections and Election Petitions (1937 Edn.), p. 362; Nanak Chand, Law of Elections and Election Petitions (1950 Edn.), p. 263, cited Krishnamoorthy v. Sivakumar, 2009 SCC OnLine Mad 933 : (2009) 5 MLJ 1255, affirmed

Election

Corrupt Practices/Electoral Offences

Undue Influence/Coercion/Fraud

— **Undue influence — Non-disclosure of criminal antecedents by returned candidate — Illiteracy or lack of educational attainment of candidate as ground for failure to disclose clearly and completely all the criminal antecedents/cases, not acceptable** — *Election — Representation of the People Act, 1951 - Ss. 33-A, 123(2) and 100 — Election — Conduct of Election — Candidature — Nomination/Nomination Paper — Validity/Invalidity/Scrutiny/ Acceptance/ Rejection/Defects in/Rectification of Nomination/Nomination paper - Non-disclosure of criminal antecedents in nomination paper - Effect — Election — Conduct of Election — Returning Officer — Powers/Functions/Duties of Returning Officer - Non-disclosure of criminal antecedents in nomination paper - Effect — Election — Democracy and General Principles — Criminalisation of politics - Non-disclosure of criminal antecedents in nomination paper - Effect*

The appellant, who was the President of a cooperative society, on allegations of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in Crime No. 10 of 2001. During investigation, the police found

certain other facets and eventually placed eight different charge-sheets, being CCs Nos. 3, 4, 5, 6, 7, 8, 9 and 10 of 2004 before the Judicial Magistrate and the Magistrate took cognizance whereafter charges were framed in all the eight cases for the offences under Sections 120-B, 406, 408 and 477-A IPC.

Subsequently, the appellant filed nomination papers for election of President of Panchayat in the State of Tamil Nadu. Tamil Nadu State Election Commission (TNSEC) had issued a Notification bearing S.O No. 43/2006.TNSEC/EG dated 1-9-2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories referred to in Para 5 of the Preamble to the Notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law.

Accordingly, the appellant filed a declaration and the affidavit but only mentioning Crime No. 10 of 2001 but without mentioning the details of the charge-sheets filed against him which were pending trial.

In the election the appellant was elected as President of the Panchayat. The respondent filed an election petition challenging the validity of the election on the sole ground that the appellant had filed a false declaration suppressing the details of the criminal cases pending trial against him which constituted the corrupt practice of undue influence under Section 260 of the Tamil Nadu Panchayats Act, 1994 and that therefore, his election deserved to be declared null and void. Section 260 of the T.N Act had adopted similar expressions as have been used under Section 123(2) of the Representation of the People Act, 1951.

The Election Tribunal (Principal District Judge) held that the nomination papers of the appellant deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election null and void and ordered for re-election for the post of President of the Panchayat. In revision, the High Court opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of “undue influence” and consequently “corrupt practice” under Section 259(1)(*b*) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion of the tribunal though for a different reason.

Dismissing the present appeal with costs assessed at Rs 50,000,

Held :

When an FIR is filed, a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is

definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remains in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body. Thus, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature. (Paras 82, 94.4 and 94.5)

If the corrupt practice is proven on the foundation of Section 100(1)(*b*) of the RP Act, 1951, the Election Tribunal/High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(*d*)(*ii*) of the RP Act, 1951. This distinction between the two provisions is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(*b*) of the RP Act, 1951 is established, the election has to be declared void. No other condition is attached to it. (Paras 63 and 65)

If a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and a corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. It has to be determined in an election petition by the Election Tribunal. If the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. (Paras 91 and 62)

In the present case, as the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure of eight such cases on his part, it would amount to undue influence and, therefore, the election has to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act. The question whether it materially affects the election or not will not arise in a case of this nature. (Paras 93 and 94)

There is no substance in the contention that there was no challenge on the ground of corrupt practice in the election petition, the election was sought to be assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, it cannot be alleged that there were no material particulars and no ground for corrupt practice in the election petition. In a way it is there. Further, the submission that the appellant

has passed only up to Class X and therefore, was not aware whether he had to give all the details i.e details as to all the 8 embezzlement cases as he was under the impression that all the cases were one case or off-shoots of the main case, also deserves to be rejected. (Para 93)

***Krishnamoorthy* v. *Sivakumar*,**
(2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : 2015 SCC OnLine SC 102 : (2015) 5 ALD 62 (SC) : AIR 2015 SC 1921

Bench Strength **2.** Coram : **Dipak Misra** and *Prafulla C. Pant*, JJ.
[Date of decision : 05/02/2015]

Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294; People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399; Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238; Manohar Joshi v. Nitin BhauraoPatil, (1996) 1 SCC 169; Jeet Mohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386; M. Narayana Rao v. G. Venkata Reddy, (1977) 1 SCC 771, relied on Vineet Narain v. Union of India, (1998) 1 SCC 226 : 1998 SCC (Cri) 307; Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651; Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405; Kanhiya Lal Omar v. R.K Trivedi, (1985) 4 SCC 628; Common Cause v. Union of India, (1996) 2 SCC 752; P.V Narasimha Rao v. State, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108; Mahadeo v. Babu Udai Pratap Singh, AIR 1966 SC 824; Baburao Patel v. Zakir Hussain, AIR 1968 SC 904; Jeet Mohinder Singh v. Harminder Singh Jassi, (1999) 9 SCC 386; Govind Singh v. Harchand Kaur, (2011) 2 SCC 621; Mangani Lal Mandal v. Bishnu Deo Bhandari, (2012) 3 SCC 314; Shambhu Prasad Sharma v. Charandas Mahant, (2012) 11 SCC 390, referred to Krishnamoorthy v. Sivakumar, 2009 SCC OnLine Mad 933 : (2009) 5 MLJ 1255, affirmed

Local Government
Panchayats and ZilaParishads
Goa Panchayat Raj Act, 1994 (14 of 1994)

— **S. 10(f) — Disqualification from membership of panchayat — Indirect share or monetary interest in contract awarded by panchayat, if enough to attract disqualification — Appellant's husband awarded a contract by village panchayat — Appellant was disqualified from her membership of panchayat — Sustainability of** — *Held, Respondent 4 and appellant are husband and wife — Arts. 1098 and 1108 of Portuguese Civil Code, 1860 applicable to them — By operation of law appellant became entitled to share in profits of contract awarded to her husband — In absence of any evidence to the contrary it can be concluded that*

appellant had indirect share or monetary interest in contract awarded to her husband — Hence her disqualification from membership of panchayat was justified — Family and Personal Laws — Portuguese Civil Code, 1860 - Arts. 1098 and 1108 — Taxation — Direct Taxation — Income Tax — Income Tax Act, 1961 - S. 5-A — Family and Personal Laws — Marriage - Effect on legal entities of spouses - Community of property - When may be inferred — Words and Phrases - "Community of property" and "communiao dos bens" — Election — Representation of the People Act, 1951 - S. 9-A — Election — Disqualification - Benefit of contract or monetary interest — Family and Personal Laws — Joint family/Joint Family Property/Community of Property — Property Law — Co-owner/Co-ownership/Joint Ownership

The appellant was member of Raia Village Panchayat elected under the Goa Panchayat Raj Act, 1994. The village panchayat invited tender and it was awarded to Respondent 4, husband of the appellant. Respondent 1 filed an election petition for disqualification of the appellant's membership on the ground that she had accrued direct or indirect share or monetary interest in the contract awarded to her husband. The State Election Commission disqualified the appellant from her membership. The appellant went in appeal before the High Court, which rejected her writ petition. Hence, this appeal.

Dismissing the appeal,

Held :

There is no dispute that Respondent 4 and the appellant are husband and wife and are governed by the provisions of the Portuguese Civil Code, 1860. By virtue of Article 1098 and Article 1108 thereof, in the absence of any contract, the marriage between the appellant and Respondent 4 is governed by the system "communiao dos bens" i.e community of property. Accordingly, on marriage, the property of the spouses gets merged. Each spouse, by operation of law, unless contracted otherwise, becomes 50% shareholder in all their properties, present and future and each spouse is entitled to a one-half income of the other spouse. (Para 15)

Section 10(*f*) of the Goa Panchayat Raj Act, 1994 speaks of monetary interest. The general rule that the wife's interest is not necessarily the husband's interest has no application where the husband and the wife are governed by the system "community of property" because under that system, on marriage, each spouse is entitled to a one-half income of the other spouse unless contracted otherwise. During the subsistence of marriage, the husband and the wife each have a share in the corpus as well as the income of communion property. (Paras 18 and 20)

Money acquired by the appellant's husband from the contract with Village Panchayat Raia is "community property" and, therefore, the conclusion is inescapable that the appellant has indirect share, or, in any case, monetary interest

in the contract awarded to her husband by Village Panchayat Raia as the profits from the contract shall be apportioned equally between her and her husband. There is no evidence of exclusion of the appellant from her husband's assets and income. The provisions contained in Articles 1098 and 1108 of the Portuguese Civil Code, 1860 and Section 5-A of the Income Tax Act, 1961 give the appellant a participation in the profits of the contract and advantages like the apportionment of income from that contract. The appellant, by operation of law, becomes entitled to share in the profits of the contract awarded to her husband by the Village Panchayat. From whatever way it is seen, the appellant's participation in the profits of the contract does constitute an "indirect monetary interest" in the contract for collection of market fee awarded to her husband within Section 10(*f*) prohibiting the member of the Village Panchayat from having such an interest. (Para 20)

Zelia M. Xavier Fernandes E. Gonsalves v. *Joana Rodrigues*,
(2012) 3 SCC 188 : (2012) 2 SCC (Civ) 59 : 2012 SCC OnLine SC 122 : (2012) 4 Mah LJ 686 : AIR 2012 SC 988

Bench Strength **2.** Coram : **R.M Lodha** and *H.L Gokhale*, JJ.
[Date of decision : 03/02/2012]

GulamYasin Khan v. SahebraoYeshwantraoWalaskar, AIR 1966 SC 1339, distinguished on facts Zelia M. Xavier Fernandes E. Gonsalves v. Joana Rodrigues, WP No. 437 of 2009, decided on 22-7-2009 (Bom), affirmed

Local Government
Panchayats and ZilaParishads
Panchayat elections

— **Disqualification on holding an "office of profit" — Lambardars, whether disqualified under S. 208(1)(g), Punjab Panchayati Raj Act** — *Lambardar merely getting Rs 900 p.m as honorarium to meet expenses incurred in carrying out certain important duties — Office of Lambardar giving incumbent certain status, honour and prestige in the village — Disqualification under S. 208(1)(g), held, is not applicable to Lambardar — Office of Lambardar cannot be held to be an office of profit in terms of S. 11(g), Punjab State Election Commission Act — Lambardar cannot be said to be a salaried employee in terms of S. 208, Panchayati Raj Act — Local Government — Panchayats and ZilaParishads — Punjab Panchayati Raj Act, 1994 (9 of 1994) - S. 208(1)(g) - Disqualification of whole-time salaried employee of Government or its instrumentality - Lambardars, held, not disqualified — Election — Election Commission - Punjab State Election Commission Act, 1994 (19 of 1994) - S. 11(g) — Words and Phrases - "Office of Profit" — Election — Representation of the People Act, 1951 - Ss. 100 and 9-A — Election — Disqualification - Office of profit*

The impugned circular, Memo No. SEC-2008/4365 was issued to convey to all the Deputy Commissioners-cum-District Electoral Officers in the State that Lambardars and Anganwadi workers, were ineligible to contest elections as member of Panchayat because they hold “office of profit”. By the impugned order, the High Court allowed the writ of the Anganwadi workers but not the Lambardars.

Thus the only issue in the present appeal was whether an incumbent Lambardar held an “office of profit” under the Government, thereby disentitling him to contest election as member of Panchayat.

Allowing the appeal,

Held :

A Lambardar is entitled to seek election as a Panch of Gram Panchayat. Since the Lambardar is not holding any post under the Government, no salary is payable to him. There is no pay scale attached to the office of Lambardar. He receives no salary, emoluments, perquisites or facilities. Therefore, it cannot be said that he is in receipt of any remuneration. Under the State Panchayati Raj Act, by virtue of Section 208 a person would be disqualified to contest the elections as a member of Panchayat, if he is a whole-time salaried employee of the State Government. But under Section 11(*g*) of the State Election Commission Act, a person is so disqualified if he holds an “office of profit” under the State Government. (Paras 37, 15, 24 and 10)

The office of Lambardar is not an office of profit. As per the revised provisions, the Lambardar receives Rs 900 per month as honorarium. This honorarium is merely compensatory to meet the out-of-pocket expenses, incurred in the performance of his duties. After abolition of land revenue, the Lambardar has no land revenue to collect and therefore, not entitled to receive any remuneration as 5% of the land revenue assessed as per Rule 21(*iii*), Punjab Land Revenue Rules. Therefore, the aforesaid percentage of cess was replaced by an honorarium of Rs 500 per month under a Circular dated 9-10-2006 issued by the Government of Punjab, Department of Revenue and Rehabilitation to all Deputy Commissioners in the State. (Paras 37 and 16 to 20)

Even though the office of Lambardar is regarded as a mere relic in this day and age, it still carries with it certain important duties which are to be performed by the incumbent. Although purely “honorary”, being a Lambardar gives the incumbent a certain status in the village. In some cases, the office of Lambardar has been in the same families for generations. For them, it becomes a matter of honour and prestige that the office remains in the family. The office of Lambardar is a heritage office. Some families would cherish the office of Lambardar, even though the incumbent does not get any salary, emoluments or perquisites. (Para 36)

The disqualifications introduced though the impugned circular could prove disastrous to democracy at the grass roots level in Punjab. A Lambardar would be qualified to contest the elections to the Legislative Assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. Village-level democracy is the bedrock of Indian national democracy. Being a member of a panchayat can be the beginning of a long career in public life. (Para 37)

Anokh Singh v. *Punjab State Election Commission*,
(2011) 11 SCC 181 : AIR 2011 SC 230

Bench Strength **2.** Coram : *B. Sudershan Reddy* and **S.S Nijjar**, JJ.
[Date of decision : 29/10/2010]

Som Lal v. Vijay Laxmi, (2008) 11 SCC 413; Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa, (1971) 3 SCC 870; Mahavir Singh v. Khiali Ram, (2009) 3 SCC 439 : (2009) 1 SCC (L&S) 737 : (2009) 1 SCC (Civ) 849; RavannaSubanna v. G.S Kaggeerappa, AIR 1954 SC 653; Umrao Singh v. Darbara Singh, AIR 1969 SC 262 : (1969) 1 SCR 421, relied on Abdul Shakur v. Rikhab Chand, AIR 1958 SC 52, referred to

Local Government
Panchayats and ZilaParishads
Panchayat elections

— **Disqualification of Lambardars — Justifiability — Disqualification introduced through impugned circular could prove disastrous to democracy at grass roots level in Punjab — Rationale for, explained — Said circular set aside** — *Constitution of India - Pts. IX and IX-A - Democracy at grass roots level - Features*

The impugned circular, Memo No. SEC-2008/4365 was issued to convey to all the Deputy Commissioners-cum-District Electoral Officers in the State that Lambardars and Anganwadi workers, were ineligible to contest elections as member of Panchayat because they hold “office of profit”. By the impugned order, the High Court allowed the writ of the Anganwadi workers but not the Lambardars.

Thus the only issue in the present appeal was whether an incumbent Lambardar held an “office of profit” under the Government, thereby disentitling him to contest election as member of Panchayat.

Allowing the appeal,

Held :

A Lambardar is entitled to seek election as a Panch of Gram Panchayat. Since the Lambardar is not holding any post under the Government, no salary is payable to him. There is no pay scale attached to the office of Lambardar. He receives no salary, emoluments, perquisites or facilities. Therefore, it cannot be said that he is in receipt of any remuneration. Under the State Panchayati Raj Act, by virtue of Section 208 a person would be disqualified to contest the elections as a member of Panchayat, if he is a whole-time salaried employee of the State Government. But under Section 11(*g*) of the State Election Commission Act, a person is so disqualified if he holds an "office of profit" under the State Government. (Paras 37, 15, 24 and 10)

The office of Lambardar is not an office of profit. As per the revised provisions, the Lambardar receives Rs 900 per month as honorarium. This honorarium is merely compensatory to meet the out-of-pocket expenses, incurred in the performance of his duties. After abolition of land revenue, the Lambardar has no land revenue to collect and therefore, not entitled to receive any remuneration as 5% of the land revenue assessed as per Rule 21(*iii*), Punjab Land Revenue Rules. Therefore, the aforesaid percentage of cess was replaced by an honorarium of Rs 500 per month under a Circular dated 9-10-2006 issued by the Government of Punjab, Department of Revenue and Rehabilitation to all Deputy Commissioners in the State. (Paras 37 and 16 to 20)

Even though the office of Lambardar is regarded as a mere relic in this day and age, it still carries with it certain important duties which are to be performed by the incumbent. Although purely "honorary", being a Lambardar gives the incumbent a certain status in the village. In some cases, the office of Lambardar has been in the same families for generations. For them, it becomes a matter of honour and prestige that the office remains in the family. The office of Lambardar is a heritage office. Some families would cherish the office of Lambardar, even though the incumbent does not get any salary, emoluments or perquisites. (Para 36)

The disqualifications introduced though the impugned circular could prove disastrous to democracy at the grass roots level in Punjab. A Lambardar would be qualified to contest the elections to the Legislative Assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. Village-level democracy is the bedrock of Indian national democracy. Being a member of a panchayat can be the beginning of a long career in public life. (Para 37)

Anokh Singh v. *Punjab* State Election Commission,
(2011) 11 SCC 181 : AIR 2011 SC 230

Bench Strength **2.** Coram : *B. Sudershan Reddy* and **S.S Nijjar**, JJ.
[Date of decision : 29/10/2010]

Som Lal v. Vijay Laxmi, (2008) 11 SCC 413; Shivamurthy Swami Inamdar v. AgadiSangannaAndanappa, (1971) 3 SCC 870; Mahavir Singh v. Khiali Ram, (2009) 3 SCC 439 : (2009) 1 SCC (L&S) 737 : (2009) 1 SCC (Civ) 849; RavannaSubanna v. G.S Kaggeerappa, AIR 1954 SC 653; Umrao Singh v. Darbara Singh, AIR 1969 SC 262 : (1969) 1 SCR 421, relied on

Abdul Shakur v. Rikhab Chand, AIR 1958 SC 52, referred to

Election
Disqualification

— **Office of profit — Test for determining office of profit, stated — Whether an office is an office of profit, held, depends upon facts of each case, substance and essence and not on the form or nomenclature of office** — *High Court order and impugned circular, without applying said test, holding office of Lambardar as office of profit, therefore, set aside — Words and Phrases - "Office of Profit" — Election — Representation of the People Act, 1951 - Ss. 100 and 9-A*

All the five tests laid down in *Shivamurthy case*, (1971) 3 SCC 870 would be relevant to determine whether a particular office is an office under the Government. It is, therefore, necessary to evaluate the nature and the importance of the functions performed. It would be essential to determine whether it would be necessary for the person holding an office under the Government to incur any expenditure in performance of the functions. These matters would then have to be correlated to any honorarium, allowance or stipend that may be attached to the office. Without examining any of these issues, the High Court concluded that the honorarium received by the Lambardar is not compensatory in nature. Such an approach adopted by the High Court cannot be endorsed. (Paras 22 and 21)

The issue as to whether an office is an office of profit, each case has to be judged in the light of the relevant provisions of the statute and its own peculiar facts. (Para 32)

The term "office of profit" has not been defined in the Constitution, the Representation of the People Act, 1951, the Punjab State Election Commission Act, 1994 or the Punjab Panchayati Raj Act, 1994. It is one of those rare terms which is

not even defined in the General Clauses Act, 1897. It has, however, been judicially considered in numerous judgments. (Para 25)

The dictionary meaning of the word “honorarium” would not be of much help. Therefore, the matter must be considered as a matter of substance rather than of form, the essence of payment rather than its nomenclature. (Para 30)

The impugned judgment of the High Court is set aside, insofar as it relates to Lambardars. The impugned Circular dated 30-4-2008 is quashed and set aside qua the Lambardars also. The very basis of issuing the circular was non-existent and misconceived. The High Court quashed the circular in relation to Anganwadi workers. For the same reasons the circular could not be sustained qua the Lambardars also. In view of the aforesaid conclusion, the effect of Section 2(*a*) of the Punjab State Legislative (Prevention of Disqualifications) Act, 1952, on Section 11(*g*) of the State Election Commission Act, need not be considered. (Paras 35 to 38)

The High Court gives no reason for concluding that the honorarium received by a Lambardar is not compensatory in nature. The High Court erred in not analysing the real and substantive nature of the honorarium. The High Court failed to take notice of the fact that the respondents had placed no material on the record to establish that the honorarium of Rs 900 would result in a net gain to the Lambardar. In other words, the out-of-pocket expenses for attending to the duties of a Lambardar would be less than Rs 900 per month. (Paras 27 and 33)

***Anokh Singh* v. *Punjab* State Election Commission,**
(2011) 11 SCC 181 : AIR 2011 SC 230

Bench Strength **2.** Coram : *B. Sudershan Reddy* and **S.S Nijjar**, JJ.
[Date of decision : 29/10/2010]

Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa, (1971) 3 SCC 870; Ravanna Subanna v. G.S Kaggeerappa, AIR 1954 SC 653; Shibu Soren v. Dayanand Sahay, (2001) 7 SCC 425; Karbhari Bhimaji Rohamare v. Shanker Rao Genuji Kolhe, (1975) 1 SCC 252, relied on M. Ramappa v. Sangappa, AIR 1958 SC 937, cited Shivamurthy Swami Inamdar v. AgadiSanganna Andanappa, (1971) 3 SCC 870; Ravanna Subanna v. G.S Kaggeerappa, AIR 1954 SC 653, clarified Anokh Singh v. Punjab State Election Commission, AIR 2009 P&H 63, partly reversed

Constitution of India

— **Art. 226 — SDM administering oath to all elected members/councilors** — *Name of Petitioner 1 proposed for President — SDM instead of declaring Petitioner 1 as President unopposed postponing meeting — Petitioner 1 should have been declared as President as he stood elected for post of President in view of R. 5(1)(a) of 1994 Rules — R. 3 of the 1994 Rules requires 48 hours clear notice to be served on members before convening meeting for election of President and Vice-President — Since minimum of 48 hours notice not given meeting dated 21-12-2009 held to be illegal and non est in eye of law — Alternative remedy — Whether High Court is competent to exercise writ jurisdiction under Art. 226 — Held, yes — No need to file election petition since second election was absolutely void ab initio ipso facto illegal — Petition allowed, State directed to notify Petitioner 1 as an elected President of MC — Punjab Municipal Act, 1911 — S. 20 — Punjab Municipal (President and Vice-President) Election Rules, 1994 — R. 3*

Instead of adjourning the meeting, the Sub-Divisional Magistrate should have declared Petitioner 1 as the President under R. 5(1)(a) of the Rules there and then. There seems to be no justification to adjourn the meeting. Report or affidavits filed before this Court do not suggest that name of Petitioner 1 Raj Kumar was opposed by others and members present wanted to propose name of other candidates. Not only this, out of 15 total elected members and one nominated member, 10 are before this Court and all the 10 members are in one voice saying that name of Petitioner 1 was proposed and no other name was proposed. There is no dispute about this fact. Hence, in view of this, I find that only name of Petitioner 1 was proposed for the post of President no other name was proposed, hence, Petitioner 1 should have been declared as the President then and there as he stood elected for the post of President in view of R. 5(1)(a) of the Rules. (Para 13)

Further held, that from the perusal of R. 3 of the Rules, I have no hesitation to hold that to convene the meeting for election of the President and Vice-President of the Municipal Council, 48 hours clear notice is required to be served on the members. The meeting was convened on 21-12-2009, however, notice thereof was served on most of the members on 20-12-2009. Since minimum of 48 hours clear notice is not given for the meeting, which was held on 21-12-2009, hence, meeting dated 21-12-2009 is otherwise illegal and non-est in the eye of law. (Para 15)

Further held, that there is no doubt about the ratio of the judgment of the Full Bench of this Court in the matter of Prithvi Raj v. State Election Commission, AIR 2007 P&H 178, however, if election was validly held on 29-10-2009, in which the only name of Petitioner 1 was proposed, he should have been declared validly elected, hence, this Court cannot be a Silent spectator and shall not refuse to exercise its writ jurisdiction under Art. 226 of the Constitution of India, to issue mandamus commanding Respondents 1 to 5 to notify election of Petitioner 1 as President of the Municipal Council pursuant to the meeting, dated 29-10-2009. Since second election was not permissible for the post of President, in view of the meeting

held on 29-10-2009, hence, so-called election on 21-12-2009 was absolutely void ab initio ipso fact illegal, hence, there is no need to file election petition. Had it been a case of simple election, perhaps this Court would have refused to exercise its writ jurisdiction under Art. 226 of the Constitution of India. (Para 17)

***Raj Kumar* v. *State of Punjab*,**
2010 SCC OnLine P&H 9521 : ILR (2011) 1 P&H 506
Bench Strength **1.** Coram : *Alok Singh*, J.
[Date of decision : 05/10/2010]

Election

— **Punjab Panchayati Raj Act, 1994 — S. 208(c)** — *Disqualification under — Applicability — Held, provisions of S. 208 would not be applicable in the presence of provisions of S. 11 of the Punjab State Election Commission Act, 1994 — Provisions of S. 208 would apply provided the disqualifications are consistent in Ss. 208 and 11 — Disqualification provided under S. 208(c) is absent in S. 11, hence, would not apply — On facts, order by which election of appellant set aside under S. 208(c) on the ground of his conviction under Public Gambling Act, 1867, set aside — Punjab State Election Commission Act, 1994 — S. 11*

(Para 6)

Sodhi Ram v. *Election Tribunal-cum-Sub Divisional Magistrate*,
2010 SCC OnLine P&H 7686 : (2010) 4 RCR (Civil) 754 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 25/08/2010]

Election

— **Punjab State Election Commission Act, 1994 — S. 11** — *Disqualification for membership of Panchayat — Conviction of elected Panch under NDPS Act, 1985 — Effect of, when same was not provided as disqualification under S. 11 — Held, the elected Panch was disqualified under S. 8(1)(f) of the Representation of the People Act, 1950 r/w Art. 243-F of the Constitution for contesting the election of the Panchayat and thus liable to be removed — As per Art. 243-F of the Constitution, a person is disqualified for being chosen as and for being a member of a Panchayat, if he is disqualified under any Act for the time being in force — In the instant case, appellant was a convict for 10 years under the NDPS Act, 1985 — Election Tribunal set aside his election as Panch — Order upheld — Held, as per Art. 243-F of the Constitution r/w S. 8(1)(f) of the Act of 1950, the appellant was not entitled to be*

considered eligible for contesting the election as a member of the Panchayat — Therefore, he was rightly disqualified and removed — Constitution of India — Art. 243-F — Representation of the People Act, 1950 — S. 8(1)(f) — Narcotics, Intoxicants and Liquor — Narcotic Drugs and Psychotropic Substances Act, 1985

Art. 243-F of the Constitution of India, categorically provides that a person shall be disqualified for being chosen as and for being a member of a Panchayat (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned like the Punjab Panchayati Raj Act, 1994 or the Punjab State Election Commission Act, 1994 (b) if he is so disqualified by or under any law made by the Legislature of the State for the time being in force for the purpose of election to the Legislature of the State concerned i.e The Representation of People Act, 1950. Interpretation of Art. 243-F would be that the Election Tribunal can consider the disqualification for the purpose of unseating an elected member Panchayat if he is so disqualified either under the Act of the State or under the Representation of People Act, 1950, meant for the election of the Legislature.

(Paras 12 and 13)

***Joginder Singh* v. *Balwinder Singh*,**
2010 SCC OnLine P&H 6296 : (2010) 4 RCR (Civil) 296 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 06/08/2010]

Election

— **Punjab** State Election Commission **Act, 1994 — S. 87** — *Power of Election Tribunal — Scope — Held, Election Tribunal has a jurisdiction either to dismiss the election petition or declare the election of all or any other returned candidates to be void and declare the election petitioner or any other candidates to be duly elected — On facts, Election Tribunal while upsetting the election of appellant had rightly declared the election petitioner/Respondent 1 as an elected Panch.*

(Para 14)

***Joginder Singh* v. *Balwinder Singh*,**
2010 SCC OnLine P&H 6296 : (2010) 4 RCR (Civil) 296 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 06/08/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 69 and 89** — *Power of State Election Commission to countermand election — Stage at which such power exercisable — State Election Commission when exercising the powers of superintendence, directions, and control regarding conduct of election, can countermand that election before declaration of the result — However, once the result is declared in Form 5 or Form 9, annexed to the Punjab Panchayat Election Rules, 1994, the only remedy available to an aggrieved candidate is to file an election petition under S. 89*

(Para 18)

***Rajpreet Singh* v. *State of Punjab*,**
2010 SCC OnLine P&H 5534 : (2010) 3 RCR (Civil) 901 (P&H)

Bench Strength **2.** Coram : *MukulMudgal*, *C.J.* and *Jasbir Singh*, J.
[Date of decision : 16/07/2010]

Election

— **Punjab State Election Commission Act, 1994 — S. 89** — *Election to Gram Panchayat — Whether can be countermanded on any ground, other than those mentioned in the Act — Held, election to the Gram Panchayat can be countermanded, postponed and deferred only in terms of the Act and the Punjab Panchayat Election Rules, 1994 — To exercise that power, the State Election Commission has to give detailed reasons to support action under any of the provisions of the Act and the Rules — The Act is a complete code in itself as the legislature has taken care of all the eventualities and circumstances under which the State Election Commission can interfere in an election and pass appropriate orders for smooth completion of the election process — Further, the Punjab Panchayat Election Rules, 1994, have been framed to give effect to the provisions of the Act*

(Paras 11, 12 and 18)

***Rajpreet Singh* v. *State of Punjab*,**
2010 SCC OnLine P&H 5534 : (2010) 3 RCR (Civil) 901 (P&H)

Bench Strength **2.** Coram : *MukulMudgal*, *C.J.* and *Jasbir Singh*, J.
[Date of decision : 16/07/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 76 and 89** — *Meeting for the election of Sarpanch — Notice/summons for the meeting — Non-acceptance/refusal of summons — Procedure under Or. 5 R. 17 CPC is to be followed in such situation — Meeting convened without following such procedure not valid — In the instant case, meeting for election of Sarpanch was to be convened — Notice for the same was issued to appellant — Appellant had refused to receive the notice — Meeting was then held in which Respondent 2 was declared as Sarpanch — Such meeting held, not valid — Under Or. 5 R. 17 CPC in case of non-acceptance or refusal of the summons, the Serving Officer should affix a copy of the summons on the outer door of the residence or the working place of the person sought to be summoned, then only the service would be deemed to have been completed — Holding of meeting by ignoring the procedure given under Or. 5 R. 17 CPC was illegal — Civil Procedure Code, 1908 — Or. 5 R. 17*

(Para 4)

Pinki Devi v. *Electiion Tribunal*,
2010 SCC OnLine P&H 5068 : (2010) 4 RCR (Civil) 380 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 20/05/2010]

Election

— **Punjab State Election Commission Act, 1994 — S. 89** — *Election to the post of Panches — One seat reserved for General (Women) and other three as General — Filing of nomination papers by a lady — Non-mentioning of the choice — Effect of — Held, it is to be considered that such lady has contested the election in the General category not in the General (Women) category — In the instant case, Returning Officer had wrongly considered the election petitioner in the category of General (Women) which had effected her election even though she had not written anything relating to the same in her nomination papers — Such election held, can be challenged by filing an election petition — Contention of appellant that the election petitioner had intended to contest the election in the category of General (Women) but she did not show her choice to be filled up in her nomination papers, rejected*

(Paras 9 to 11)

***Jagir Singh* v. *Rajwinder Kaur*,**
2010 SCC OnLine P&H 4428 : (2010) 4 RCR (Civil) 752 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 06/04/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 76(1) and 80** — *Election Petition — Not presented by candidate — Permissibility of — S. 76(1) specifically provides that an election petition has to be presented by a candidate — Further, S. 80(1) is couched in a negative language, such that election petition is liable to be dismissed for non-compliance with any provision of S. 76 — On facts, election petition presented by the candidate through his Advocate, being in violation of S. 76(1), dismissed in view of S. 80*

(Paras 16 and 19)

Gurlal Singh v. *Presiding Officer, Election Tribunal*,
2010 SCC OnLine P&H 4263 : (2010) 5 RCR (Civil) 474 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 26/03/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 76(1) and 80** — *Election Petition — Not presented by candidate — Objection regarding — If not raised at the first instance, whether deemed to have been waived — Held, there is no question of any waiver in the election petition of a mandatory and peremptory provision of law — Thus, on non-compliance with S. 76(1) and in view of the negative language of S. 80, election petition liable to be dismissed, even though said objection raised for the first time in appeal*

(Paras 23 and 24)

***Gurlal Singh* v. *Presiding Officer, Election Tribunal*,**
2010 SCC OnLine P&H 4263 : (2010) 5 RCR (Civil) 474 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 26/03/2010]

Election

— **Punjab Panchayati Raj Act, 1994 — S. 208** — *Disqualification for membership to Gram Panchayat or Block Samiti — Whether incurred on ground of being a defaulter of a Cooperative Society — Held, said ground is not stated to be a ground*

for disqualification either under S. 208 or under S. 11 of the Punjab State Election Commission Act, 1994 — On facts, decision of Tribunal setting aside election of appellant as Panch on said ground, held, not proper — Punjab State Election Commission Act, 1994 — S. 11

(Para 8)

***Harminder Singh* v. *Rajinder Singh*,**
2010 SCC OnLine P&H 4183 : (2010) 3 RCR (Civil) 11 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 18/03/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 56, 87 and 88** — *Direction for the conduct of fresh election — Validity of — Said direction held, is not provided under Ss. 87 and 88 — Procedure as per the scheme of the Act is that when election of a sitting candidate is set aside under Ss. 87 and 88, the Tribunal is bound to communicate the same to the Election Commission with an authenticated copy of the order, such that said order may be published in the official gazette — Purpose of this exercise is to bring on record the decision of the Tribunal and make it public, such that, thereafter under S. 56, the Election Commission can call upon the concerned Panchayat/Municipality to elect a person for the vacancy caused — Thus, direction issued by the Tribunal for the conduct of fresh election held, to be without jurisdiction, being beyond the scope of Ss. 87 and 88*

(Para 8)

***Sulakhan Kaur* v. *Sohan Singh*,**
2010 SCC OnLine P&H 2501 : (2010) 3 RCR (Civil) 7 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 18/02/2010]

Election

— **Punjab State Election Commission Act, 1994 — S. 81** — *Framing of issues by the Tribunal — Necessity of — When the Tribunal adopts the procedure of CPC, then it should frame the issues and allow the parties to lead their evidence — On facts, held, once the Tribunal had proceeded to adopt the procedure of CPC by taking the pleadings of both the parties which ended up in filing of replication and even the proposed issues were taken, then it should have framed the issues and allowed the parties to lead their evidence focused on those issues — Civil Procedure*

Code, 1908 — Procedure for the trial of suits under — Applicability to the trial of Election petitions

(Paras 10 and 11)

***Palwinder Kaur* v. *Ranjit Singh*,**
2010 SCC OnLine P&H 1204 : (2010) 4 RCR (Civil) 750 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 27/01/2010]

Election

— **Punjab State Election Commission Act, 1994 — Ss. 54(3), 76 and 89** — *Rejection of nomination papers — Challenged vide writ petition — Permissibility of — For the 7 panches to be elected, only 6 persons validly nominated — Since the number of candidates was less than the number of seats to be filled up, all 6 declared elected — Thereafter, result published and declaration made by the Returning Officer — Petitioner challenged the same vide writ petition contending that nomination papers of 17 persons had been wrongly rejected — Further, as per the decision of the State Election Commission in pursuance to the directions given in a previous writ petition, the electoral process had been entirely vitiated by rejection of nomination papers — Challenge rejected — After declaration of election results, petitioner's complaint of unlawful rejection of nominations ought to have been made vide an election petition and not vide a writ petition — Further, after declaration of result by Returning Officer, State Election Commission had no power to countermand the election — Punjab Panchayati Raj Act, 1994 — S. 210*

(Paras 4 to 6)

***Surjit Singh* v. *State of Punjab*,**
2009 SCC OnLine P&H 10970 : (2010) 1 RCR (Civil) 552 (P&H)

Bench Strength **1.** Coram : *K. Kannan*, J.
[Date of decision : 10/12/2009]

Election

— **Punjab State Election Commission Act, 1994 — S. 78(1)(c)** — *Election Petition — Defect in verification — Held, such defect is not fatal to the election petition — Ground contained in S. 78(1)(c) is not one of the grounds contained in S. 80(1) for which an election petition can be dismissed.*

(Para 8)

***Kamaljit Kaur* v. *Jasbir Kaur*,**
2009 SCC OnLine P&H 10339 : (2010) 1 RCR (Civil) 332 (P&H)

Bench Strength **1.** Coram : *Nirmaljit Kaur*, J.
[Date of decision : 27/11/2009]

Election

— **Punjab State Election Commission Act, 1994 — S. 89** — *Nomination Paper — Accepted, in wrong category — Implications of — Respondent filed nomination papers to be elected in the General Lady Panch category, such that "GENERAL" written on the right corner of the nomination form — However, respondent wrongly listed for General category, such that appellant, being the unopposed candidate in the General Lady Panch category, stood elected — On challenge, Tribunal set aside the election of appellant, as acceptance of nomination paper of respondent in the wrong category had materially affected the result — Order challenged contending that election could only be set aside on the grounds mentioned in S. 89 and nomination paper of respondent had not been rejected — Contention rejected — Held, consideration of nomination paper of respondent in the wrong category was tantamount to rejection only — Wrong rejection and wrong acceptance of the nomination is a ground for setting aside the election under S. 89 — Further, not giving of opportunity to candidate to examine the nomination papers at the time of scrutiny amounted to non-compliance with S. 89(1)(d)(iv) — Thus, order of Tribunal upheld*

(Paras 11 and 13)

***Kamaljit Kaur* v. *Jasbir Kaur*,**
2009 SCC OnLine P&H 10339 : (2010) 1 RCR (Civil) 332 (P&H)

Election

— **Punjab State Election Commission Act, 1994 — S. 76** — *Election Petition — Limitation for — Condonation of delay — Permissibility of — Election of appellant-Sarpanch challenged vide writ petition, wherein direction issued to Deputy Commissioner for decision, but he directed the respondent to file election petition — Again, instead of an election petition, writ petition filed, which was dismissed with liberty to avail remedy of election petition — Thereafter, election petition filed, such that it was delayed by 4 months — Still, same allowed and election of appellant set aside — Order challenged on the ground of limitation — Held, while granting liberty to avail remedy of election petition, no direction qua condonation of delay was passed — Further, neither any application for condonation of delay was filed nor is*

there any provision for condonation of delay — Thus, time-barred election petition should not have been entertained

(Para 7)

***Joginder Singh* v. *Baldeep Singh*,**
2009 SCC OnLine P&H 10293 : (2010) 1 RCR (Civil) 78 (P&H)

Bench Strength **1.** Coram : *Nirmaljit Kaur*, J.
[Date of decision : 12/11/2009]

Election

— **Punjab State Election Commission Act, 1994 — S. 11** — *Mention of name on two electoral rolls — Eligibility to contest election — Election of appellant-Sarpanch set aside on the ground that he was not competent to contest the election since his name appeared on the electoral rolls of two constituencies — Order set aside — Mention of name of appellant on two electoral rolls did not create a bar for contesting the election as member of Panchayat — Moreover, much before the date of election, application had been moved by the appellant for cancellation of his name from one constituency — Thus, appellant was fully eligible to contest the election — Local Government — Panchayats and Zila Parishads — Punjab Panchayati Raj Act, 1994 — S. 208*

(Paras 9, 11, 13, and 14)

***Joginder Singh* v. *Baldeep Singh*,**
2009 SCC OnLine P&H 10293 : (2010) 1 RCR (Civil) 78 (P&H)

Bench Strength **1.** Coram : *Nirmaljit Kaur*, J.
[Date of decision : 12/11/2009]

Election

Punjab State Election Commission Act, 1994 (19 of 1994)

— **S. 77 — Election laws** — *Impleadment — Tribunal rejecting the application summarily for impleadment moved by the petitioner without going in the provisions of the Act — Order set aside — Matter remanded — Civil Procedure Code, 1908 — Or. 1 R. 10*

(Paras 2 and 3)

Tabbo Bai v. *Kulwant Singh*,
2009 SCC OnLine P&H 7739 : (2010) 3 ICC 533 (P&H)

Bench Strength **1.** Coram : *Vinod K. Sharma*, J.
[Date of decision : 10/08/2009]

Election

— **Punjab State Election Commission Act, 1994 — S. 77** — *Election petition — Declaration sought that another person be declared elected — Impleadment of all contesting candidates — Requirement of — Held, for such declaration, all the candidates who contested the election were required to be impleaded as party in the election petition — Representation of the People Act, 1951 — S. 82*

(Para 17)

***Surjit Singh* v. *Addl. Dy. Commr.*,**
2009 SCC OnLine P&H 2258 : (2010) 5 RCR (Civil) 252 (P&H)

Bench Strength **1.** Coram : *Rakesh Kumar Jain*, J.
[Date of decision : 24/02/2009]

Election Petition

— **Punjab Panchayati Raj Act, 1994 — S. 11** — *Reserved seat — Quashing the election result — Petition for — Concept of a 'multi member single constituency' or a 'single member constituency' — A constituency in common parlance is a demarcated area or a group of people which is a unit for electing at least one representative — A constituency may either be a Territorial (Geographic) Constituency or a Non-territorial (Functional) Constituency — When a constituency is geographically demarcated i.e it involves a defined area — It is called 'Territorial Constituency' — All the people living in that area together elect their one or more representatives — A 'single member constituency' is one from which only one representative is elected — A multi member constituency is one where two or more than two representatives are elected — A reserved constituency is one from which only persons belonging to reserved category i.e Scheduled Castes, Scheduled Tribes, Backward Classes or Women, as the case may be, can contest the election — The candidates belonging to other categories or classes cannot contest the election from the reserved constituencies — From such constituencies, only a person belonging to that category can contest the election — The Panchayati Raj Act, the legislation while enacting S. 10 has adopted the concept of a 'multi member single constituency' without correspondingly making special provisions for declaration of result of the election of various seats reserved for different categories in a 'multi member single constituency' — The provisions for declaration of result have been borrowed from the Representation of People Act in which the concept of multi member single*

constituency was abolished in 1961 with repeal of special procedure for declaring the result — The concept of declaration of result on the principle that if candidates belonging to Scheduled Caste category or Backward Class category get more votes than the candidates of general category, then they will be declared elected against the general category and a candidate belonging to Scheduled Caste or Backward Class category getting lesser votes, will be considered against the quota reserved for them, is contrary to the Schemes and provisions of the Act and the Rules — Manjit Singh v State Election Commission, Punjab, Chandigarh in Kaur v. State of Punjab followed in Asha Rani v. State of Punjab — Do not lay down the correct principle to be followed in the declaration of result in a 'multi member single constituency' — Therefore, all the aforesaid three judgments require re-consideration by a Larger Bench

***Karnail Singh* v. *State of Punjab*,**
2009 SCC OnLine P&H 115 : (2009) 5 RCR (Civil) 910 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 07/01/2009]

Election
Punjab State Election Commission Act, 1994

— **S. 11(g) — Object of** — *In order to eliminate the risk of conflict between the duties and interest amongst the members of the Panchayat and to ensure that the Gram Panchayat does not contain persons who have received benefits from the executive, and further that a person, if holding an office of profit, may not use the said office to his advantage in the election of the Panchayat*

(Para 28)

***Anokh Singh* v. *Punjab* State Election Commission,**
(2009) 1 RCR (Civil) 898 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 05/12/2008]

Affirmed in *Anokh Singh v. Punjab State Election Commission, (2011) 11 SCC 181*

Election
Punjab State Election Commission Act, 1994

— **S. 11 — Punjab Panchayati Raj Act, 1994** — *S. 208(g) — Distinguished*

(Para 12)

Anokh Singh v. *Punjab State Election Commission*,
(2009) 1 RCR (Civil) 898 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 05/12/2008]

Election
Punjab State Election Commission Act, 1994

— **S. 11(g) — Anganwari Workers** — *Anganwari Workers working in the State of Punjab under a Scheme floated by the Central Government known as ICDS are not holding an office of profit under the State Government — Therefore, in view of cl. (g) of S. 11 of the State Election Commission Act r/w S. 208 of the Panchayati Raj Act, they are not disqualified for being chosen as a Member of a Panchayat.* Anganwari Workers are appointed on temporary basis under a Scheme floated by the Central Government known as ICDS. The said Scheme is not of per-manent nature. Under the Scheme the Anganwari Workers are volunteers taken from amongst local inhabitants. The entire financial burden of the said Scheme is borne out by the Central Government. They can be removed from service by the concerned CDPO for not performing their duties properly. They do not hold any post under the State Government. They are not being governed by any service rules formulated by the State Government. They are not holding the office under the State Government. (Para 27)

The Anganwari Workers are merely volunteers and they are rendering certain services to the weaker sections, children and old ladies in the village. There is no possibility of misusing their office and taking advantage of the same in the election. Keeping in view their nature of duties and their appointments, the Government of India, Ministry of Human Resources Development, Department of Women & Child Development has issued a Circular dated 2-1-1996 clarifying that the Anganwari Workers can contest the election of local bodies and Panchayats. Similarly, the West Bengal State Election Commission and Andhra Pradesh State Election Commission have clarified that Anganwari Workers, who merely receive honorarium from the Government, are eligible to contest the election and they cannot be said to be holding any office of profit under the Government. (Para 28)

***Anokh Singh* v. *Punjab State Election Commission*,**
(2009) 1 RCR (Civil) 898 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 05/12/2008]

Affirmed in *Anokh Singh v. Punjab State Election Commission, (2011) 11 SCC 181*

Constitution of India, 1950

— **Art. 226 — Circular dated 30th April, 2008 issued by State Election Commission** — *Election of Gram Panchayat — Whether Lambardars are holding office of profit under State Government — Held, yes — Circular debaringLambardars from contesting election to Panchayat Samities and ZilaParishad held to be valid — Punjab State Election Commission Act, 1994 — S. 11 — Punjab Panchayati Raj Act, 1994 — S. 208*

That the State Legislature though competent to remove any disqualification in respect of the election of a Member of a Panchayat has not exempted the office of Lambardar from the operation of the provisions of clause (g) of Section 11 of the State Election Commission Act. Merely because the office of Lambardar has been kept in the Schedule which is deemed to be not holding an office of profit under the aforesaid provisions of Punjab State Legislature (Prevention of Disqualifications) Act, 1952, it cannot be said that a Lambardar is also exempted from the disqualifications prescribed under clause (g) of Section 11 of the State Election Commission Act. The office of Lambardar is an office of profit under the State Government. Thus, in view of clause (g) of Section 11 of the State Election Commission Act, a Lambardar is disqualified for being chosen as a member of a Panchayat. To this extent, the Circular dated 30th April, 2008 is held to be valid. (Para 19)

***Anokh Singh* v. *Punjab State Election Commission, Chandigarh*,**
2008 SCC OnLine P&H 1548 : ILR (2009) 1 P&H 1119

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.

Constitution of India, 1950

— **Art. 226 — Circular dated 30th April, 2008 issued by State Election Commission** — *Election of Gram Panchayat — Whether Anganwari Workers are holding office of profit under State Government and they are disqualified for being chosen as, and for being, a member of a Panchayat — Held, no — Anganwari Workers merely volunteers and rendering certain services to weaker sections,*

children and old ladies — No possibility of misusing office and taking advantage of same in election — Government of India issuing Circular clarifying that Anganwari Workers can contest election of local bodies and Panchayats — Circular debaringAnganwari Workers from contesting election to Panchayat Samities and ZilaParishad quashed — Punjab State Election Commission Act, 1994 — S. 37 — Punjab Panchayati Raj Act, 1994 — S. 208

That the Anganwari Workers are appointed on temporary basis under a Scheme floated by the Central Government known as ICDS. The said scheme is not of permanent nature. Under the Scheme the Anganwari Workers are volunteers taken from amongst local inhabitants. The entire financial burden of the said Scheme is borne out by the Central Government. They can be removed from service by the concerned CDPO for not performing their duties properly. They do not hold any post under the State Government. They are not being governed by any service rules formulated by the State Government. They are not holding the office under the State Government.
(Para 27)

Further held, that the disqualification provided in clause (g) of Section 11 of the State Election Commission Act is incorporated in order to eliminate the risk of conflict between the duties and interest amongst the members of the Panchayat and to ensure that the Gram Panchayat does not contain persons who have received benefits from the executive, and further that a person, if holding an office of profit, may not use the said office to his advantage in the election of the Panchayat. Therefore, this object must be borne in mind. In our opinion, to lay down that the office of Anganwari Worker is an office of profit, by the circular issued by the State Election Commission, does not have any nexus with the object sought to be achieved, namely, the elimination of possibility of misuse of the position. The Anganwari Workers are merely volunteers and they are rendering certain services to the weaker sections, children and old ladies in the village. There is no possibility of misusing their office and taking advantage of the same in the election. Keeping in view their nature of duties and their appointments, the Government of India, Ministry of Human Resources Development, Department of Women and Child Development has issued a Circular dated January 2, 1996 clarifying that the Anganwari Workers can contest the election of local bodies and Panchayats. (Para 28)

Further held, that the Anganwari Workers working in the State of Punjab under a Scheme floated by the Central known as ICDS are not holding an office of profit under the State government. Therefore, in view of clause (g) of Section 11 of the State Election Commission Act read with Section 208 of the Panchayati Raj Act, they are not disqualified for being chosen as a Member of a Panchayat. Hence, writ petitions are allowed and the circular issued by the State Election Commission pertaining to the Anganwari Workers is hereby quashed. (Para 29)

***Anokh Singh* v. *Punjab State Election Commission, Chandigarh*,**
2008 SCC OnLine P&H 1548 : ILR (2009) 1 P&H 1119

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 05/12/2008]

Constitution of India, 1950

— **Art. 226 — Punjab Municipal (President & Vice President) Election Rules, 1994** — *Rl. 3-Petitioner declared elected President of M.C-Government declining to notify in official gazettee — No requirement of quorum for first meeting in which President and Vice President of Municipality are to be elected under provisions of 1911 Act and 1994 Rules-11 out of 22 members present in meeting — Plea that an ex-officio member cannot be taken as member of Municipal Council and cannot be counted for purpose of determining one half quorum cannot be accepted — Section 12 provides that a Municipal Council consists of elected members as well as ex-officio member — Section 20 provides that all members committee will elect one of its members as President — Government wrongly holding that one half of members were not present in meeting and quorum was not complete — Whether a Scheduled Caste Councilor eligible to be elected as President which is reserved for General Category — Held, yes-Petition allowed — Punjab Municipal Act, 1911 — S. 24(2)*

That one of the grounds on which the Government has refused to notify the election of the petitioner as President of the Municipal Council is that the quorum of the first meeting on 23rd July, 2008, in which the petitioner was elected, was not complete, therefore his election of the office of President was not valid. Form the bare reading of Section 20 of the Act and Rule 3 of the 1994 Rules, there is no requirement of quorum for the first meeting, in which the President and Vice President of the Municipality are to be elected. A perusal of the provisions of Sections 26 and 27 of the Act reveals that the ordinary or special meeting is being called only for the transaction of the business of the committee, whereas the first meeting of the committee, which is to be convened under Rule 3 of the 1994 Rules, is not for the purpose of the business of the committee, but for the purpose of administering oath of allegiance to the newly elected members and for electing the President and Vice President. Therefore, the said meeting, cannot be termed either an ordinary or a special meeting, but the said meeting is a statutory meeting, which the convener is duty bound to convene within fourteen days of the publication of the notification of the election or members of a newly constituted Municipality. (Paras 16 & 17)

Further held, that even otherwise, out of 22 members of the Municipal Council, Sangrur, 11 were present, in which the petitioner was elected as President. Therefore, it cannot be said that one half of the members were not present and the

quorum was not complete. In this regard, respondents has raised an objection that Member of the Legislative Assembly, who is an ex-officio member, cannot be taken as member of the Municipal Council and he cannot be counted for the purpose of determining the one half quorum of the committee. In our opinion, this contention cannot be accepted. Section 12 of the Act provides that a Municipal Council consists of elected members as well as the ex-officio member. Section 20 of the Act further provides that all the members of the committee will elect one of its members as president. As far as ex-officio member is concerned, he can participate in the proceedings of the Municipal Council, even in the proceedings, where President and Vice President are to be elected. But only embargo is that he cannot contest the election of the President or Vice President of the Municipality, as provided under sub-section (3) of Section 20 of the Act. Therefore, vide the impugned order, the Government has wrongly held that one half of the members were not present in the meeting, therefore, quorum was not complete. (Para 18)

Further held, that Section 55 of the Punjab State Election Commission Act, 1994 declares that a member of the Scheduled Caste shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of India and the Election Commission Act. Therefore, the petitioner, who belongs to the Scheduled Caste Category and elected as Municipal Councilor from the seat reserved for that category, cannot be held to be ineligible to contest the election of the office of President, which is meant for General category. As far as the General category is concerned, there is no reservation. After the reservation of the seats for the categories of the Scheduled Caste, Backward Class and Women, all the remaining seats left are treated as General. Therefore, any person, whether he is a Scheduled Caste, Backward Class or Woman, is eligible to contest the election of a seat or an office, meant for General Category. (Para 19)

***Harbans Lal* v. *State of Punjab*,**
2008 SCC OnLine P&H 1495 : ILR (2009) 1 P&H 1096

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 26/11/2008]

Election Petition

— **Punjab State Election Commission Act, 1994 & Punjab Panchayati Raj Act, 1994 — S. 13** — *Reserved seat — General category — Panch in Gram Panchayat — Disqualification sought — Employed as Security Guard (Contractual) with BSNL — Held, after the oath, the petitioner has entered upon his duties as a Panch of the Gram Panchayat — As per the scheme of the Act, election of a returned candidate*

can be set aside by the Election Tribunal on an election petition filed under S. 76 r/w S. 89 of the State Election Commission Act — As per provision of S. 89, the election of an elected Panch can be set aside on the ground that he was disqualified to contest the election of the Panch at the time of filing his nomination paper — Respondent 4 has filed the election petition challenging the election of the petitioner — The said petition is still pending — It is a settled legal position that until and unless, election of the returned candidate is set aside, he cannot be stopped from functioning and discharging his duties as a member of the Gram Panchayat, merely on the ground of pendency of an election petition against him

***Makhan Singh* v. *State of Punjab*,**
2008 SCC OnLine P&H 1459 : (2009) 3 RCR (Civil) 641 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 19/11/2008]

Election
— **Grounds of Challenging Election — Re-election on the ground of wrong vote cast by one due to mistake** — *Impermissibility — Held, casting of vote by mistake in favour of another candidate, though voluntarily, may be due to weak eye sight, cannot be construed as illegality or corrupt practice so as to have ground of setting aside election — Punjab State Election Commission Act, 1994 — Election petition — Grounds — Panchayats and ZilaParishads.*

***Tej Kaur* v. *State of Punjab*,**
2008 SCC OnLine P&H 1428 : (2009) 2 RCR (Civil) 607 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 12/11/2008]

Punjab State Election Commission Act, 1994

— **S. 69 — Election** — *Powers of Returning Officer — Held, Returning Officer has no jurisdiction to postpone the meeting or to declare a result as invalid, after the declaration of the result — Election petition — Panchayats and ZilaParishads*

After the names of Panches duly notified, first meeting of Gram Panchayat to conduct election of Sarpanch convened under the authorisation of Deputy Commissioner was postponed due to lack of quorum. In Second meeting names of petitioner and Respondent 7 were proposed for Sarpanch. Petitioner received 5 votes out of nine and was declared elected as Sarpanch and recorded in proceeding book of the meeting. After Election the Presiding Officer added a note in the proceeding book that due to weak eye sight of one Panch, one vote has been

wrongly casted and therefore, it has become necessary to postpone the election. The court on an earlier occasion in a petition moved by Respondent 7 without having knowledge of the election of Sarpanch, ordered to conduct the election if not held so far.

Allowing the appeal, the court.

Held :

When after the counting of votes, result was declared, then the said declaration of result has to be notified and the election of the returned candidate can only be set aside by filing an election petition under the Punjab State Election Commission Act, 1994. (Para 10)

In the instant case, after the declaration of the result, if Respondent 7, the defeated candidate, wanted to question the election of the petitioner as Sarpanch on the ground that actually one Panch wanted to caste vote in her favour, but by mistake she has casted vote in favour of the petitioner, she has the remedy to challenge the election of the petitioner by filing an election petition. This Court having doubt that even on such plea, election of the returned candidate can be set aside, because casting of vote by mistake in favour of another candidate, though voluntarily, may be due to weak eye sight, cannot be construed as illegality or corrupt practice. The Returning Officer has no jurisdiction to postpone the meeting or to declare a result as invalid, after the declaration of the result. Since S. 69 of the Election Commission Act clearly postulates that when the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election. Therefore, in the present case, the petitioner was duly elected as Sarpanch of the Gram Panchayat in the meeting held on 29-7-2008. Thereafter, Respondent 4 cannot be permitted to convene any meeting for re-conducting the election of the office of Sarpanch on the ground that one Panch, by mistake due to weak eye sight, had casted vote in favour of the petitioner. (Para 11)

This Court's order dated 6-8-2008 in CWP No. 13863 of 2008 giving direction to convene the meeting for conducting elections would not hold because the petitioner was already elected as Sarpanch in the meeting held on 29-7-2008. (Para 12)

***Tej Kaur* v. *State of Punjab*,**
2008 SCC OnLine P&H 1428 : (2009) 2 RCR (Civil) 607 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 12/11/2008]

Election
Disqualification

— **Person holding office of profit under Government of India or any State Government — "GraminDakSewak"** — *Held, the same though employed on part-time basis, is governed by statutory rules framed under proviso to Art. 309 — There is a specific prohibition in statutory rules against taking part in elections of legislative assembly or local authority — He is therefore disqualified under S. 11(g) — Election — Punjab State Election Commission Act, 1994 (19 of 1994) - S. 11(g) — Local Government — Municipalities — Municipal Elections - Disqualification — Words and Phrases - "Office of profit" - Interpretation of - Part-time employee - "GraminDakSewak"*

The legal issue involved in this case was whether "GraminDakSewak" is a government servant who is disqualified under Section 11 of the Punjab State Election Commission Act to become member of Nagar Panchayat. Section 11(*g*) disqualifies a person if he holds any office of profit under the Government of India or State Government. The appellants' contention was that their employment was on part-time basis and therefore they were not regular government servants. It was however found that the appellants were governed by statutory rules, known as the Department of Posts, GraminDakSewak (Conduct and Employment) Rules, 2001, and Rule 22(4) of these Rules specifically provided that no "Sewak" shall "take part in an election to any legislative or local authority".

The Election Commission constituted under the Act held that appellants were holding office of profit and therefore were disqualified from contesting election. The High Court dismissed their writ petitions.

Affirming the judgment of the High Court,

Held :

The Department of Posts, GraminDakSewak (Conduct and Employment) Rules, 2001, are statutory in character and have been framed under proviso to Article 309 of the Constitution. Such kind of rules are framed for government employees. It was for the appellants to show that they were not governed by these Rules. Government employees are prohibited from taking part in election to a panchayat or Nagar Panchayat. The legislative object in making the Rules is very clear viz. the status enjoyed by a candidate should not be allowed to be prejudicial vis-à-vis a candidate who does not enjoy such a status. In view of settled legal position, the appellants were disqualified from contesting Nagar Panchayat elections. (Paras 9, 15 and 19)

***Chet Ram* v. *Jit Singh* ,**

(2008) 14 SCC 427 : (2009) 1 LLN 70 : (2009) 1 CHN 141 (SC) : (2009) 2 SLR 192 : AIR 2009 SC 659

Bench Strength **2.** Coram : **S.B Sinha** and *Cyriac Joseph*, JJ.

[Date of decision : 22/10/2008]

Supdt. of Post Offices v. P.K Rajamma, (1977) 3 SCC 94 : 1977 SCC (L&S) 374; Abdul Shakur v. Rikhab Chand, AIR 1958 SC 52; RavannaSubanna v. G.S Kaggeerappa, AIR 1954 SC 653; Shivamurthy Swami Inamdar v. AgadiSangannaAndanappa, (1971) 3 SCC 870; Satrucharla Chandrasekhar Raju v. VyricherlaPradeep Kumar Dev, (1992) 4 SCC 404, referred to Madhukar G.E Pankakar v. Jaswant Chobbildas Rajani, (1977) 1 SCC 70, distinguished Shibu Soren v. Dayanand Sahay, (2001) 7 SCC 425; M.V Rajashekaran v. Vatal Nagaraj, (2002) 2 SCC 704; Guru GobindaBasu v. Sankari Prasad Ghosal, AIR 1964 SC 254 : (1964) 4 SCR 311; PradyutBordoloi v. Swapan Roy, (2001) 2 SCC 19; Jaya Bachchan v. Union of India, (2006) 5 SCC 266; Union of India v. Kameshwar Prasad, (1997) 11 SCC 650 : 1998 SCC (L&S) 447, relied on Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department, p. 1, quoted

Election

Punjab State Election Commission Act, 1994 (19 of 1994)

— **Ss. 11 and 12 — Election Commission — Jurisdiction to decide whether or not a candidate is qualified for being chosen as a member of panchayat or municipality — Held, the Commission has jurisdiction** — *Election — Disqualification - Powers of Election Commission*

In terms of Sections 11(*g*) and 12 of the Act, Election Commission is competent to decide the question as to whether the returned candidate was or was not qualified for being chosen as a member of panchayat or municipality. When an election petition is filed, all questions which arise for consideration by the Tribunal must be adjudicated upon on the basis of the materials brought on record by the parties. As regards the eligibility of a candidate to contest in an election of the municipalities in question, the Tribunal had jurisdiction to determine the same. (Paras 10 and 12)

***Chet Ram* v. *Jit Singh* ,**

(2008) 14 SCC 427 : (2009) 1 LLN 70 : (2009) 1 CHN 141 (SC) : (2009) 2 SLR 192 : AIR 2009 SC 659

Bench Strength **2.** Coram : **S.B Sinha** and *Cyriac Joseph*, JJ.

[Date of decision : 22/10/2008]

Election Petition

— **Reservation — Election Commission Act** — *S. 54 — Procedure in contested and uncontested elections — Scheduled Caste (Women) — Rejection of nomination papers — When after the expiry of the period within which candidature may be withdrawn, the list of contesting candidates was prepared and published and the*

ballot papers were prepared, then there was no occasion for the Returning Officer to declare the petitioner to be elected as unopposed Election.

***Manjit Kaur* v. *Punjab State Election Commission, Chandigarh*,**
2008 SCC OnLine P&H 1243 : (2009) 5 RCR (Civil) 443 (P&H) (DB)

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 26/09/2008]

Constitution of India, 1950
— **Art. 226 — Punjab Panchayati Raj Act, 1994** — *S. 13-A — Jurisdiction of Election Tribunal — Respondent No. 4 challenging election of Panches — Election Tribunal staying convening of meeting under section 13 for election of Sarpanch — Challenge thereto — Whether Election Tribunal has jurisdiction to stay election of Sarpanch — Held, no — Election Tribunal has no power to pass an injunction or stay order during pendency of election petition — Petiton allowed, order of Tribunal set aside.*

That the impugned order passed by the Election Tribunal is wholly without jurisdiction. A Division Bench of this Court in Sham Lal *versus* State Election Commission, Punjab, 1997 (1) R.C.R (Civil) 82, has already decided the issue while holding that no power has been conferred upon the Tribunal to pass an injunction or stay order during the pendency of the election petition. On perusal of the order, dated 16th July, 2008 passed in CWP No. 12039 of 2008, it is clear that this Court had directed the Election Tribunal to decide the application of respondent No. 4 before the final selection of Sarpanch. The direction of the High Court was to decide that application in accordance with law, but the law does not empower the Election Tribunal to pass an order staying the election of Sarpanch during the pendency of the election petition. The impugned order amounts to restraining the elected Panches to elect their Sarpanch in the meeting convened under Section 13-A of the Act, which is not permissible under the scheme of the Act. (Paras 8 & 9)

***Sukhdev Singh* v. *State of Punjab*,**
2008 SCC OnLine P&H 1152 : ILR (2009) 1 P&H 434

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 12/09/2008]

Constitution of India, 1950

— **Art.226 — Punjab Panchayati Raj Act, 1994** — *S.12 — Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice — Chairmen of Panchayat Samitis and ZilaParishads Rules, 1994 — R1.6 — A woman belonging*

to Scheduled Caste elected Panch against reserved seat of S.C women — Whether eligible to contest election for post of Sarpanch against seat meant for Scheduled Caste Category — Held, yes — No prohibition from contesting election for post of Sarpanch against seat reserved for S.C category merely on ground that she was elected as Panch from reserved seat of S.C Women — Such prohibition violates Article 15 — Petition dismissed

That if the seat of Sarpanch of a village is reserved for Scheduled Caste, then both Men and Women belonging to Scheduled Castes category can contest the election for the said post because the eligibility is only "being a Scheduled Caste Panch" and not the nature of the constituency they represent as Panches. Further, if the seat of a Sarpanch of a village is reserved for Scheduled Caste (Women), then only women Panches belonging to Scheduled Caste can contest against the said seat because the eligibility is "being a Scheduled Caste as well as a Woman". (Para 7)

Further held, that Section 55 of the Punjab State Election Commission Act, 1994 provides that "For the avoidance of doubt, it is hereby declared that a member of the Scheduled Castes shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of India and this Act". These provisions have been made with regard to contesting of the election by the Scheduled Castes against the unreserved seat meant for General Category. These provisions declare that a member of the Scheduled Castes shall not be deemed to be disqualified to contest the election against the unreserved seats if he is otherwise qualified to hold such post under the Constitution of India or under this Act. On the same analogy a woman belonging to Scheduled Caste is fully eligible and qualified to hold the office of Sarpanch reserved for Scheduled Castes under the Act. She cannot be prohibited from contesting the election for the post of Sarpanch against the seat meant for Scheduled Castes category merely on the ground that she was elected as Panch from the reserved seat of scheduled Castes Women. Such prohibition would be violative of Article 15 of the Constitution of India which prohibits discrimination on the ground of sex. Article 15(3) provides that nothing in this article shall prevent the State from making any special provision for women and children. Keeping in view the said mandate, under Section 12 of the Act, special provision has been made with regard to minimum 1/3rd total reserved seats of Scheduled Castes for the office of Sarpanch in the district for women belonging to Scheduled Castes. Therefore, the contention of the petitioner that a member of the Scheduled Castes can only contest the election for the office of Sarpanch against the reserved seat for 'women' belonging to Scheduled castes and not the seat reserved for Scheduled Castes, cannot be accepted. Thus, respondent No. 5 though was elected to the office of Panch against the reserved category of Scheduled Castes Women was fully eligible to contest the election for the post of Sarpanch,

which was reserved for Scheduled Castes category, being a 'woman' belonging to Scheduled Caste. (Para 8)

Parmjit Singh v. *State of Punjab*,
2008 SCC OnLine P&H 1073 : ILR (2009) 1 P&H 349

Bench Strength **2.** Coram : *Satish Kumar Mittal* and *Jaswant Singh*, JJ.
[Date of decision : 26/08/2008]

Constitution of India, 1950

— **Arts. 226 & 243ZG(b)-Punjab Municipal Act, 1911-Ss. 3, 8, 12, 13 & 13-A — Determination of the number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994** — *Rls. 3, 4, Schedules I and II — Delimitation of Wards of Municipalities Rules, 1972 — Rls. 3 to 10 — Petitioners seeking determination of delimitation, exclusion of names from voter list, non-preparation of proper and correct electoral rolls, non-reservation, wrong reservation of seats — Election schedule already notified and process of nomination commenced — Intervention of High Court in exercise of writ jurisdiction under Article 226 is improper — Any action of Court or any individual which may, by any means, hamper or obstruct democratic process is anti thesis to spirit of constitutional provisions — Petitioner failing to place material on record to indicate that any right of them is infringed in any manner — Petitions liable to be dismissed.*

That the election schedule has been notified and the process of nomination commenced on 12th June, 2008. These writ petitions were heard when the nomination process had already started. All issues relating to delimitation, wrong delimitation, exclusion of names from the voter list, non-preparation of the proper and correct electoral rolls, non-reservation, wrong reservation of seats for various prescribed reserved categories relate to the conduct of election process for which is already on. Intervention of this court, in exercise of writ jurisdiction under Article 226 of the Constitution, at this stage, which may even remotely suggest the stalling of elections, is improper. The object and purport of introduction of Chapter IX-A in the Constitution of India by the 74th Constitutional Amendment 1992 was/is to facilitate the conduct of elections which is the fundamental requirement of democracy. Any action of the Court or any individual which may, by any means, hamper or obstruct the democratic process is anti thesis to the spirit of these constitutional provisions. (Para 32)

Further held, that State Election Commission is the sole repository of the elections. In the present case, State Election Commission the only body entrusted with the conduct of the election and all its directions are binding upon the State Government and it is the constitutional obligation of the State Government as also

the Election Commission to ensure timely, free and fair election. It is in this spirit that the elections are required to be conducted. (Para 36)

Further held, that petitioners in all these petitions seem to be political workers who may be associated with one or the other political parties. No material has been placed on record to indicate that any right of the petitioners is infringed in any manner. The only right of a citizen in the matter of election is to exercise franchise according to his/her free will and choice. This right of the petitioners remains intact irrespective of the fact whether there are lesser number of representatives or more. In some of the petitions, the grievance of the petitioners is that they are interested to contest election in a particular ward which has either been reserved or de-reserved. These are the individual rights which cannot have precedence over the larger public interest of holding elections to democratic institutions which alone can strengthen the democracy. (Para 37)

***Baldev Raj* v. *State of Punjab*,**
2008 SCC OnLine P&H 861 : ILR (2009) 1 P&H 355

Bench Strength **2.** Coram : *PermodKohli* and *Rakesh Kumar Garg*, JJ.
[Date of decision : 11/07/2008]

Election Petition

— Punjab Panchayati Raj Act, 1994 — Punjab State Election Commission Act, 1994 — *Countermanding of elections — Stay of the fresh elections — Demand for — In all the cases, fresh elections have been ordered to be held — Prima facie in the cases where candidates have been declared elected in accordance with S. 54 of the Punjab State Election Commission Act, 1994 or where the returning officer has declared the result under S. 69 of the Punjab State Election Commission Act, 1994 and elections have been countermanded thereafter, the holding of fresh elections shall remain stayed — In other cases where the election has been countermanded before the date of polling, respondent-State may hold fresh election — However, the outcome of the election shall remain subject to decision of these writ petitions*

***Balwinder Singh* v. *State of Punjab*,**
2008 SCC OnLine P&H 812 : (2008) 4 RCR (Civil) 451 (P&H) (DB)

Bench Strength **2.** Coram : *PermodKohli* and *Rakesh Kumar Garg*, JJ.
[Date of decision : 13/06/2008]

Constitution of India

— **Art. 243(D) — Elections of Gram Panchayats** — *Issue involved regarding number of seats allotted to or reserved for different categories of persons for the offices of Sarpanches — Art. 243(D) of the Constitution of India provides for reservations of seats in favour of Scheduled Castes in every Panchayat — S. 12(a) of the Punjab Panchayati Raj, 1994 provides reservation of seats for the office of Sarpanch — S. 12 lays down that offices of Sarpanches of Gram Panchayats in the district shall be reserved for Scheduled Castes in the same proportion as the population of Scheduled Castes in the district bears to the total population in the district — Reservation in favour of women is also as per mandate of Art. 243(D) — Under S. 12(4) offices reserved under S. 12(1) shall be allotted by rotation to the different Gram Panchayats in such manner as may be prescribed — Under the Punjab Reservation for the Offices of Sarpanches of Gram Panchayats, Chairman and Vice Chairman of Panchayat Samities and ZilaParishads Rules, 1994 provision made for reservation of seats for the offices of Sarpanches — R. 3 thereof empowers the Deputy Commissioner to reserve the offices of Sarpanches for persons belonging to the Scheduled Castes — Two amendments carried out by Government of Punjab to the reservation rules — Sub-r. (3) added to R. 3 — Newly added rule provides that the roster referred to in sub-rr. (1) and (2) shall be prepared block-wise by the Deputy Commissioner — Submission of the petitioner that the Act mandates reservations taking the district as a unit but through the amendment to the Rule, effective from 10-4-2008 the roster is to be maintained block-wise — Thus the question has been raised whether this is constitutionally permissible? — Held on the face of it, S. 12 certainly expressly lays down that reservation has to be districtwise — Meaning thereby that it is the district as a unit which has to be considered the basis for making reservations — Held however, the very basis for reservation is in fact the Scheduled Caste Population Ratio ('SCPR') — If SCPR of the district is known then further reservation is made — Therefore, SCPR is the determining factor whether treated districtwise or on the basis of any other unit — Held block-wise rotation not contrary to S. 12(4) because S. 12 itself provides that reservation of seats shall be rotated in such a manner as may be prescribed — Held certainly true that changing districtwise rotation to block-wise rotation appears to be grossly violative of scheme of rotation but on closer analysis this is not so — Held it should not be forgotten that the basis of reservation is SCPR of the block and 1/3rd reservation for women — Such figures change for different blocks — Held rotation may cause heart burning in certain Gram Panchayats where rotational reservation is continuing for the second or the third time, in one form or the other — Switching to block-wise rotation may extend reservation to later elections — Observed that block-wise rotation is a more accurate and scientific method to determine allotment of the reserved seats — Held interference in the election process at this stage not possible even though block-wise rotation is apparently not in conformity with districtwise*

rotation mandated by S. 12 of the Panchayati Raj Act — Reason for not interfering being that firstly block-wise rotation is more accurate and scientifically proven, if it continues and is not changed after five years to some other rotational unit — Secondly, the Constitution forbids interference in the election process in the allotment of seats — AnugrahNarain Singh v. State of U.P, (1996) 6 SCC 303 referred — Held court bound by constitutional prohibitions and can not at this stage undo rotation which has already been put into motion — Petitions dismissed.

***Harmeet Singh* v. *Punjab State Election Commission*,**
2008 SCC OnLine P&H 786 : (2009) 1 RCR (Civil) 148 (P&H) (DB)

Bench Strength **2.** Coram : *K.S Garewal* and *Daya Chaudhary*, JJ.
[Date of decision : 29/05/2008]

Constitution of India, 1950

— **Art. 226 — Haryana Municipal Act, 1973** — *Ss.18, 26 and 27 — Maintainability — Election to President and Vice-President of M.C — Alternative remedy of Election Petition — Whether jurisdiction of High Court is barred-Held, no*

That the judgment of the Full Bench in the case of Prithvi Raj versus *State Election Commission*, Punjab and others, 2007(2) ILR (Punjab and Haryana) 206, lays down that an election under the Municipal Act commences with the issuance of a notification, by the State Government, under Section 13-A (2) of the Municipal Act. The election is thereafter held by the *State Election Commission*. The 'election' concludes with the declaration of the result. Thus, a petition that 'calls into question' an election during the period of the election would not be entertained under Article 226 of the Constitution of India and the redress to any such grievance would have to await the outcome of the election and then also would be urged by filing an election petition under the provisions of the Election Commission Act. Whereas the present election to the post of President and Vice President is not covered by the aforesaid decision, therefore, the writ petition filed by the petitioners-appellants herein was maintainable although this aspect has not been decided by the learned Single Judge as the main petition was dismissed on merits. (Para 17)

***Suman* v. *State of Haryana*,**
2008 SCC OnLine P&H 638 : ILR (2008) 2 P&H 923

Bench Strength **2.** Coram : *Mehtab S. Gill* and *Rakesh Kumar Jain*, JJ.
[Date of decision : 29/04/2008]

Local Government
Panchayats and Zila Parishads

Election

Nomination

— **Competent authority to accept nomination papers and subscribe oath or affirmation — Assistant Returning Officer — Who can be appointed on — Person holding additional charge from designated Effect** — *State Election Commission under S. 42(1) of Kerala Panchayat Raj Act appointing Secretary of each Block Panchayat as Assistant Returning Officer to assist Returning Officer — Block Development Officer (BDO) and Secretary of Block Panchayat concerned so appointed — On superannuation, a person working as Extension Officer given full additional charge of BDO as per order of Collector — Held, the officer holding the additional charge, competent to function as Assistant Returning Officer — No specific authorisation by State Election Commission or Returning Officer required for that purpose — Merely because the officer was holding the additional charge, it does not mean that he was not holding full charge of BDO — Local Government — Panchayats and ZilaParishads — Kerala Panchayat Raj Act, 1994 (13 of 1994) - Ss. 42 & 43 — Election — Nomination/Nomination paper - Returning officer - Who can be*

The appellant and the respondent contested the Panchayat election from a ward of a Block Panchayat. The appellant was declared elected. The respondent filed an election petition challenging the election of the appellant on two grounds. It was first contended that the officer who accepted the nomination papers of the appellant had no authority to receive the same and secondly, the appellant had not made or subscribed an oath or affirmation before the Returning Officer or any other person authorised by the State Election Commission and, therefore, he was not qualified to fill a seat.

Allowing the appeal,

Held :

It is an admitted position that one *V* was posted in place of *M*, the erstwhile Block Development Officer and Secretary of the Block Panchayat concerned and that at least for that period *V* was holding full additional charge of BDO of the Block Panchayat concerned. Thus *V* who was an Extension Officer was acting as a Block Development Officer and the Secretary to the Block Panchayat for all practical purposes. Merely because *V* was holding additional charge of BDO, it did not mean that he was not holding the full charge of the post of BDO. He was also the Secretary of the Block Panchayat and was acting as such. Once this position is clear, then it is obvious that he had all the powers, authority and the responsibilities of an Assistant Returning Officer. (Paras 18 and 19)

The notification issued by the State Election Commission appointed “Secretary of each Block Panchayat” as the “Assistant Returning Officer” to assist the Returning Officer for that particular block. Thus the notification suggests that the Secretaries of

each block were not empowered, under the said notification, in their name. It was only the incumbent of the office of the Secretary of each Block Panchayat who was empowered to act as the Assistant Returning Officer. It, therefore, naturally follows that every incumbent who was working, at the relevant time, as the Secretary of the Block Panchayat was empowered to act as the Assistant Returning Officer. (Paras 18 and 19)

Assistant Returning Officers are to be appointed by the State Election Commission and not by the Returning Officer. The Assistant Returning Officers draw their powers directly from the State Election Commission. The State Election Commission, in the present case, had empowered all the Secretaries of the Block Panchayat as the Assistant Returning Officers. It is not necessary that a Returning Officer should be assisted only by one Assistant Returning Officer. Therefore, in cases where there are more than one person acting as the Secretaries (which is unlikely case), all such Assistant Returning Officers could assist the Returning Officer. The language of sub-section (1) of Section 42 is more than explicit to so suggest. (Para 22)

Section 42(2) is merely an empowering section which declares that the Assistant Returning Officer is competent to perform all or any of the functions of the Returning Officer. However, his functions are subject to the control of the Returning Officer, meaning thereby that he can be prohibited by the Returning Officer to do a particular function or his actions would be subject to the rigid control of the Returning Officer. However, in order to clothe him with the competence to act, he does not require any specific authorisation from the Returning Officer. (Para 21)

The words in Section 43 “any function which he is authorised to perform under sub-section (2) of Section 42” do not mean to suggest that there has to be an authorisation, much less in writing by the Returning Officer in favour of the Assistant Returning Officer. The words refer only to the functions which the Assistant Returning Officer “*can* ” perform or is “*capable* ” of performing under sub-section (2) of Section 42. There is no necessity of specific authorisation on behalf of the Returning Officer in favour of the Assistant Returning Officer. (Para 22)

The instruction of the State Election Commission issued in exercise of powers under Article 243-K(1) of the Constitution of India read with Sections 44 and 48-A of the Act stating that there has to be a specific authorisation of the Returning Officer in favour of the Assistant Returning Officer cannot override the provisions of the Act which have been taken into consideration for holding that no such specific authorisation was ever necessary. Moreover, this document was never referred to during the arguments before the Supreme Court and it is only now, after the case is closed and the judgment reserved that the point is being raised. Further, the said document was never produced before the Court by the respondent who chose to argue his case in person. (Para 31)

The proviso to sub-section (2) of Section 42 specifically provides that the Assistant Returning Officer could not perform any of the functions which relate to the scrutiny of nominations unless the Returning Officer is unavoidably prevented from performing the said function. This proviso would mean that in an emergent situation where the Returning Officer is not able to function by some unforeseen event as a Returning Officer, the Assistant Returning Officer could also go ahead with the task of scrutinising the nominations. That, however, would depend upon the evidence. If there arises a situation that on the date fixed in the election programme for scrutiny of nominations, the Returning Officer meets with an accident and is not able to communicate anything to the Assistant Returning Officer, under such emergent situation, the Assistant Returning Officer can and has to go ahead with the task of scrutinising the nominations because the scrutiny must be held on that particular date as per the election programme. Insistence on any such so-called written authorisation would render the whole proviso meaningless. (Paras 20 and 23)

In this case, *V* had to accept the nomination papers and subscribe oath on the day that he did introduce the oath to the appellant and also accepted his nomination papers due to the absence of the Returning Officer. It is unthinkable that during the period when the election programme is on, there would be nobody to accept the nomination form and also to introduce the oath to a person tendering his nomination form. Such situation can never be imagined. There could not be a void during the period when the election programme is on. (Para 25)

Lastly, the acceptance of nomination papers of the appellant and the subscription of oath by *V* to the appellant was never objected to either by the Returning Officer or by the subsequent BDO who took the charge of that post from *V* . Again all these objections were also not raised at the time when the scrutiny of the nomination papers was done. Of course that may not be the only reason to throw out the election petition but that is certainly an additional factor to be taken into consideration. (Para 26)

Therefore, it must be held that *V* who was, at the relevant time, working as a Secretary to the Block Panchayat and was holding a full additional charge of the Block Development Officer for Alangad Block Panchayat was quite competent to subscribe oath to the appellant. He was also quite competent to accept the nomination papers. There is no substance in the contention that taking of oath being sine qua non for a proper candidature, enabling such a person to subscribe oath would hit Articles 243-F, 173-A and 191(*e*) of the Constitution read with Sections 36(2)(*a*) of the RP Act, 1951 read with the Supreme Court's decision in *Sk. Abdul Rahman case* . The contentions based on the said decision are completely meaningless. (Paras 24, 33 and 34)

Appeal allowed, counsel's fee fixed at Rs 10,000. (Para 39)

***V.A Shabeer* v. *P.A Niamathulla* ,**
(2008) 10 SCC 295 : (2008) 2 KLT 362 : AIR 2008 SC 2496

Bench Strength **2.** Coram : *P.P Naolekar* and **V.S Sirpurkar**, JJ.
[Date of decision : 10/04/2008]

Sk. Abdul Rehman v. Jagat Ram Aryan, (1969) 1 SCC 667, distinguished

Local Government
Panchayats and ZilaParishads
Kerala Panchayat Raj Act, 1994 (13 of 1994)

— **S. 42(1) — Nature and Scope — Appointment of — Assistant Returning Officer (ARO) — Authority competent for** — *Held, ARO is appointed by State Election Commission and Returning Officer has no role to play.*

Assistant Returning Officers are to be appointed by the State Election Commission and not by the Returning Officer. The Assistant Returning Officers draw their powers directly from the State Election Commission. The State Election Commission, in the present case, had empowered all the Secretaries of the Block Panchayat as the Assistant Returning Officers. It is not necessary that a Returning Officer should be assisted only by one Assistant Returning Officer. Therefore, in cases where there are more than one person acting as the Secretaries (which is unlikely case), all such Assistant Returning Officers could assist the Returning Officer. The language of sub-section (1) of Section 42 is more than explicit to so suggest. (Para 22)

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[Date of decision : 10/04/2008]

Local Government
Panchayats and ZilaParishads
Kerala Panchayat Raj Act, 1994 (13 of 1994)

— **Ss. 44 & 48-A and 42 & 43 — Specific authorisation by Returning Officer (RO) in favour of Assistant Returning Officer (ARO) for performing functions of former by Latter — Statutory provisions or instructions issued by State Election Commission (SEC) — Primacy of** — *SEC's instruction issued under Art. 243-K(1) of the Constitution r/w Ss. 44 and 48-A of the Act requiring specific*

authorisation by RO in favour of ARO for performing the functions of the former by the latter — Held, such instructions cannot override the provisions of the Act — Administrative Law — Ultra Vires — Grounds for plea of ultra vires — Compliance with Constitutional and statutory requirements - Notification cannot override the Act

Assistant Returning Officers are to be appointed by the State Election Commission and not by the Returning Officer. The Assistant Returning Officers draw their powers directly from the State Election Commission. The State Election Commission, in the present case, had empowered all the Secretaries of the Block Panchayat as the Assistant Returning Officers. It is not necessary that a Returning Officer should be assisted only by one Assistant Returning Officer. Therefore, in cases where there are more than one person acting as the Secretaries (which is unlikely case), all such Assistant Returning Officers could assist the Returning Officer. The language of sub-section (1) of Section 42 is more than explicit to so suggest. (Para 22)

Section 42(2) is merely an empowering section which declares that the Assistant Returning Officer is competent to perform all or any of the functions of the Returning Officer. However, his functions are subject to the control of the Returning Officer, meaning thereby that he can be prohibited by the Returning Officer to do a particular function or his actions would be subject to the rigid control of the Returning Officer. However, in order to clothe him with the competence to act, he does not require any specific authorisation from the Returning Officer. (Para 21)

The words in Section 43 “any function which he is authorised to perform under sub-section (2) of Section 42” do not mean to suggest that there has to be an authorisation, much less in writing by the Returning Officer in favour of the Assistant Returning Officer. The words refer only to the functions which the Assistant Returning Officer “*can* ” perform or is “*capable* ” of performing under sub-section (2) of Section 42. There is no necessity of specific authorisation on behalf of the Returning Officer in favour of the Assistant Returning Officer. (Para 22)

The instruction of the State Election Commission issued in exercise of powers under Article 243-K(1) of the Constitution of India read with Sections 44 and 48-A of the Act stating that there has to be a specific authorisation of the Returning Officer in favour of the Assistant Returning Officer cannot override the provisions of the Act which have been taken into consideration for holding that no such specific authorisation was ever necessary. Moreover, this document was never referred to during the arguments before the Supreme Court and it is only now, after the case is closed and the judgment reserved that the point is being raised. Further, the said document was never produced before the Court by the respondent who chose to argue his case in person. (Para 31)

***V.A Shabeer* v. *P.A Niamathulla*,**
(2008) 10 SCC 295 : (2008) 2 KLT 362 : AIR 2008 SC 2496

Bench Strength **2.** Coram : *P.P Naolekar* and **V.S Sirpurkar**, JJ.
[Date of decision : 10/04/2008]

Election

Panchayat elections

— Disqualification of candidate — Conflicting provisions regarding, in two Acts which were simultaneously in force in the State concerned — Which one to prevail — *The Act earlier in time disqualifying wholetime salaried employees of local authorities, statutory corporations, boards, cooperative societies, State Government and Central Government — The later Act disqualifying only holders of an office of profit under a Panchayat, a Municipality or the Central Government or any State Government — Moreover, the subsequent Act giving overriding effect to its provisions over inconsistent provisions of other laws — It also repealing the corresponding provisions of other laws of the State albeit with savings to a limited extent — In such circumstances the legislative intent behind the reduction of disqualifications by the subsequent Act, held, was to discontinue the disqualification of being an employee of any local authority, statutory corporation or board or cooperative society under the earlier Act — Both the Acts could not be read harmoniously by holding that the incurring of any of the disqualifications enumerated in either Act would disqualify a person for being elected as a member of a panchayat — Further held, the legislative mandate under the subsequent Act was clear and, in the absence of compelling reasons, the courts should be slow to interfere with the legislative mandate — Appellant employee of Haryana State Agricultural Marketing Board therefore not disqualified — Disqualification - Panchayat election — Local Government — Panchayats and ZilaParishads — Punjab Panchayati Raj Act, 1994 (9 of 1994) - S. 208(1)(g) and Preamble - Disqualifications for membership of Panchayat under S. 208(1)(g), held, stood reduced by Ss. 11(f) & (g), 142 and 143 of Punjab State Election Commission Act, 1994 (19 of 1994) — Local Government — Panchayats and ZilaParishads — Punjab State Election Commission Act, 1994 (19 of 1994) - Ss. 11(f) & (g), 142, 143 and Preamble - Effect of Ss. 11(f) & (g), 142 and 143 on disqualifications for membership of a Panchayat contained in S. 208(1)(g) of Punjab Panchayati Raj Act, 1994 (9 of 1994) - Held, the disqualifications mentioned in Act 9 of 1994 stood reduced and confined to those mentioned in Act 19 of 1994 — Local Government — Panchayats and ZilaParishads — Punjab Panchayati Raj Act, 1994 (9 of 1994) - S. 208(1)(g) and Preamble — Local Government — Panchayats and ZilaParishads — Punjab State Election Commission Act, 1994 (19 of 1994) - Ss. 11(f) & (g), 142, 143 and Preamble*

In the election of Sarpanch of a village, the appellant secured the highest number of votes and was declared elected. The respondent, who had stood second to the appellant, challenged the latter's election by filing an election petition. The main ground of the challenge was that the appellant was an employee of the Haryana

State Agricultural Marketing Board and was, in view of Section 208(1)(*g*) of the Punjab Panchayati Raj Act, 1994 (Punjab Act 9 of 1994), disqualified for contesting the election. The appellant opposed the election petition on the ground that in view of Section 11 of the Punjab State Election Commission Act, 1994 (Punjab Act 19 of 1994) which commenced on a date subsequent to the date of commencement of Punjab Act 9 of 1994, an employee of the State Agricultural Marketing Board was not disqualified to contest the election in question. The Election Tribunal allowed the election petition.

The appellant filed an appeal before the High Court. In a reference from a Single Judge, a Division Bench of the High Court opined that a person incurring any of the disqualifications enlisted in Section 208 of the Punjab Panchayati Raj Act, 1994 and/or Section 11 of the Punjab State Election Commission Act, 1994 would be disqualified from being elected as a member of a Panchayat. The Single Judge, therefore, upheld the order of the Election Tribunal. The appellant then filed the present appeal.

Before the Supreme Court the appellant contended that disqualifications prescribed in Act 19 of 1994 being subsequent in point of time would prevail over the corresponding provisions of Act 9 of 1994 specially in view of Section 142 of Act 19 of 1994. That moreover, Section 143 thereof contemplated repeal of all other provisions of State law corresponding to its provisions except the provisions not inconsistent therewith.

On the other hand, the respondents submitted that there was no express repeal but merely repeal by implication and that both the Acts could be read harmoniously.

Allowing the appeal,

Held :

Act 9 of 1994 came into effect on 21-4-1994 and Act 19 of 1994 came into effect on 19-9-1994. Act 19 of 1994 is definitely later in point of time and here under Sections 11(*f*) and (*g*) the disqualifications have been prescribed. Though similar disqualifications existed under Section 208 of Act 9 of 1994 but subsequently the legislature in its wisdom has reduced the disqualifications and confined only to the area that one should not hold office of profit under a Panchayat or a municipality or under the Government of India or any State Government. Thus, the legislature in its wisdom has not considered it proper to continue with the disqualification of being an employee of any local authority, statutory corporation or board or a cooperative society. (Para 10)

Moreover, Sections 142 and 143 of Act 19 of 1994 clearly contemplate that it would have complete overriding effect. Therefore, the mandate of the legislature is very clear and has saved the actions under Section 143 to the extent that any other law which was inconsistent with that law would stand repealed and only the actions

taken under the corresponding provisions of any State law which were in force at that time, would be saved and not otherwise. Therefore, the saving clause is very limited. The disqualifications mentioned in Section 208 of Act 9 of 1994 which are consistent with Section 11 of Act 19 of 1994 can only survive and not other disqualifications. (Paras 11, 12, 16 and 22)

The courts should be very slow to interfere with the mandate of the legislature unless there are compelling reasons for doing so. (Para 12)

It is not possible to hold that both the provisions could be read harmoniously. Since there are only four disqualifications mentioned in Section 11 of Act 19 of 1994, the rest of the disqualifications cannot be imported by implication from Act 9 of 1994. (Para 13)

The subsequent Act 19 of 1994 which has come at later point of time, repeals the provisions of Act 9 of 1994 so far as it is inconsistent with Act 19 of 1994. (Para 18)

***Som Lal* v. *Vijay Laxmi* ,**
(2008) 11 SCC 413 : AIR 2008 SC 2088

Bench Strength **2.** Coram : **A.K Mathur** and *AltamasKabir*, JJ.
[Date of decision : 14/03/2008]

Ratan Lal Adukia v. Union of India, (1989) 3 SCC 537; Hyderabad Chemical and Pharmaceutical Works Ltd. v. State of A.P, AIR 1964 SC 1870 : (1964) 7 SCR 376, relied on MCD v. Shiv Shanker, (1971) 1 SCC 442 : 1971 SCC (Cri) 195; KishorebhaiKhamanchand Goyal v. State of Gujarat, (2003) 12 SCC 274 : 2005 SCC (L&S) 127, distinguished G.P Singh: Principles of Statutory Interpretation, 11th Edn. 2008, Ch. VII, p. 637, referred to Jugal Kishore v. State of Maharashtra, 1989 Supp (1) SCC 589; Mary Roy v. State of Kerala, (1986) 2 SCC 209; Jain Ink Mfg. Co. v. LIC, (1980) 4 SCC 435; Nanak Chand v. Chandra Kishore Aggarwal, (1969) 3 SCC 802 : 1970 SCC (Cri) 127, cited

Constitution of India, 1950
— Arts. 243R(2)(b), 243G, 243S, 243ZG(b) — Punjab State Election Commission Act, 1994 *— Ss. 74, 76 and 87 — Maintainability — Election to President and Vice President of a Nagar Panchayat/Municipality — Dispute with regard to post of President and Vice President of a Nagar Panchayat/Municipality — Whether writ petition is maintainable — Held, yes*

That Article 243ZG of the Constitution of India also left it open to the State Legislature to frame rules with regard to filing of an election petition, before a competent authority and the manner in presenting that petition. In the case of election of the office bearers of the Nagar Panchayats/Municipalities such a procedure was not provided, which stands in contra distinction to the provisions

made in the Punjab Municipal Election Rules, 1994, wherein remedy of an election petition has been provided to lay challenge to the election of a member of the Nagar Panchayat/Municipality. In 1994 Election Rules, to elect office bearers, voting is by show of hands. Procedure was very simple, may be due to that the legislature may have thought that there may not be any dispute so far as elections of the President and Vice President are concerned. Situation like the one in the present case, may not have been visualized at the time when above said rules were framed, otherwise, there was no necessity, to frame separate rules, with regard to election of members of the municipalities and its office bearers. The writ petition is the only remedy available in case of any election dispute with regard to the post of President and Vice President of a Nagar Panchayat/Municipality. (Paras 28 & 29)

Further held, that a reading of the contents of the proceedings recorded by the Presiding Officer, Annexure R-2/2 indicates that all the 13 members were present. Names of petitioner No. 3 and respondent No. 4 were proposed for the post of President. The Presiding Officer noted that seven members have favoured respondent No. 4 and six were in favour of petitioner No. 3 and accordingly, declared respondent No. 4 as elected President of the Nagar Panchayat. The voting was by show of hands. We feel that to maintain fairness (though it is not provided in the rules) it was incumbent for the Presiding Officer to name the members who have voted in favour of the elected and the defeated candidate, to get their signatures on the proceedings (Para 35)

***Shimla Rani* v. *State of Punjab*,**
2007 SCC OnLine P&H 944 : ILR (2008) 2 P&H 610

Bench Strength **2.** Coram : *Jasbir Singh* and *Nirmal Yadav*, JJ.
[Date of decision : 17/09/2007]

Constitution of India
— **Arts.226, 243 — ZG(b), 243ZA, 243K and 243-0** — *Punjab Municipal Act, 1911 — Ss. 3(4c) and 13-A — Punjab* State Election Commission *Act, 1994 — S.74 — Maintainability — Election to Municipal Council — Petitioner's name appeared in array of candidates after acceptance of his nomination paper* — State Election Commission *deleting petitioner's name on the ground that his name stood deleted from electoral rolls — Challenge thereto — Cl.(b) of Art. 243 — ZG postulates that notwithstanding anything contained in the Constitution no election to any Municipality shall be called in question except by way of an election petition — Ambit and scope of CI. (b) of AH.243ZG, stated — Whether jurisdiction of High Court to entertain a petition against the impugned order is barred — Nature of powers of High Court under Art. 226, stated — Once electoral process commences, with the issuance of a notification any grievance touching upon an "election" would be justiciable only by*

way of an election petition — Interference by Courts in election matters after the commencement of election process not permissible

Held, that Art. 226 of the Constitution encapsulates a High Court's power to issue writs, directions, or orders 'including' writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, so as the enforce the rights conferred by Part III of the Constitution 'and for any-other purpose'. A High Court's jurisdiction to issue rule nisi, thus, flows from Art. 226 of the Constitution. The power of judicial review is neither arbitrary nor unbridled. High Courts, while upholding their jurisdiction to issue writs, orders or directions have generally, declined to exercise jurisdiction where an alternative and efficacious remedy is available, the cause suffers from unexplained delay and laches, or involves adjudication of disputed questions of facts, and relevant to the present case, in election matters, where the process of election has commenced. These restraints, that a High Court, places, on exercise of the power of judicial review, cannot be equated with a lack of jurisdiction or an assertion that the High Court lacks powers to entertain a writ petition. (Para 9)

Further held, that no degree of judicial scholarship is required to hold that Art. 226 of the Constitution of India, is integral to the scheme of judicial review, and thus to the basic structure of the Constitution. Without Art. 226, the Constitution, would be an empty shell lacking substance, and a mere piece of paper, devoid of any means to protect and enforce its lofty ideals. (Para 11)

Further held, that a conjoint reading of the provisions of Constitution, the Municipal Act and the Election Commission Act leads to a singular conclusion, namely, that once an election has been notified under S. 13-A(2) of the Municipal Act, an "election", as defined in S. 3(4-c) thereof, can only be called into question, by way of an election petition, filed in accordance with the provisions, and the mode and manner, as set out in the Election Commission Act. (Para 21)

Further held, that an "election", under the Municipal Act, commences with the issuance of a notification, by the State Government, under S. 13-A(2) of the Municipal Act, The election is thereafter held by the State Election Commission. The 'election' concludes with the declaration of the result. Thus, a petition that "calls into question" an "election", during the period of the "election", would not be entertained, under Art. 226 of the Constitution of India. Redress to any such grievance would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act. The aforementioned conclusions, however, shall not be construed to oust the jurisdiction of a High Court, under Art. 226 of the Constitution of India. A High Court's power of judicial review is merely postponed, to a time and a stage, after the conclusion of the election and then also to a judicial appraisal of any judgment or order that may be passed by an Election Tribunal, duly constituted, in terms of S. 73 of Election Commission Act. (Para 27)

Further held, that the word "election" and the expression "called into question" used in Art. 243ZG(b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e calling in question the election, would have to be made by way of election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Art. 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition. However, the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question as election. A petition seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Art. 243ZG (b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election. (Para 29)

Further held, that an appraisal of the provisions of Art. 226 of the Constitution and the judgments of the Hon'ble Supreme Court clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justiciable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible. Challenge to an election, would be postponed, to a time and stage after the conclusion of the "election" and then also by an election petition, a High Court would, in exercise of judicial restraint, postpone judicial review to a stage after the Election Tribunal adjudicates the election petition. The power of a High Court, under Art. 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair pool. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extra ordinary powers of this Court under Art. 226 of the Constitution. (Paras 34 and 35)

***Prithvi Raj* v. State Election Commission,**
2007 SCC OnLine P&H 738 : ILR (2007) 2 P&H 206

Bench Strength **5.** Coram : *Vijender Jain*, *C.J.* and *M. M. Kumar*, *Jasbir Singh*, *RajiveBhalla*and *Rajesh Bindal*, JJ.

[Date of decision : 25/07/2007]

Young man helping old voter to reach Pollingbooth

PUNJAB AND HARYANA HIGH COURT

Hon'ble Mr.Justice Adarsh Kumar Goel
Hon'ble Mr.Justice S.S.Sudhalkar

Sunil Kumar V/s State of Haryana and others

Writ Petition No.3141/2000, decided on 31st October, 2001

"Counsel for the petitioner contended that his case was covered by proviso to Section 13A of the Act and he should have been treated as qualified. He submitted that disqualification did not operate upto the expiry of one year from the commencement of this Act. He submitted that the third child was born on 11.05.1995 and though the proviso to Section 13A of the Act was added on 05.04.1994, but there was further amendment on 04.10.1994 substituting the word 'upto' in place of 'after and therefore, the disqualification will not operate upto one year from 04.10.1994, while counsel for the respondent argued that the disqualification will operate after one year from the date the proviso was originally added.

We find that in the amendment made on 04.10.1994, only word 'upto' was substituted in place of work 'after' and the remaining expression one year of the commencement of the Act published on 05.04.1994 and therefore after 05.04.1995, the disqualification will operate and in view of admitted position that the petitioner had the third child on 11.05.1995, the disqualification against the petitioner was operative and the nomination of the petitioner was rightly rejected. This writ petition is accordingly, dismissed.

IN SLP BEFORE SUPREME COURT OF INDIA

Hon'ble Mr.Justice Doraiswamy Raju
Hon'ble Mr.Justice Shivaraj V.Patil

Decided on 19th December, 2002

In SLP before Hon'ble Supreme Court Judgment.

"The legislative intent thus to compute the period of one year from the "commencement of this Act" meaning thereby Haryana Act No.3 of 1994 is equally explicit and clear. There is therefore, no rhyme or reason or justification in the claim on behalf of the appellant that the one year period has to be calculated from the date of coming into force of the Haryana Act No.15 of 1994, which merely substituted the word 'After' by the word 'upto'. The result of substitution, as we could see, was to read the provision as amended by the word, ordered to be substituted. The legislature seem to have realized the need for substitution on becoming aware of the anomalies and absurdities to which the provision without such substitution may lead

to, even resulting, at times, in repugnance with the main provision and virtually defeating the intention of the legislature. The modification of the provision, as carried out by the substitution ordered, when found to be needed and necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must and the only inevitable solution. The right to contest to an office of member of municipal body is the creature of Statute and not a constitutional or fundamental right. Viewed, thus also we are convinced that the interpretation placed by the High Court on the provisions concerned is neither arbitrary, or unreasonable or unjust to call for our interference.

The appeal consequently falls and shall stand dismissed. No costs.

PUNJAB AND HARYANA HIGH COURT

Hon'ble Mr. Justice V.S.Aggarwal

Hon'ble Mr. Justice Amar Bir Singh Gill

Surinder Kumar V/s. State of Haryana & others.

Civil Writ Petition No.4105/2000, decided on 16th November, 2000

"Once the irregularities in preparation of the electoral rolls was noticed and a report had been received by the State Election Commission, indeed, the Commission was under a legal obligation to ensure that there is a fair election. So far as Ward No.10 from where the petitioner has filed the nomination paper is concerned, there have been changes after the revised electoral roll was prepared. In this process, when the whole election programme had been cancelled, the petitioner in that view of the matter cannot claim any special right to urge that he is taken to have been elected and the cancellation of the election programme will have no effect on his election.

There is another way of looking in the matter. We have earlier analysed the relevant Rules. It is true that if there is only one candidate left, he would be elected. But, declaration of result, as is envisaged under the Rules, is mandatory. If, for some reason, the result is not declared and in the intervening period the election programme is cancelled, as is happened in the present case, a person cannot claim that he is deemed to have been elected. It is admitted that the petitioner had submitted his nomination paper and was the sole person left in the field. It is also admitted that the Returning Officer was busy during the day doing the other work. Ultimately, the result of the petitioner was not declared. The declaration of the result was a mandatory act. Once it was not so declared and, indeed, in the meantime the election programme was cancelled, we have no hesitation in concluding that the petitioner cannot claim the right.

For these reasons, the writ petition being without any merit must fall and is accordingly dismissed with no orders as to costs.

THE PUNJAB AND HARYANA HIGH COURT

Hon'ble Mr.Justice V.S.Aggarwal

Hon'ble Mr.Justice Amar Bir Singh Gill

CWP No.5985 of 2000 – Ali Mohammad and others V/s State of Haryana & others

Decided on 22nd March, 2001

"We have already referred in the Judgment, the purpose of enacting this provision under challenged and the right to life. Keeping in view the same can not be extended in the manner that endless millions keep multiplying when every one has thereafter to live an animal existence. The restrictions, therefore, can not be termed to be arbitrary.

In some of the matters, it was pointed out that though certain petitioners had more than two children but one of them had been given in adoption, therefore, they only had two children. Our attention was drawn to the provisions of the Hindu Law that once the child is given in adoption, e is transplanted to the next family adopting the child and therefore, such petitioner is stated to have only two children.

We find that the said contention so much though of is without any merit. The Legislature in its wisdom has used the words has more than two living children. In other words, disqualification arises the moment a person gives birth to a third child subject to the proviso. The disqualification that accrues does not put an end to the subsequent act. If the Legislature has so desired, it could had made a provision in this regard. The intention was to restrict the birth of number of children to not more than two and consequently this particular plea must also be held to be devoid of any merit.

A similar Civil Writ Petition No.15714 of 1996 titled Lala Ram V/s State of Haryana was filed and once again constitutional validity of Section 175(1)(q) of the Act was upheld. We find ourselves in agreement with the earlier decision.

For these reasons, all these writ petitions must fail and are dismissed.

Similar identical question has also been upheld by the Hon'ble Punjab & Haryana High Court in its judgements in CWP No. 11439 of 1997 – Fazru V/s State of Haryana & others and CWP No. 8730 of 2001 - Roshni Devi V/s State of Haryana & others.

SUPREME COURT OF INDIA

Writ Petition No.302 of 2001
In
C.A. Nos.5335 to 5372,5380 to 5382,5397 to 5450 of 2003

Hon'ble Mr.Justice R.C.Lahoti
Hon'ble Mr.Justice Ashok Bhan
Hon'ble Mr.Justice Arun Kumar

Javed Vs. State of Haryana, Decided on 30th July, 2003

"In our view, a statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.

Looked at from any angle, the challenge to the constitutional validity of Section 175 (1)(q) and Section 177(1) must fall. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation. It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more than one or procreating more children than one is a practice followed by any community or group of people the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

If anyone chooses to have more living children than two, he is free to do so under the law as it stands nor but then he should pay a little price and that is of depriving himself from holding an office in Panchayat in the State of Haryana. There is nothing illegal about it and certainly no unconstitutionality attaches to it.

Some incidental questions

It was submitted that the enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated hereinabove, we may add that disqualification is attached no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the scope of

disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person sought to be disqualified is responsible for or has given birth to children more than two, who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

It was also submitted that the impugned disqualification would hit the women worst, inasmuch as in the Indian Society they have no independence and they almost helplessly bear a third child if their husband wants them to do so. This contention need not detain us any longer. A male who compels his wife to bear a third child would disqualify not only his wife but himself as well. We do not think that with the awareness which is arising in Indian women folk, they are so helpless as to be compelled to bear a third child even though they do not with to do so. At the end, suffice it to say that if the legislature chooses to carve out an exception in favour of females it is free to do so but merely because women are not expected from the operation of the disqualification it does not render it unconstitutional.

Hypothetical examples were tried to be floated across the bar by submitting that there may be cases where triplets are born or twins are born on the second pregnancy and consequently both of the parents would incur disqualification for reasons beyond their control or just by freak of divinity. Such are not normal cases and the validity of the law cannot be tested by applying it to abnormal situations. Exceptions do not make the rule nor render the rule irrelevant. One swallow does not make a summer; a single instance or indicator of something is not necessarily significant.

Conclusion

The challenge to the constitutional validity of Section 175(1)(q) and 177(1) falls on all the counts. Both the provisions are held, intra vires the Constitution. The provisions are statutory and in public interest. All the petitions which challenge the constitutional validity of the abovesaid provisions are held liable to be dismissed.

Certain consequential orders would be needed. The matters in this batch of hundreds of petitions can broadly be divided into a few categories. There are writ petitions under Article 32 of the Constitution directly filed in this Court wherein the only question arising for decisions the constitutional validity of the impugned provisions of the Haryana Act. There were many writ petitions filed in the High Court of Punjab & Haryana under Articles 226/227 of the Constitution which have been dismissed and appeals by special leave have been filed in this Court against the decisions of the High Court. The writ petitions, whether in this Court or in the High Court, wee filed at different stages of the proceedings. In some of the matters the High Court had refused to stay by interim order the disqualification of the proceedings relating to disqualification pending before the Director under Section

177(2) of the Act. With the decision in these writ petitions and the appeals arising out of SLPs the proceedings shall stand revived at the state at which they were, exempting in those matters where they stand already concluded. The proceedings under Section 177(2) of the Act before the Director or the hearing in the appeals as the case may be shall now be concluded. In such of the cases where the persons proceeded against have not filed their replies or have not appealed against the decision of the Director. In view of the interim order of this Court or the High Court having been secured by them they would be entitled to the reply or appeal, as the case may be, within 15 days from the date of this judgment if the time had not already expired before their initiating proceedings in the High Court or this Court. Such of the cases where defence in the proceedings under Section 177(2) of the Act was raised on the ground that the disqualification was not attracted on account of a child or more having been given in adoption, need not be re-opened as we have held that such a defence is not available.

Subject to the abovesaid directions all the writ petitions and civil appeals arising out of SLPs are dismissed.

PUNJAB AND HARYANA HIGH COURT

Hon'ble Mr. Justice H.S.Bedi
Hon'ble Mr. Justice A.S.Garg

Surjeet Singh & Others Vs. State of Haryana & Anothers

CWP No.12742 of 1999, Decided 30th September, 1999

The Second General Panchayat Elections in the State were due to be held in the month of December, 1999 and during the period when the printing of voter lists was in progress, a Civil Writ Petition No.12742 of 1999 titled as Surjit Singh and Joginder Singh Versus State of Haryana was filed in the Hon'ble Punjab and Haryana High Court in the month of August,1999. In this Civil Writ Petition, the Panchayat voters lists of the Gram Panchayats in district Ambala were challenged on the ground that these lists had been prepared on the basis of the draft Assembly Electoral rolls preliminary published on 20.04.1999 and not on the basis of Assembly electoral rolls finally published on 21.07.1999. The petitioners prayed that the voters lists of the Gram Panchayats in Ambala district revised by the State Election Commission on the basis of the draft Assembly Electoral Rolls preliminary published on 20.04.1999 should be quashed and the voters list be prepared afresh on the basis of the Assembly Rolls finally published on 21.07.1999. The Hon'ble Division

Bench of the Hon'ble Punjab and Haryana High Court in their judgement dated 30.09.1999 passed the following orders:-

> "Ld. Counsel for the Petitioner as also the Ld. Advocate General, Haryana representing, Respondents No.1 and 3 have stated that in the facts and circumstances of the case, it would be appropriate that the voters lists finalised for the Panchayat/Municipal elections is revised on the basis of Assembly electoral rolls finally published on 21.07.1999 and that the same be prepared after affording an opportunity to all the eligible voters after following the prescribed procedure. This petition is thus disposed of with the directions that Respondent No.2 represented by Mr. Rajan Gupta, Advocate shall prepare the electoral rolls in the manner indicated above before June,2000.

A review application against the above orders of the Hon'ble High Court in the form of a CM No.25598 of 1999 in CWP No.12742 of 1999 was filed by six petitioners including two MLAs for impleading them as respondent in the above said Civil Writ Petition and also saying that elections of Gram Panchayats, Panchayat Samitis and Zila Parishad in the State which were due to be held in December, 1999, the same would be deferred, if the voters lists were to be prepared afresh in compliance of the Hon'ble High Court's order dated 30.09.1999 and that would result in noncompliance of the provisions of the Constitution to complete the elections of the Panchayats before the expiry of their duration, which would expire in 28 December, 1999. The Hon'ble High Court in its interim Orders dated 03.12.1999 impleaded the applicants as parties and disposed of the Civil Writ Petition No.12488 and 16994 of 1999 (pertaining to Gram Panchayats, Panchayat Samitis and Zila Parishads) and No.17359 of 1999 (pertaining to Municipalities) and directed that the elections to these bodies (except for 92 Panchayats and 22 Municipal Councils and Municipal Committees) should be held positively by the end of February, 2000. The Hon'ble Court also observed that the Advocate General Haryana and Counsel of the Commission conceded that the Order dated 30.09.1999 had been made in ignorance of the constitutional provisions contained in Part IX and IX-A and the Panchayati Raj Act and Municipal Act and the Order had infact by implication, nullified a Constitutional and statutory mandate. The Hon'ble Court also held that it is for the State Election Commission to decide the electoral rolls on the basis of which the elections are to be held.

SUPREME COURT OF INDIA

Hon'ble Mr.Justice S.Rajendera Babu
Hon'ble Mr.Justice Doraiswamy Raju

SLP No.772-773 of 2000, Decided on 1st Feb., 2000

An SLP against the Hon'ble High Court's orders dated 27.12.1999 was filed by the State Government in the Supreme Court of India. The Hon'ble Supreme Court of India disposed of the SLP No.772-773 of 2000 and passed the following orders:-

"Leave granted in all the appeals.

Learned counsel for the parties are present before us and they waive notice. This order shall dispose of all the aforesaid appeals.

The controversy in these appeals, which have put in issue the judgement and order of the High Court dated 27th December, 1999 and the order dated 21st January, 2000 made in Review Application resolves around the holding of the elections to the Municipal Councils, Municipal Committees and Municipal Corporation, Faridabad as also to the Gram Panchayats, Panchayat Samitis and Zila Parishads.

In view of the developments, which have taken place in this Court and the additional affidavit which has been filed in response to the direction given to the State by Shri Hardeep Kumar, Joint Secretary-cum-Director, Development and Panchayats Department, Haryana, we are 29 relieved of the necessity to trace the history of the litigation. Suffice it to notice that the High Court through the impugned orders directed the State Government and the State Election Commission to hold elections to the Gram Panchayats, Panchayat Samitis and Zila Parishads as well as the Municipalities etc. by the end of February, 2000, except for those Municipalities etc. which were left out in the order of the High Court itself.

Mr. Sarin, Advocate General, appearing for the State, submits that because of the Assembly elections which have been necessitated on account of the dissolution of the Assembly and the polling for which is scheduled to taken place on 22nd February, 2000, it is not possible for the State or the State Election Commission to hold the elections to the Panchayat Samitis etc. by the end of February, 2000, as directed by the High Court and that some more time is required for the purpose. Mr.Harbhagwan Singh, learned senior counsel appearing for the respondents submits that the State has been dragging its feet and not holding the elections without any justification.

We quite appreciate the difficulty expressed by the State in view of the forthcoming Assembly elections. The State Election Commission as well as the State of Haryana have, in response to directions issued by this court, submitted a tentative time schedule for holding of the elections to the Municipal Councils and Panchayat Samitis etc. alongwith the affidavit of Shri Hardeep Kumar. We have perused the same. We are of the considered opinion that the democratic process of election should not be postponed unduly and though the State should be given some more time to complete the election process, the time suggested in the schedule is not reasonable.

We, therefore, with the consent of learned counsel for all the parties, direct that the State and the State Election Commission shall hold elections to the Gram Panchayats etc. and complete the process of holding elections, wherever poll is required to be held, on or before 31st March, 2000. The State and the State Election Commission shall also hold elections to the Municipal Councils etc. and complete the process by holding the polls, wherever required, by the 7th of April,2000.

The State as well as the State Election Commission shall accordingly take all appropriate preparatory steps connected with the holding of the elections like issuance of notification etc., accordingly so that the polls, wherever necessary, are held by 31st April, 2000 in the case of Municipalities etc. The learned Advocate General appearing for the State of Haryana and Mr.Ravinder Bana, learned counsel appearing for the State Election Commission assure us that the needful shall be done by the dates as given by us.

The impugned order of the High Court to that extent shall, therefore, stand modified.

We clarify that we have not expressed any opinion with regard to the alleged strictures passed against the State or its officials and it is open to the concerned party to approach the High Court for expunging of such remarks and the High Court shall decide those applications, if made, so uninfluenced by the order made by us today.

We are informed that some contempt proceedings have also been initiated by the High Court arising out of the impugned orders. Those proceedings may be decided by the High Court, keeping in view the consent order made by us today.

With the above modification of the impugned and the directions, all the appeals are disposed of. The parties shall, however, bear their own costs insofar as these appeals are concerned.

SUPREME COURT OF INDIA

Hon'ble Mr.Justice K.G. Balakrishnan, Chief Justice
Hon'ble Mr.Justice S.H.Kapadia,
Hon'ble Mr.Justice C.K.Thakkar,
Hon'ble Mr.Justice P.K.Balasubramanyan

Kishan Singh Tomar Vs. Municipal Corporation of the City of Ahemdabad and Others

Appeal (Civil) No. 5756 of 2005, Decided on 19.10.2006

J U D G M E N T

This appeal is directed against the judgment of the Division Bench of the High Court of Gujarat. The appellant filed a Special Civil Application No. 9847 of 2005 praying for a writ of mandamus or any other appropriate writ or direction to the respondents in the writ petition, namely, the Municipal Corporation of the City of Ahmedabad, the State of Gujarat and the Gujarat State Election Commission, to take all steps necessary for the purpose of holding elections for constituting the Municipal Corporation of the city of Ahmedabad before the expiry of the duration of the Municipal Corporation constituted pursuant to the elections held in October, 2000.

The appellant, who was the writ petitioner before the High Court, was the Chairman of the Standing Committee of the Ahmedabad Municipal Corporation (hereinafter referred to as "AMC"). The elected body of the AMC was constituted for the relevant period pursuant to an election held in October, 2000 and its term was due to expire on October 15, 2005. The appellant apprehended that the authorities may delay the process of election to constitute the new Municipal body and therefore filed the aforesaid writ petition on 23rd August, 2005. The AMC filed an affidavit before the High Court stating that it was the responsibility of the third respondent, namely, the State Election Commission, to conduct the elections in time. The State Election Commission, in a separate affidavit in reply, submitted that under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, the State Govt. had issued a Notification on 8th June, 2005 determining the wards for the city of Ahmedabad by which the total number of wards had been increased from 43 to 45 and in view of the increase in the number of wards, the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmedabad in accordance with the provisions of the Bombay Provincial Municipal Corporation (Delimitation of Wards in the City & Allocation of Reserved Seats) Rules, 1994 and that the Commission had issued a circular requiring the Collectors

and the Designated Officers to furnish the details and to make proposals for delimitation of the wards. The Commission contended that it would take two months' time to complete the process of delimitation as the preparation of voters' list in each ward had to be revised in accordance with the Bombay Provincial Municipal Corporation (Registration of Voters) Rules, 1994. It was alleged by the Commission that it was required to consult the political parties to carry out the delimitation of the wards and that it would take at least six months' time for completing the process of election and the Commission could act only after the State Govt. issued the notification. The State Govt. produced a chart showing the detailed steps taken by the State Govt. at various stages culminating in the issue of Notification dated 8th June, 2005.

The appellant contended before the Single Judge that in view of Article 243-U of the Constitution, the authorities were bound to complete the process at the earliest and the elections should have been held before the expiry of the term of the existing Municipal Corporation. The learned Single Judge accepted the timeframe suggested by the State Election Commission and directed that it should be strictly followed and the process of elections must be completed by 31st December, 2005, and that no further extension for holding the elections would be permissible.

Aggrieved by the decision of the Single Judge, the appellant filed a Letters Patent Appeal before the High Court and the Division Bench of the High Court by the impugned judgment held that the timeframe given by the State Election Commission was perfectly justified and the Election Commission was directed to begin and complete process as per the dates given in its affidavit and the L.P.A. was dismissed. Aggrieved thereby, the present appeal is preferred before us by the appellant.

We heard appellant's counsel as also the counsel for the respondents. The main thrust of the arguments of the appellant's counsel was that in view of the various provisions contained in Part IX of the Constitution of India, it was incumbent on the part of the authorities to complete the process of election before the expiry of the period of five years from the date appointed for first meeting of the Municipality. The counsel for the respondents, especially the counsel for the State Election Commission contended that every effort was made by the Election Commission to conduct the elections before the stipulated time, but due to unavoidable reasons, the elections could not be held and the preparation of the electoral rolls and the increase in the number of wards had caused delay in the process of election and under such circumstances the delay was justified in conducting the elections.

The question that arises for consideration is whether Article 243-U of the Constitution, by which the duration of the Municipality is fixed is mandatory in nature and any violation could be justified in the circumstances stated by the respondents. Article 243-U of the Constitution reads as follows :

"243-U. Duration of Municipalities, etc. (1) Every Municipality, 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:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality 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 Municipality 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 dissolution:

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

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved."

Article 243-ZA 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 a State Election Commission referred to in Article 243-K.

Article 243-S states that there shall be constituted Wards' Committees consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more and that the State Legislature may by law make provision with respect to (a) the composition and the territorial area of a Wards Committee; and (b) the manner in which the seats in a Wards Committee shall be filled.

Under Article 243-T, it is provided that the seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes

in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality. Further clause (2) of Article 243-T says that not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Clause (3) of this Article further provides that not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. Clause (6) empowers the State Legislature to make any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

The provisions contained in the Bombay Provincial Municipal Corporations Act, 1949 also are relevant to be noted here. Section 6 of this Act deals with the duration of a corporation. It reads as under :

"6. Duration of Corporation :

(1) Every Corporation unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer.

(2) A Corporation constituted upon the dissolution before the expiration of its duration shall continue only for the remainder of the period for which it would have continued under Sub-Section (1) had it not been so dissolved."

Section 6A reads as under :

"6A. Terms office of Councillors :

The term of the office of the Councillors shall be co-extensive with the duration of the corporation."

Section 6B is to the following effect :

"Election to Constitute the Corporation :

An election to constitute a corporation shall be completed

(a) before the expiration of its duration specified in sub-section (1) of the section 6.

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

Provided that where the remainder of the period for which the dissolved Corporation would have continued is less than six months, it shall not be necessary

to hold any election under this section for constituting the Corporation for such period."

It may be noted that Part IX-A was inserted in the Constitution by virtue of the Seventy Fourth Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before the Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a Constitutional status to such bodies and to ensure regular and fair conduct of elections. In the statement of objects and reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated :

> "In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersession's and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.

Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to :

  (a) the functions and taxation powers, and

  (b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections.

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for ---

(f) fixed tenure of 5 years for the Municipality and re-election within a period of six months of its dissolution."

The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this Article, the duration of the Municipality is fixed for a term of five years and it is stated that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a Municipality shall be completed-

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

(b) before the expiration of a period of six months from the date or its dissolution. Therefore, the constitutional mandate is that election to a Municipality shall be completed before the expiry of the five years' period stipulated in Clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A Proviso is added to Sub-clause (3) Article 243-U that in case of dissolution, the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period. It is also specified in Clause (4) of Article 243-U that a Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1) had it not been so dissolved.

So, in any case, the duration of the Municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243-U.

The counsel for the respondents contended that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and under such circumstances the provisions of Article 243-U could not be complied with stricto sensu.

A similar question came up before the Constitution Bench of this Court in Special Reference No. 1 of 2002 with reference to the Gujarat Assembly Elections matter. The Legislative Assembly of the State of Gujarat was dissolved

before the expiration of its normal duration. Article 174(1) of the Constitution provides that six months shall not intervene between the last sitting of the Legislative Assembly in one session and the date appointed for its first sitting in the next session and the Election Commission had also noted that the mandate of Article 174 would require that the Assembly should meet every six months even after dissolution of the House and that the Election Commission had all along been consistent that normally a Legislative Assembly should meet at least every six months as contemplated by Article 174 even where it has been dissolved. As the last sitting of the Legislative Assembly of the State of Gujarat was held on 3.4.2002, the Election Commission, by its order dated 16.8.2002, had not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat and observed that the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December, 2002 and therefore the mandate of Article 174(1) of the Constitution of India to constitute a new Legislative Assembly cannot be carried out. The Reference, thus, came up before this Court.

Speaking for the Bench, Justice Khare, as he then was, in paragraph 79 of the Answer to the Reference, held :

> "However, we are of the view that the employment of the words "on an expiration" occurring in Sections 14 and 15 of the Representation of the People Act, 1951 respectively show that the Election Commission is required to take steps for holding election immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for. Yet, there is another indication in Sections 14 and 15 of the Representation of People Act that the election process can be set in motion by issuing of notification prior to expiry of six months of the normal term of the House of the People or Legislative Assembly. Clause (1) of Article 172 provides that while promulgation of emergency is in operation, Parliament by law can extend the duration of the Legislative Assembly not exceeding one year at a time and this period shall not, in any case, extend beyond a period of six months after promulgation has ceased to operate.
>
> The aforesaid provisions do indicate that on the premature dissolution of the Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Legislative Assembly."

Concurring with the foregoing opinion, Pasayat, J. in paragraph 151, stated as follows :

> "The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex no cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform.
>
> "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Ed., at pp 1962-63 and Craies on Statue Law, 6th Edn., p. 268.) These aspects were highlighted by this Court in Special Reference No. 1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

The majority opinion in Lakshmi Charan Sen & Ors. Vs. A.K.M. Hassan Uzzaman & Ors. (1985) 4 SCC 689 held that the fact that certain claims and

objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities.

But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.

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 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.

In terms of Article 243 K and Article 243 ZA (1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision.

The words, 'superintendence, direction and control' as well as 'conduct of elections' have been held in the "broadest of terms" by this Court in several decisions including in Re : Special Reference No. 1 of 2002 (2002) 8 SCC 237 and Mohinder Singh Gill's case (1978) 1 SCC 405 and the question is whether this is equally relevant in respect of the powers of the State Election Commission as well.

From the reading of the said provisions it is clear that the powers of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by State Legislatures provided the same do not encroach upon the plenary powers of the said Election Commissions.

The State Election Commissions are to function independent of the concerned State Governments in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities.

Article 243 K (3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

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 fulfill the constitutional mandate.

Taking into account these factors and applying the principles of golden rule of interpretation, the object and purpose of Article 243-U is to be carried out.

As the elections to the Ahmedabad Municipal Corporation have already been held and the new Municipal body constituted, no further direction is required in the matter. With these observations, we dispose of the appeal with no order as to costs.

Through a CWP No.5690 of 2005 filed in the Hon'ble Punjab & Haryana High Court, Sh.Jagir Singh & Others prayed for directing the respondents to include their names in the voters' list of Gram Panchayat Dhani Satnam Singh, Block Rania, District Sirsa. The Hon'ble High Court, vide its order dated 07.04.2005, disposed off the Writ Petition directing the respondents to take a decision in the matter by 08.04.2005, in accordance with law. The said order of the High Court, alongwith representation of the petitioners, was sent to the Deputy Commissioner, Sirsa. The Deputy Commissioner, Sirsa decided the representation and allowed the names of the petitioners to be included in the voters' list of Gram Panchayat Dhani Satnam Singh.

In a similar CWP No.5676 of 2005 filed by Sh.Tikka Ram and others praying for the inclusion of their names in the voters' list of Gram Panchayat Kheri Mor Singh, Block Rania, District Sirsa, the Hon'ble High Court passed the same order dated 07.04.2005 directing the respondents to decide the representation by 08.04.2005. This order of the High Court, alongwith the representation, was also sent to the Deputy Commissioner, Sirsa to comply with the orders of the Hon'ble High Court. The Deputy Commissioner disposed off the representation, allowing the names of the petitioners to be included in the voters' list of Gram Panchayat Kheri Mor Singh.

Another CWP No.5679 of 2005 was filed before the Hon'ble High Court by Prince Pal Singh & Others praying for the inclusion of name of the petitioner, his mother and wife in the voters' list of Gram Panchayat, Sangoli Rangdan, Block Babain, District Kurukshetra. This Writ Petition was also disposed of by the Hon'ble High Court, vide order dated 07.04.2005 with the direction to decide the representation by 08.04.2005. The order of the High Court, alongwith the representation, wa7s sent to the Deputy Commissioner, Kurukshetra for complying with the orders of the High Court. However, the Deputy Commissioner, Kurukshetra vide his order dated 08.04.2005 rejected the representation on the plea that the petitioners had not availed of the opportunity of filing claims for the inclusion of their names, during the period provided in the schedule of preparation of voters' lists as per programme issued by the State Election Commission.

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Brig. Hardeep Singh Ghuman (Shaurya Chakra) Vs. Union of India and others

CWP No. 3775 of 2009, Decided on 22nd August, 2013

Present:- Mr. Shireesh Gupta, Advocate, for the petitioner.
Mr. M.L. Sarin, Senior Advocate, with,
Mr. Hemant Sarin, Advocate, for respondents No. 3 and 4.
Mr. Gaurav Garg Dhuriwala, Deputy Advocate General, Punjab,
for respondent No. 7.
Mr. Ajay Gupta, Additional Advocate General, Haryana,
for respondent No. 8.

AUGUSTINE GEORGE MASIH, J.

This Public Interest Litigation (PIL) has been preferred by a former officer of the defence services highlighting an alleged grievance and difficulty faced by the defence personnel and their families who are posted outside their home town and are unable to cast their votes and thus, depriving them participation in the election process of the country. The primary grievance highlighted is that the process of preparation of electoral rolls for all defence areas and cantonments are not carried out by the respondents depriving them of their valuable right to vote.

Petitioner states that he is a decorated retired officer of the Indian Army. The defence personnel and the dependent members of their families face a problem especially those who are posted away at far off places from their home town where they are unable to cast their votes and participate in the election process because of the enrollment drive of voters not being initiated and carried out by the respondents in the areas where the defence personnel reside i.e. the restricted areas. They are not even aware of the fact that they can be enrolled as voters at their place of posting if they so desire, nor are they educated with regard to the fact that they can cast their votes through proxy or by means of postal ballot. This is primarily because of lack of information supplied to them and inaction on the part of the Election Commission of India which has failed to initiate the process of preparation of electoral rolls within the defence areas. The option of casting vote by postal ballot due to delay of despatch of the ballot papers from the Returning Officers to the Service Voters and then the postal delays leads to the said postal ballots reaching back the Returning Officer after the declaration of the result which defeats the very purpose for which it was created rendering the whole process a farce and futile exercise. Stipulating a tenure of posting of minimum three years in the post at a

peace station as the sufficient span of time for a defence officer and his family to get enrolled as a voter at the place of posting as a general voter has also been challenged by asserting that it is contrary to the provisions contained in Sections 19 and 20 of the Representation of the People Act. 1950 (hereinafter referred to as '1950 Act'). Accordingly, prayer has been made for initiation of process of preparation of electoral rolls for all defence areas and cantonments, so that the valuable right to vote is not defeated of the defence personnel and their family members because of inaction on the part of the Election Commission as provided in Sections 15, 21 and 22 of the 1950 Act for discharging their duties. Counsel for the petitioner has put-forth his submissions on the basis of these pleadings.

A detailed reply to the writ petition has been filed wherein Sections 19, 20 and 60 have been reproduced and explanations given thereto. Rule 7 of the Registration of Electors Rules, 1960 (hereinafter mentioned as '1960 Rules') has also been referred to and each plea, as has been raised in the writ petition, has been responded to.

As per Section 19, which provides for condition for registration of a person as a voter, one of the conditions is that he should be an ordinarily resident of the constituency entitling him to be registered in the electoral roll for that constituency. Section 20 gives the meaning of the ordinarily resident and as per Sub-section (3), any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification and he would have been ordinarily resident on that date. Sub-section (4) provides that any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of sub-section apply, shall be deemed to be an ordinarily resident. As per sub-section (6), wife of any person referred to in sub-sections (3) and (4) if she is residing with such a person, shall be deemed to be ordinarily resident of the constituency. In case of any dispute, Rules made in this behalf with regard to ordinarily resident at the relevant time, will be determined with reference to the facts of the case. Section 20 thus, creates a legal fiction in favour of certain persons who may be deemed to be ordinarily residents in some other place than the place where they actually/physically reside for the time being which is a contingency due to compulsion of office/post held by them. Referring to Section 20(8) of the 1950 Act, it has been stated that service personnel have an option to get themselves registered as Service Voters in their native places.

Rule 7 of the 1960 Rules provides that a person, when submits declaration statement in the specified form to be registered in the constituency possessing a service qualification, he can get himself registered as a voter in the constituency where he would have been ordinarily resident, except for the

requirement of service/post he holds. However, if a service voter desires his name to be included in the electoral roll of the constituency in which he is physically ordinarily resident for the time being like the Military Cantonments, because of his posting under the service in which he is employed, option is given to him to get himself registered as a general voter in that constituency by filling up Form-6 as laid in the Rules 1960 alongwith a declaration that he is not registered as a service voter in the constituency of his native place of residence. However, a condition has been imposed that the service voter is posted at a peace station and staying with the family on a tenure post of at least three years. This is for the reason that the demographical character of the constituency where there may be very small electorate is not altered which may affect the local populace and upset the electoral profile.

The person having service qualification is eligible for casting his vote by postal ballot as provided in Section 60 of the 1950 Act which provides for special procedure. As per Sub-section (a), any person who possesses service qualification as referred in clauses (a) or (b) of Sub-section (8) of Section 20 of the 1950 Act can cast his vote either in person or by postal ballot or by proxy. This would cover the members of the Armed Forces of the Union and members of the Forces, to which the provisions of Army Act, 1950, have been made applicable with or without modification. Thus, a member of the armed forces of the Union or a member of the Forces has not been deprived of his right to vote. An option has thus, been given to a service voter to exercise his right either as a service voter in his native place or to register himself in his place of posting as a general voter if he fulfils the conditions specified for the said purpose. The right of casting vote of a personnel belonging to the armed forces has been amply preserved and safeguarded under the law.

The allegations that the answering respondents have refused to initiate the process of making electoral rolls in the defence and cantonment areas have been denied. Rather, it has been asserted that the letter dated 28.12.2008 issued by the Election Commission of India had directed the Chief Electoral Officers to take special awareness campaign among the voters with a view to enhancing enrollment of the service voters while outlining the options available to them. Total number of service electors in the country during the General Elections of Lok Sabha 2009 was 1083809. This number does not include those service personnel who chose to enroll as general electors. In the States of Punjab and Haryana, a total number of 13347 and 287 defence personnel respectively were enrolled as general electors. Every effort has thus, been made by the Commission through awareness campaigns to apprise the defence personnel about their right.

Learned senior counsel for Election Commission of India and counsels for State Election Commissioners, Haryana and Punjab, have made their submissions on the basis of the above referred to pleadings.

We have considered the submissions made by the counsels for the parties and with their assistance have gone through the records of the case.

Right to vote is not a fundamental right, but is a recognized statutory right and, therefore, the same is governed by the statute. It is a personal right and has to be exercised by the person as per his choice and the same cannot be enforced except by the individual and that too as provided under the statute. Thus, this PIL itself cannot be entertained.

However, the issue raised in this Public Interest Litigation preferred by the petitioner with regard to denying the right to vote to the members of the armed forces stands belied from the reply which has been filed by the respondents. As is apparent from the provisions as contained in Sections 19, 20 and 60 of the 1950 Act that the right of the armed forces personnel with regard to their registration as a voter and his right to vote has been amply protected and options have been provided for exercise of the same either in person or by postal ballot or even by proxy in his native place where he has been registered in the electoral roll as a service voter. Thus, there is no denial of any voting right to the armed forces personnel as was sought to be asserted by the petitioner. It may be noted here again that the right to vote is neither a fundamental right nor an absolute right, but is a statutory right and ample opportunities have been granted to exercise the said right in accordance with statute. Armed forces personnel have, therefore, not been denied or deprived of their right to vote.

The projection on the part of the petitioner that the armed forces personnel are not made aware of their right to exercise their voting rights also cannot be accepted in the light of the fact that various campaigns have been held by the Election Commission and communications addressed to the Chief Electoral Officers directing them to carry out special awareness campaigns amongst the service voters with a purpose to educate them and enhance their knowledge while highlighting the options available to them such as appointing a proxy to vote for them, postal ballot, in person and/or to enroll as general electors in case they are posted at peace station and staying with family on a tenure posting of at least three years. The choice is, therefore, open for armed forces personnel to either exercise his right to vote in his native place or to enroll himself as a general elector in the constituency in which he resides on a tenure posting of at least three years obviously at the cost of giving up his right to vote in his native place. Thus, the option has to be volunteered by the armed forces personnel. Further, the assertion of the petitioner about the denial of

the right to vote or lack of information about the said right and the manner in which it can be exercised is belied from the fact that in the General Elections of Lok Sabha 2009, total number of service voters in the country were 1083809 excluding those service personnel who chose to enroll as general electors. In the State of Punjab, defence personnel who enrolled as general electors were 13347, whereas in Haryana, their number was 287. It can thus, not be said that the armed forces personnel are unaware of their right to vote and the mode through which they can exercise the said right.

Challenge has been posed to the condition enforced by the Election Commission which mandates armed forces personnel to be enrolled as an ordinarily resident in the constituency where he is posted prescribing a minimum three years posting tenure being arbitrary and without any basis. But, this contention of the petitioner also cannot be accepted keeping in view the change of demographical character of the constituencies which have very small electorates alteration of which may affect the local populace and upset the electoral profile. There are many parts of the country where due to security reasons and keeping in view the national interest including maintenance of security especially the border areas where large number of defence personnel (including para-military personnel) are posted, it would not be advisable nor would it be in the interest of the local populace that such a condition be not imposed. Apart from that, if such a condition is not put into place, to garner votes of the service personnel, they would be approached by the politicians, political parties as also the contesting candidates thus, exposing and involving them in active politics, which has its potential dangers and is required to be avoided in national interest. The neutrality of the armed forces need to be maintained and it is essential so that the interest of the country is not adversely affected in any manner.

As regards the ineffectiveness of the postal ballot because of the procedural and postal delay, the same has been taken care of by the respondents and detailed guidelines dated 21.10.2008 (Anenxure-R-3/1) have been issued by the Election Commission of India for smooth management of postal ballot in which the procedure has been streamlined, according to which, the District Electoral Officer as soon as the list of contesting candidates is drawn up after the period for withdrawal of candidates is over, will get the postal ballot papers printed at his level under direct supervision of responsible officer and the same will be despatched without any delay. The District Electoral Officer will coordinate with the senior officials of the postal department and shall ensure that a team of postal department officials receive covers containing the postal ballot papers and they in turn will ensure that the ballots are sent to the right address without any delay. The entire process will be videographed. Similarly, when the Returning Officers start receiving the polled postal ballot papers from the service voters, they shall give a daily report to the Observer concerned. The Returning Officers in turn is required to follow the procedures as

also the polling officials as prescribed in the guidelines. All efforts have been made by the Election Commission to ensure that the service voters receive the postal ballot papers on time and the same are received back well in time, so that the valuable statutory right of the voter is not frustrated. All due care and caution has thus, been taken by the Election Commission, which would effectively translate the statutory right of vote by postal ballot papers into an effective mode of exercising the said right.

In view of the above, we do not find any merit in the present writ petition and thus, dismiss the same. Parties are left alone to bear their own costs.

Female voters waiting in queue to vote

HIGH COURT OF PUNJAB AND HARYANA

Hon'ble Mr.Justice Mukul Mudgal, Chief Justice
Hon'ble Mr.Justice Ajay Tewari

Pawan Kumar and Others Vs. State of Haryana and others alongwith connected matters

C.W.P No. 3403 of 2010, Decided on 14th September, 2010

1. C.W.P No. 3403 of 2010
   Pawan Kumar and others vs State of Haryana and others

2. C.W.P No. 3004 of 2010
   Rajesh Sharma and others v. The State of Haryana and others

3. C.W.P No.3290 of 2010
   Surinder Kumar and others v. State of Haryana and others

4. C.W.P No.3628 of 2010
   Prem Chand and others v State of Haryana and others

5. C.W.P No.3729 of 2010
   Jaswinder Singh and another v. State of Haryana and others

6. C.W.P No.3781 of 2010
   Vedpal and another v. State of Haryana and others

7. C.W.P No.3858 of 2010
   Sucha Singh v. State of Haryana and others

8. C.W.P No.3976 of 2010
   Ram Chander v. State of Haryana and others

9. C.W.P No.3979 of 2010
   Karambir v. State of Haryana and others

10. C.W.P No.4017 of 2010
    Azad Singh and others v. State of Haryana and others

11. C.W.P No.4056 of 2010
    Nasib Singh v. State of Haryana and others

12. C.W.P No.4084 of 2010
    Sukhbir Singh and others v. State of Haryana and others

13. C.W.P No.4143 of 2010
    Jaspal Singh v. State of Haryana and others

14. C.W.P No.4154 of 2010
Amrik Singh v. State of Haryana and others

15. C.W.P No.4575 of 2010
Dharminder Singh v. State of Haryana and others

16. C.W.P No.4582 of 2010
Balkar Singh v. State of Haryana and others

17. C.W.P No.4691 of 2010
Jangbir v. State of Haryana and others

18. C.W.P No.4900 of 2010
Gurmail Singh and others v. State of Haryana and others

19. C.W.P No.4989 of 2010
Anil Kumar and others v. The State of Haryana and others

20. C.W.P No.5103 of 2010
Barinder Singh v. State of Haryana and others

21. C.W.P No.5341 of 2010
Gian Singh v. State of Haryana and others

22. C.W.P No.5488 of 2010
Sanjay and another v. State of Haryana and others

23. C.W.P No. 5496 of 2010
Mahabir v. State of Haryana and others

24. C.W.P No.5519 of 2010
Lehna Singh v. State of Haryana and others

25. C.W.P No.5524 of 2010
Sarwan Kumar and another v. State of Haryana and others

26. C.W.P No.5533 of 2010
Kanwar Singh v. State of Haryana and others

27. C.W.P No.5680 of 2010
Karan Singh v. State of Haryana and others

28. C.W.P No. 6752 of 2010
Sunil Lamba v. State of Haryana and others

29. C.W.P No.6817 of 2010
Kartar Singh v. State of Haryana and others

30. C.W.P No.6818 of 2010
Ram Chander v. State of Haryana and others

31. C.W.P No.6819 of 2010
Udham Singh v. State of Haryana and others

32. C.W.P No.6890 of 2010
Hari Parkash v. The State of Haryana and others

33. C.W.P No. 7212 of 2010
Piara Singh and another v. State of Haryana and others

34. C.W.P No.7515 of 2010
Bhushan Kumar and another v. State of Haryana and others

35. C.W.P No.7525 of 2010
Gurminder Singh and others v. State of Haryana and others

36. C.W.P No.7529 of 2010
Dalip Singh v. State of Haryana and others

37. C.W.P No.7533 of 2010
Jagat Singh v. State of Haryana and others

38. C.W.P No. 7541 of 2010
Dharmender and another v. State of Haryana and others

39. C.W.P No.7542 of 2010
Vedpal v. State of Haryana and others

40. C.W.P No. 7552 of 2010
Phool Singh and another v. State of Haryana and others

41. C.W.P No.7553 of 2010
Khem Chand v. State of Haryana and others

42. C.W.P No.7554 of 2010
Kavinder Kaur and others v. State of Haryana and others

43. C.W.P No.7555 of 2010
Suresh Kumar v. State of Haryana and others

44. C.W.P No.7561 of 2010
Satbir Singh v. State of Haryana and others

45. C.W.P No.7590 of 2010
Naresh Kumar v. State of Haryana and others

46. C.W.P No.7616 of 2010
Naresh Rohal v. State of Haryana and others

47. C.W.P No. 7714 of 2010
Rajesh Rawal and another v. State of Haryana and others

48. C.W.P No.7737 of 2010
Balbir Singh and others v. State of Haryana and others

49. C.W.P No.7739 of 2010
Shanti Devi v. State of Haryana and others

50. C.W.P No. 7960 of 2010
Gurdip Singh v. State of Haryana and others

51. C.W.P No. 8054 of 2010
Prakash Chand v. State of Haryana and others

52. C.W.P No. 8061 of 2010
Dildar Ahmad v. State of Haryana and others

53. C.W.P No. 8196 of 2010
Subhash v. State of Haryana and others

54. C.W.P No. 8241 of 2010
Joginder and others v. State of Haryana and others

55. C.W.P No. 8246 of 2010
Harcharan Singh v. State of Haryana and others

56. C.W.P No. 8295 of 2010
Rajesh Kumar v. State of Haryana and others

57. C.W.P No. 8312 of 2010
Gurvinder Singh v. State of Haryana and others

58. C.W.P No. 8319 of 2010
Latif v. State of Haryana and others

59. C.W.P No. 8323 of 2010
Nissan Singh v. State of Haryana and others

60. C.W.P No. 8334 of 2010
Kulwant Singh v. State of Haryana and others

61. C.W.P No. 8340 of 2010
Vikram Singh v. State of Haryana and others

62. C.W.P No. 8428 of 2010
Raj Kumar and others v. State of Haryana and others

63. C.W.P No. 8482 of 2010
Bhup Singh v. State of Haryana and others

64. C.W.P No. 8484 of 2010
Ram Pal v. State of Haryana and others

65. C.W.P No. 8512 of 2010
Vikram Singh and others v. State of Haryana and others

66. C.W.P No. 8542 of 2010
Jai Singh v. State of Haryana and others

67. C.W.P No. 8543 of 2010
Shamsher v. State of Haryana and others

68. C.W.P No. 8593 of 2010
Amarjit Singh v. State of Haryana and others

69. C.W.P No. 8633 of 2010
Deepak Sharma v. State of Haryana and others

70. C.W.P No. 8641 of 2010
Ram Singh and others v. State of Haryana and others

71. C.W.P No. 8645 of 2010
Rajbir v. State of Haryana and others

72. C.W.P No. 8653 of 2010
Hukam Chand v. State of Haryana and others

73. C.W.P No. 8682 of 2010
Surender Singh v. State of Haryana and others

74. C.W.P No. 8974 of 2010
Ajay Kumar v. State of Haryana and others

75. C.W.P No. 9001 of 2010
Ravi Chouhan and others v. State of Haryana and others

76. C.W.P No. 9031 of 2010
Charan Singh v. State of Haryana and others

77. C.W.P No. 9055 of 2010
Sohan Singh v. State of Haryana and others

78. C.W.P No. 9057 of 2010
Baljinder Kaur v. State of Haryana and others

79. C.W.P No. 9118 of 2010
Dariya Singh and another v. State of Haryana and others

80. C.W.P No. 9128 of 2010
Braham Dutt v. State of Haryana and others

81. C.W.P No. 9160 of 2010
Shamsher Singh and another v. State of Haryana and others

82. C.W.P No. 9219 of 2010
Narinder Kaur v. State of Haryana and others

83. C.W.P No. 9266 of 201
Mohar Singh v. State of Haryana and others

84. C.W.P No. 9288 of 2010
Randhir Singh and another v. State of Haryana and others

85. C.W.P No. 9303 of 2010
Satbir v. State of Haryana and others

86. C.W.P No. 9319 of 2010
Jai Singh v. State of Haryana and others

87. C.W.P No. 9323 of 2010
Narender v. State of Haryana and others

88. C.W.P No. 9333 of 2010
Rattan Singh v. State of Haryana and others

89. C.W.P No. 9338 of 2010
Rakesh Kumar v. State of Haryana and others

90. C.W.P No. 9371 of 2010
Rajinder Kumar v. State of Haryana and others

91. C.W.P No. 9498 of 2010
Rameshwar Dayal and others v. The State of Haryana and others

92. C.W.P No. 9524 of 2010
Balwant Singh v. State of Haryana and others

93. C.W.P No. 9537 of 2010
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CORAM : HON'BLE MR. JUSTICE MUKUL MUDGAL, CHIEF JUSTICE
HON'BLE MR.JUSTICE AJAY TEWARI

***

Present : Mr. Gaurav Mohunta, Advocate
Mr. Rajnish Chadwal, Advocate
Mr. Vikram Singh, Advocate
Mr. Sajjan Singh, Advocate
Mr. Harkesh Manuja, Advocate
Mr. Rajiv Godara, Advocate
Mr. R.D.Gupta, Advocate
Mr. R.S.Mamli, Advocate
Mr. C.S.Sharma, Advocate
Mr. Ashok Kaushik, Advocate
Mr. Vivek Goel, Advocate
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Mr. Pankaj Bali, Advocate
Mr. Ramesh Hooda, Advocate
Mr. Rakesh Gupta, Advocate
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Mr. S.K.Hooda, Advocate
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Mr. A.K.Jain, Advocate
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Mr. Jagdeep Singh, Advocate
Mr. Dalel Singh Nain, Advocate
Mr. Bhupinder Singh Bhiragi, Advocate
Mr. B.K.Bagri, Advocate
Mr. Raj Mohan Singh, Advocate for the petitioners.
Mr. H.S.Hooda, Advocate General, Haryana with
Mr. Randhir Singh, Addl. A.G Haryana for the respondents.
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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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MUKUL MUDGAL, CHIEF JUSTICE

This judgment shall dispose of C.W.P Nos. 3403, 3004, 3290, 3628, 3729, 3781, 3858, 3976, 3979, 4017, 4056, 4084, 4143, 4154, 4575, 4582, 4691, 4900, 4989, 5103, 5341, 5488, 5496, 5519, 5524, 5533, 5680, 6752, 6817, 6818, 6819, 6890, 7212, 7515, 7525, 7529, 7533, 7541, 7542, 7552, 7553, 7554, 7555, 7561, 7590, 7616, 7714, 7737, 7739, 7960, 8054, 8061, 8196, 8241, 8246, 8295, 8312, 8319, 8323, 8334, 8340, 8428, 8482, 8484, 8512, 8542, 8543, 8593, 8633, 8641, 8645, 8653, 8682, 8974, , 9001, 9031, 9055, 9057, 9118, 9128, 9160, 9219, 9266, 9288, 9303, 9319, 9323, 9333, 9338, 9371, 9498, 9524, 9537, 9572, 9732,

9735, 9825, 9891, 9910, 10084, 10236, 10237, 10360, 10536, 11212, 11278, 11730, 11784, 12955, 13002, 13195, 13581, 13585, 13591, 13995 of 2010, as common questions of law and facts are involved therein. For the sake of convenience, facts are being extracted from CWP No.3403 of 2010.

The petitioners have challenged the reservation of seats for Sarpanches (Scheduled Castes men and women) under the Haryana Panchayati Raj Act, 1994 in the Panchayati elections held in the year 2010.

The Parliament of India inserted Part IX of the Constitution by the 73 rd Constitutional Amendment with the express purpose of strengthening and further democraticising local self government at the rural level.

It is averred in the writ petition that as per respondent No.4, out of 63 Gram Panchayats in Block Ladwa, 13 Gram Panchayats are to be reserved for Scheduled Castes and Scheduled Caste (Women). A copy of list of such villages as published in the local daily news paper is Annexure P-1. It is further averred that the offices of Sarpanches of the Gram Panchayats viz Bodla, Karami and Salempur were reserved for Scheduled Castes in the year 1994 and that of Untehari in the year 2000. The petitioners belong to these Gram Panchayats. The grouse of the petitioners is that as per list of Block Ladwa, the offices of Sarpanches of 27 Gram Panchayats from Sr. No.3 to 29 have never been reserved for Scheduled Caste and Scheduled Caste (Women) since 1994, while the offices of Sarpanches of the Gram Panchayats of the petitioners have been repeatedly reserved.

The plea taken by the respondents is that reservation proceedings for reservation of offices of Sarpanches were conducted by respondent No.4 in view of the census of 2001, as per which the percentage of population of Scheduled Caste was amongst the first highest in the Gram Panchayat/s of the petitioner/s and, thus, the offices of Sarpanches of the Gram Panchayats belonging to the petitioners were reserved for Scheduled Castes. Further, to a query sought by the Deputy Commissioner, Bhiwani, the Director of Panchayats, Haryana replied as under :-

> " In view of the above mentioned provision of the Act, the reservation of seats under sub-sections (1), (2), (3) and (5) of Sections 9, 59 and sub-sections 1, 2, 3, 4 and 6 of Section 120 of the Act, 1994 ibid, shall have to be reviewed after every decennial census. Accordingly, the reservation of seats for women belonging to Scheduled Castes/General category may be allotted by rotation and by lots to different wards, reserved under sub-section (1) of Sections 9, 59 and 120 after the decennial census i.e 2001."

It is further mentioned in the reply that the Legal Remembrancer Haryana also opined to the above effect.

For the purpose of this petition, it would be appropriate to reproduce Articles 243, 243-A, 243-B, 243-C and 243-D of the Constitution, which read as under :-

> “243 – Definitions.- In this Part, unless the context otherwise requires,--
> (a) 'district' means a district in a State;
> (b) 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
> (c) 'intermediate level' means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
> (d) 'Panchayat' means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;
> (e) 'Panchayat area' means the territorial area of a Panchayat;
> (f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published;
> (g) 'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.
> 243A - Gram Sabha: A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide.
> 243B - Constitution of Panchayats (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
> (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not, exceeding twenty lakhs.
> 243C - Composition of Panchayats (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats;
> Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in

such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State,

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be ided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chair person of—

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

243D - Reservation of seats (1) Seats shall be reserved for—

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total

number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging, to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by relation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: (emphasis supplied)

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level. (emphasis supplied)

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334 .

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens."

As mandated by Article 243-D(4) of the Constitution, the State of Haryana enacted the Haryana Panchayati Raj Act, 1994 (for short `the Act'). The relevant provisions of the Act are re-produced hereunder :-

> 9. Reservation of seats in Gram Panchayat (1) Seats shall be reserved for the Scheduled Castes in every Gram Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by election in that Panchayat as the population of the Scheduled Castes in the Panchayat area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.
> (2) Not less than one-third of the total numbers of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).
> (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under sub-sections (1) and (2).
> (4) The offices of the Sarpanches in the Gram Panchayat in a block shall be reserved for the Scheduled Castes and Women:
>
> > Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total number of such offices in the Block as the population to the Scheduled Castes in the State bears to the total population of the State:
> > Provided further that not less than one-third of the total number of offices of Sarpanches in the block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes:
> > Provided further that the number of offices of Sarpanches reserved under this subsection shall be rotated to different Gram Panchayats first

having the largest maximum population of Schedule Castes and secondly having the second largest maximum population of such classes and so on. (emphasis supplied)

(5) The reservation of the seats under sub-sections (1) and (2) and the reservation of offices of Sarpanches (other than the reservation of women) under sub-section (4) shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.

(6) Every Panchayat shall have one panch belonging to Backward Classes if their population is two percentum or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum population of persons belonging to Backward Classes.

(7) Reservation of seats as mentioned in aforesaid subsections shall be reviewed after every decennial census. (emphasis supplied)

Section 58 of the Act deals with number of members to be elected to Panchayat Samitis, while Sections 59 and 120 of the Act deal with reservation of seats for Scheduled Castes in Panchayat Samitis/Zila Parishads. With regard to Chairpersons of Panchayat Samitis/Zila Parishads also, provisions for reservation and rotation have been made which are analogous to those made for Chairpersons of Gram Panchayats.

The essence of the dispute raised in the present writ petition is the interplay between sub-section (4) of Section 9 and sub-section (7) of Section 9 of the Act. As per the petitioners, as a consequence of the interpretation put upon the said provisions by the State of Haryana what has happened is that some villages with size-able population of Scheduled Castes have never had the post of Sarpanch reserved, while in some villages the post of Sarpanch has been reserved successively for three elections. The aforesaid provision of the Act has been re-produced above.

Learned counsel for the petitioners urge that third proviso to sub-section (4) of Section 9 of the Act lays down that reservation for the post of Sarpanch has to be rotated among all the villages starting with the village which has the highest percentage of Scheduled Castes in the first election, the village with the second highest percentage in the second election, the village with the third highest

percentage in the third election and the village with fourth highest percentage in the fourth election `and so on'. As per the learned counsel, the phrase `and so on' necessarily implies that the rotation envisaged by the said proviso would continue till every village in the Block gets a Scheduled Caste Sarpanch.

Learned Advocate General Haryana Shri Hooda, however, urges that all the reservations provided in Section 9 of the Act would be subject to the provisions of sub-section (7) of Section 9 of the Act. As per his plea, after every decennial census, the State would have to see which particular village has the highest percentage of Scheduled Caste persons and then the rotation would start again from that village. As per the learned Advocate General Haryana, even if this methodology results in a situation where in some villages reservation would occur time and time again, while there would be others where there would never be any reservation, it would be legal. He has relied upon the fact that there are certain Parliamentary Constituencies which have been continuously reserved for SC candidates ever since independence.

The argument of learned Advocate General, Haryana has been countered by learned counsel for the petitioners by saying that it is not the rotation but the extent of reservation which has to be reviewed after every decennial census. Thus, if in the census of 1990, the percentage of Scheduled Castes in Block Ladwa was 15%, then 15% of the offices of Sarpanches would be reserved for Scheduled Castes. Further, if as a result of 2000 census, the percentage of Scheduled Castes in Block Ladwa went up to 18%, then 18% of the offices of Sarpanches would be reserved. Further, if as a result of 2010 census, the percentage of Scheduled Castes in Block Ladwa dropped to 16%, then 16% of the offices of Sarpanches would be reserved for Scheduled Castes. However, this would have no effect on the rotation. As per the learned counsel, the rotation roster which came into operation in the 1994 elections would continue till all the Gram Panchayats were reserved at-least once. In support of this assertion, learned counsel for the petitioners relies upon the stipulation in the Constitutional provision which is to the effect that `number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level'. They argued that the concept of rotation cannot in any manner be termed to be subordinate to the concept of reservation and both are an equally integral and important part of the Constitutional imperative of effective devolution of democratic power to the village level. Therefore, the concept of rotation which in itself is an independent facet of affirmative action, cannot be so eroded as to be obliterated.

The phrase `and so on' is defined in the following dictionaries in the following manner :-

1) The Chambers Dictionary : And more of the same or the like; and the rest of it.

2)	The Shorter Oxford English Dictionary. :	An abbreviating phrase to avoid further description or e numeration of details.

Thus, as per the plain dictionary meaning, the necessary implication would be that rotation would continue till the last village where there would be even one Scheduled Caste Panch as per the proportion of Scheduled Castes to the general population.

Apart from this linguistic interpretation, the area is not virgin territory. The constitutional validity of Part IX of the Constitution was challenged before the Hon'ble Supreme Court in Dr. K.Krishna Murthy & Ors v. Union of India & Anr, JT 2010(5) SC 601. In regard to the rotational policy, the Hon'ble Supreme Court held as follows :-

> “5. The overarching scheme of Article 243-D and 243-T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditionally weaker sections in society. The preferred means for pursuing this policy is the reservation of seats and chairperson positions in favour of Scheduled Castes (SC), Scheduled Tribes (ST), women and backward class candidates. Article 243-D(1) and Article 243-T(1) are analogous since they lay down that the reservation of seats in favour of SC and ST candidates should be based on the proportion between the population belonging to these categories and the total population of the area in question. Needless to say, the State Governments are empowered to determine the extent of such reservations on the basis of empirical data such as population surveys among other methods, thereby being guided by the principle of `proportionate representation'. Article 243-D (2) and Article 243-T(2) further provide that from among the pool of seats reserved for SC and ST candidates, at least one-third of such seats should be reserved for women belonging to those categories. Hence, there is an intersection between the reservations in favour of women on one hand and those in favour of SC/STs on the other hand.
>
> With respect to reservations in favour of women, Article 243-D(3) and Article 243-T(3) lay down that at least one-third of the total number of seats in the local bodies should be reserved for women. On the face of it, this is an embodiment of the principle of `adequate representation'. This idea comes into play when it

is found that a particular section is inadequately represented in a certain domain and a specific threshold is provided to ensure that this section of the population comes to be adequately represented with the passage of time.

With regard to chairperson positions, Article 243- D(4) and Article 243-T(4) enable State legislatures to reserve these offices in favour of SC, ST and women candidates. In the case of panchayats, the first proviso to Article 243-D(4) states that the aggregate number of chairperson positions reserved in favour of SC and ST candidates in an entire state should be based on the proportion between the population belonging to these categories and the total population. With all the chairperson positions at each level of the panchayats in an entire State as the frame of reference, the second proviso to Article 243-D(4) states that one-third of these offices should be reserved for women. The third proviso to Article 243-D(4) lays down that the number of chairperson positions reserved under the said clause would be allotted by rotation to different panchayats in each tire. This rotational policy is a safeguard against the possibility of a particular office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-T(4) for guiding the reservation of chairperson positions in Municipalities....." (emphasis supplied).

"40. The main criticism against the reservation of chairperson positions in local self-government is that the same amounts to cent-per-cent reservation since they are akin to solitary posts. As mentioned earlier, the petitioners have relied upon some High Court decisions (See: Janardhan Paswan v. State of Bihar, AIR 1988 Pat 75; Krishna Kumar Mishra v. State of Bihar, AIR 1996 Pat 112), wherein it had been held that reservations of Chairperson posts in Panchayats would not be permissible since the same was tantamount to the reservation of solitary seats. However, Article 243-D(4) provides a clear Constitutional basis for reserving the Chairperson positions in favour of SC and STs (in a proportionate manner) while also providing that onethird of all chairperson positions in each tier of the Panchayati Raj Institutions would be reserved in favour of women. As described earlier, the considerations behind the provisions of Article 243-D cannot be readily compared with those of Article 16(4) which

is the basis for reservations in public employment. It is a settled principle in the domain of service law that single posts cannot be reserved under the scheme of Article 16(4) and the petitioners have rightly pointed out to some precedents in support of their contention. However, the same proposition cannot be readily extended to strike down reservations for chairperson positions in each tier of the three levels of Panchayati Raj Institutions in the entire State. Out of this pool of seats which is computed across panchayats in the whole state, the number of offices that are to be reserved in favour of Scheduled Castes and Scheduled Tribes is to be determined on the basis of the proportion between the population belonging to these categories and the total population of the State. This interpretation is clearly supported by a bare reading of the first proviso to Article 243-D(4). It would be worthwhile to re-examine the language of the said provision....."

The Hon'ble Supreme Court further held as under :-

" 41. As may be evident from the above-mentioned provision, when the frame of reference is the entire pool of chairperson positions computed across each tier of Panchayati Raj institutions in the entire state, the possibility of cent-per-cent reservation does not arise. For this purpose, a loose analogy can be drawn with reservations in favour of Scheduled Castes and Scheduled Tribes for the purpose of elections to the Lok Sabha and the respective Vidhan Sabhas. Before elections to these bodies, the Election Commission earmarks some electoral constituencies as those which are reserved for candidates belonging to the SC/ST categories. For the purpose of these reservations, the frame of reference is the total number of Lok Sabha or Vidhan Sabha seats in a State and not the single position of an MP or MLA respectively. Coming back to the context of Chairperson positions in Panchayats, it is therefore permissible to reserve a certain number of these offices in favour of Scheduled Castes, Scheduled Tribes and women, provided that the same is done in accordance with the provisos to Article 243-D(4)."

A combined reading of the extracted portions makes it clear that the principle of rotation has been super-scribed on the principle of reservation so as to obviate the possibility of the office of Sarpanch of a particular village either being

reserved in perpetuity despite there being a size-able number of general category voters in the said village or, being not reserved in perpetuity despite there being a size-able percentage of SC persons in a village. Thus, in view of the authoritative pronouncement of the Hon'ble Supreme Court, the plea of the learned counsel for the petitioners has to be accepted and it has to be held that the provisions of sub-section (7) of Section 9 of the Act would apply to the extent of reservation and not to the concept of rotation.

Before parting with the judgment, two subsidiary arguments of learned Advocate General Haryana must be considered. The first relates to the fact that there are Parliamentary Constituencies/State Legislature Constituencies which have been reserved constantly since the first general elections. This argument can be dealt with simply by saying that there is no constitutional imperative of rotation for Parliamentary/State Legislature Constituencies. The second argument of learned Advocate General Haryana is that there are some villages which have negligible proportion of Scheduled Castes or even zero percent and, thus, it would be impossible to reserve the post of Sarpanch and, thus, the interpretation of the concept of rotation sought to be made by learned counsel for the petitioners would not be possible. In this context, guidance may be had from sub-section 1) of Section 9 of the Act. As per this sub-section, reservation would be on the same proportion as the population of Scheduled Castes bears to the population of general category voters. Consequently, if no post can be reserved for a Panch of Scheduled Caste in a particular village, obviously that village would have to be excluded from the principle of rotation.

In view of what has been said above, these writ petitions have to be allowed. However, the question arises as to whether the entire exercise of elections to the posts of Sarpanch which has been recently concluded by electing 6083 Sarpanches has to be set at naught. The principle of prospective operation of the law laid down in the judgment reported as Yogendra Pal and others vs Municipality, Rohtak, (1994) 5 Supreme Court Cases 709, is settled by the Hon'ble Supreme Court in the following terms :-

> “..... It is now well-settled by the decisions of this Court beginning with I.C.Golak Nath v. State of Punjab that the Court can mould the relief to meet the exigencies of the circumstances and also make the law laid down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also been completed. It is only some of the landowners who had approached the courts and the decisions of

the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the provisions concerned of the two enactments would be void from the date of this decision."

In view of the above statement of law by the Hon'ble Supreme Court, in our considered opinion setting aside the elections of 6083 Sarpanches may not be the appropriate consequential direction. While we have clarified the position in law as above, yet setting at naught the entire election at this stage would result in avoidable upheaval and huge administrative expenditure by unseating democratically elected Sarpanches. We cannot lose sight of the fact that the successful candidates in such cases have a popular mandate. Since rotation is a continuous process, it would be appropriate if the interpretation we have given is brought into force from the next Panchayat elections.

The writ petitions are allowed in the above terms with no order as to costs.

PUNJAB AND HARAYANA HIGH COURT

Hon'ble Mr.Justice Rajan Gupta

Angrejo Devi Vs. State of Haryana and Others

CWP No.8741 of 2010, Decided on 14th May, 2010

Present: Mr.Gaurav Mahunta, Advocate of the Petitioner.

Mr.Deepak Jindal, Deputy Advocate General, Haryana.
Mr.Arvind Singh, Advocate for State Election Commission.

*****

ORDER

Learned counsel for the petitioner has replied upon the judgement reported as Ram Bhual Vs. Ambika Singh 2005(4) RCR (Civil) 331 in support of his

contention that nomination papers cannot be rejected on the basis of clerical mistake.

Learned counsel appearing for the State Election Commission submitted that pursuant to representation received from the petitioner, notice has already been issued to Returning Officer. According to learned counsel, in view of Section 3(A) of the Haryana Municipal Act, 1973, an effort shall be made to take a decision on the representation of the petitioner at the earliest hearing the concerned parties.

To come up in 19.05.2010.

A copy of the order be given 'dasti' to learned counsel for the parties under the signature of Reader.

In pursuance of the above order of the State Election Commissioner considered the matter and passed the following order:-

Before Shri Dharam Vir, IAS (Retd.) State Election Commissioner, Haryana

ORDER

Present

1. Smt.Angrejo Devi, Petitioner, along with her counsel Sh.Manjeet Singh, Advocate with Sh.Anshu Shaudhary, Advocate.

2. Sh.D.P.Singh, CTM, Hisar-cum-Returning Officer, Municipal Committee, Barwala.

3. Smt.Babita Rani, Smt.Lilo Devi, Smt.Bala Rani and Smt.Hanshu, all candidates for the election of Ward No.1 of MC, Barwala, Hisar District.

I have heard this case in pursuance of the order dated May 14, 2010 of the Hon'ble High Court passed in the Civil Writ Petition No.8741 of 2010.

2. The brief facts of the case are that petitioner Angrejo Devi filed nomination for the election of ward Bo.1 of the Municipal Committee (hereinafter referred to as MC), Barwala, Hisar District. The nomination was proposed by one Sanjay Kumar. The name of Angrejo Devi figures at Sr.No.1375 in the voters list, whereas in the nomination form which was presented before the Returning Officer, she had mentioned 1348. The name of proposer Sanjay Kumar is at Sr.No.1366 in the voters list, whereas it is mentioned 1358 in the nomination paper. The scrutiny took place on May 8, 2010. Her nomination was rejected by the Returning Officer, MC, Barwala on the ground that voter numbers of both the candidate Angrejo Devi and the proposer Sanjay Kumar were

wrongly mentioned in the nomination form. Aggrieved with order of the Returning Officer, the petitioner filed a writ referred to in para 1 above.

3. Angrejo Devi was represented by Sh.Manjeet Singh, Advocate supported by Sh.Anshu Chaudhary, Advocate. There are four candidates in the fray for the election of Ward No.1. They were present but not represented by any legal counsel. Instead, they argued their case themselves. Sh.D.P.Singh, HCS, City Magistrate, Hisar cum Returning Officer, MC, Barwala also argued the case himself.

4. Ld.counsel for Angrejo Devi argued that both Angrejo Devi and proposer Sanjay Kumar are voters and their names figure at Sr.No.1375 and 1366 respectively in the final voters list. Their names were at Sr.No.1348 and 1358 respectively in the draft voters list. Some objections were made against a few entries in the draft list, which were ordered to be corrected, which changed the serial numbers of their in the final voters list. Angrejo Devi and Sanjay Kumar had mentioned in the nomination form the serial numbers as they appeared in the draft list. This error was not intentional and could be got corrected by the Returning Officer or Assistant Returning Officer, when the nomination paper was presented to them, but it was not done. Besides, this being a clerical mistake could also be overlooked. He argued that both Angrejo Devi and Sanjay Kumar are voters and their identity has not been questioned. He further argued that here case is fully covered by the provisions of rule 23(5) and 27(4) of Haryana Municipal Election Rules, 1978, which are reproduced as under:-

> "23(5) – On the presentation of a nominsation paper the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the roll:
>
> Provided that the Returning Officer may
>
> (a) Permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in the order to bring in conformity with the corresponding entries in the roll, and
>
> (b) Where necessary, direct that any clerical and printing error in the said entries shall be overlooked."
>
> "27(4) – No nomination shall be rejected under clause (d) of sub rule (2) if a summary enquiry is sufficient to establish the identity of the candidate or the proposer."

Ld. Counsel for the petitioner also cited a judgement dated September 29, 2005 of Apex Court in the case of Ram Bhual Vs. Ambika Singh as reported in 2005 (4) R.C.R. (Civil) 331. According to this judgement, rejection of a nomination paper on the basis of a clerical mistake such as incorrect mentioning of voter No. of proposer was not justified and should have been overlooked.

5. The Returning Officer argued that when the nomination paper was presented by Angrejo Devi on May 7, 2010, he, as well as Inder Singh, Naib Tehsildar, Assistant returning Officer, had noticed that both Angrejo Devi and the proposer Sanjay Kumar had not mentioned their voter numbers correctly. They were verbally advised to make corrections for which she was given full opportunity, but she refused to correct the entries pertaining to the voter numbers. Besides, her husband had been elected member of Municipal Committee a few times earlier and was fully familiar with the rules and procedure of the elections and it was fully familiar with the rules and procedure of the elections and it was expected that Angrejo filled her nomination paper correctly. He added that Angrejo Devi deliberately did not make correction for the reasons best known to her. He further argued that there was neither clerical mistake in the list nor there was printing error and the argument of the petitioner was after thought. He also stated that the present case is not covered by the rules and ruling cited by the petitioner's counsel.

6. The two candidates, namely Bala Rani and Hanshu, supported the plea of Angrejo, whereas the other two Babita and Lilo opposed the petitioner on the line of the Returning Officer.

7. I have considered the matter. According to the proviso (a) to rule 23(5), the Returning Officer was competent to get the voter numbers corrected in order to bring them in conformity with the entries in the roll of voters list. He could have also taken action under rule 27(4) and got a summary enquiry conducted. It is not in dispute that names of Angrejo Devi and proposer Sanjay Kumar appear in the voters list. Besides their identity has not been doubted. There is no credible evidence to show that at the time of presentation of nomination papers, she was asked to make correction of the entries relating to voter No. and she refused to do so. The mistake does not appear to be intentional and could have been corrected or overlooked especially when

their names appear in the voters list. I am also of the view that the case of Angrejo Devi is covered by the Judgement of the Apex Court cited above.

8. Accordingly, the order of the Returning Officer rejecting nomination of Angrejo Devi is set aside and she be allowed to contest the election as validly nominated candidate.

9. Having allowed the petition, the next issue is allotment of symbol. In this regard, it was proposed that symbol to Angrejo be allotted in accordance with rules, without disturbing the symbols already allotted to the other candidates. None had any objection to this proposition. The Returning Officer should take action accordingly.

10. It is also ordered that a copy each of this order is supplied to all the parties free of cost immediately.

Announced

Sd/-

Panchkula (DHARAM VIR)
May 17, 2010 State Election Commissioner, Haryana.

PUNJAB AND HARYANA HIGH COURT

Ved Wanti Vs. State of Haryana
People's Union for Civil Liberties Vs. State of Haryana and Others

CWP No. 19118 of 2015 and No.19415 of 2015

The Ordinance [Haryana Panchayati Raj (Amendment) Ordinance, 2015 issued vide Notification No. Leg.11/2015 dated 14th August, 2015] pertaining to insertion of certain disqualifications in Section 175 of the Haryana Panchayati Raj Act, 1994 was challenged in the Hon'ble Pubjab and Haryana High Court through CWP Nos. 19118 of 2015 titled Smt. Ved Wanti Vs. State of Haryana & ors. and 19415 of 2015 titled People's Unbion for Civil Liberties Vs. State of Haryana & ors. After necessary insertion made in the Haryana Panchayati Raj Act, 1994 vide Notification No. Leg.15/2015 dated 7th September, 2015; the Writ Petitions were dismissed by the Hon'ble Court on being becoming infructuous.

The insertion made by the Government in the Haryana Panchayati Raj Act, 1994 vide Notification No. Leg.15/2015 dated 7th September, 2015, was further

challenged in the Hon'ble Supreme Court of India by Smt. Rajbala and ors. through Writ Petition No. 671 of 2015, which was finally dismissed by the Hon'ble Court on 10.12.2015. The Order of the Hon'ble Supreme Court of India in this Writ Petition (Civil) is as under:-

SUPREME COURT OF INDIA

Hon'ble Mr.justice J.Chelamerwar
Hon'ble Mr.justice Abhay Manohar Sapre

Rajbala & Others Vs. State of Haryana & Others

WRIT PETITION (CIVIL) NO. 671 OF 2015, Decided on 10th December 2015

Rajbala & Others

… Petitioners

Versus

State of Haryana & Others

… Respondents

Chelameswar, J.

1. The challenge is to the constitutionality of the Haryana Panchayati Raj (Amendment) Act, 2015 (Act 8 of 2015),hereinafter referred to as the "IMPUGNED ACT".

2. Even prior to advent of the Constitution of India under the Government of India Act, 1935 certain local bodies with elected representatives were functioning. Such local bodies did not, however, have constitutional status. They owed their existence, constitution and functioning to statutes and had been subject to the overall control of provincial governments.

3. Article 40 of the Constitution mandates-

> "**40. Organisation of village panchayats** - The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government."

To effectuate such obligation of the State, Constitution authorised (even prior to the 73rd Amendment) State Legislatures under Article 246(3) read with Entry 5 of List II to make laws with respect to;

> **"**5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

Laws have been made from time to time by State Legislatures establishing a three-tier Panchayat system by 1980's. It was felt desirable that local bodies be given constitutional status and the basic norms regarding the establishment and administration of a three-tier Panchayati Raj institutions be provided under the Constitution. Hence, the 73rd Amendment of the Constitution by which Part IX was inserted with effect from 24.4.1993.

4. Under Article 243B[1], it is stipulated that there shall be constituted in every State, Panchayats at the village, intermediate and district levels (hereinafter collectively referred to as PANCHAYATS) in accordance with provisions of Part IX. PANCHAYAT is defined under Article 243(d)[2].

5. The composition of Panchayats is to be determined by the legislature of the concerned State by law subject of course to various stipulations contained in Part IX of the Constitution; such as reservations of seats in favour of scheduled castes and scheduled tribes etc. The duration of the Panchayat is fixed under Article 243E for a maximum of five years subject to dissolution in accordance with law dealing with the subject. There is a further stipulation under Article 243E that election to constitute a Panchayat be completed before the expiry of its tenure[3].

6. The broad contours of the powers and functions of Panchayats are also spelt out in Article 243G and 243H. Such powers and responsibilities are to be structured by legislation of the State. The establishment of an autonomous constitutional body to superintend the election process to the PANCHAYATS is stipulated under Article 243K.

7. The Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "THE ACT") was enacted to bring the then existing law governing PANCHAYATS in the State in tune with the Constitution as amended by the 73rd amendment. As required under Article 243B[4], a three tier Panchayat system at the Village, 'Samiti' and District level is established under THE ACT with bodies known as Gram Panchayat, Panchayat Samiti and Zila Parishad. Part V Chapter XX of THE ACT deals with provisions relating to elections to the PANCHAYATS.

8. Section 162 of THE ACT stipulates that PANCHAYAT areas shall be divided into wards[5].

9. Section 165[6] declares that every person entitled to be registered as voter in the relevant part of the electoral rolls of the Assembly is entitled to be registered as a voter for the purpose of PANCHAYATS elections.

10. Section 175 mandates that persons suffering from any one of the disqualifications mentioned in Section 175 are yneither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur any one of the disqualifications, after having been elected. The categories so specified runs into a long list, such as, convicts of certain categories of offences, adjudicated insolvent, people of unsound mind, people who hold any office of profit under any one of the three categories of Panchayats etc.

11. By the IMPUGNED ACT[7], five more categories of persons are rendered incapable of contesting elections for any one of the elected offices under THE ACT. These categories are: (i)persons against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than ten years, (ii) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or District Central Cooperative Bank or District Primary Agricultural Rural Development Bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence.

12. On 8.9.2015, the second respondent (State Election Commission) issued a notification specifying the election schedule for the PANCHAYATS of Haryana.

13. The three petitioners herein claim to be political activists interested in contesting the local body elections, but would now be disabled to contest as none of them possess the requisite educational qualification.

14. The petitioners challenge the IMPUGNED ACT principally on the ground that the enactment is violative of Article 14 of the Constitution. It is argued on behalf of the petitioners that (i) the impugned provisions are wholly unreasonable and arbitrary and therefore violative of Article 14 of the Constitution. They create unreasonable restrictions on the constitutional right of voters to contest elections under the ACT[8]; (ii) they create an artificial classification among voters (by demanding the existence of certain criteria which have no reasonable nexus to the object sought to be achieved by the ACT), an otherwise homogenous group of people who are entitled to participate in the democratic process under the Constitution at the grass-roots level; and (iii) the classification sought to be made has no legitimate purpose which can be achieved[9].

15. Though not very specifically pleaded in the writ petition, elaborate submissions are made on the questions (i) whether the stipulations contained in the impugned amendment are in the nature of prescription of “qualifications” or “disqualifications” for contesting the elections under THE ACT;

(ii) if the impugned stipulations are in the nature of a prescription of qualifications whether the State legislature is competent to make such stipulations consistent with the scheme of the Constitution, as can be culled out from the language of Article 243F and other related provisions of the Constitution.

16. On the other hand, the learned Attorney General appearing for the respondents submitted that nobody has a fundamental right to contest an election under our Constitution and it is really not necessary in the present case to decide whether the **right to contest** an election to the PANCHAYATS is a constitutional right. He argued that even assuming for the sake of argument that there is a constitutional **right to contest** an election to the PANCHAYATS; such right is expressly made subject to **qualifications/disqualifications** contemplated under Article 243F which authorises the State legislature to prescribe disqualifications for contesting election to any PANCHAYAT. Prescription of qualifications to contest an election based on criteria such as minimal educational accomplishment etc. cannot be said to be either arbitrary or irrelevant having regard to the nature of duties required to be discharged by persons elected to any one of the offices under THE ACT.

17. The learned Attorney General also submitted that the legislature best comprehends the needs of the society[10]. The decision to prescribe such a qualification is in the realm of wisdom of the legislature[11] and the Courts do not sit in review of such wisdom on the ground that the legislative decision is arbitrary[12].

18. Answers to questions raised by the petitioners in this writ petition, in our opinion, inevitably depend upon answer to the question whether **right to vote** or the **right to contest** an election to any of the constitutional bodies is a constitutional or a statutory right, since the extent to which curtailment or regulation of such right is permissible depends upon the nature of the right.

19. Prior to the 73rd Amendment of the Constitution, the Constitution contemplated elections to the office of the President, Vice-President, the two Houses of the Parliament known as Rajya Sabha and Lok Sabha and the State Legislatures. The Legislatures in certain States are bicameral. They are known as Legislative Assembly and Legislative Council while other States are unicameral (only the legislative Assembly). After the 73rd and 74th Amendments of the Constitution, PANCHAYATS and Municipal bodies specified under Parts IX & IXA of the Constitution respectively were added to the above-mentioned.

20. The nature of the **right to vote** at or the **right to contest** to any one of the abovementioned elections has been a vexed question.

21. A bench of three judges (M.B. Shah, P. Venkatarama Reddi and D.M. Dharamadhikari, JJ.) of this Court in ***People's Union for Civil Liberties (PUCL) & Another*** *v.* ***Union of India & Another***, (2003) 4 SCC 399 considered the validity of

the Representation of the People (Third Amendment) Act, 2002 (4 of 2002). By the said amendment, a candidate contesting an election (to which the Representation of the People Act, 1951 applies) is required to furnish certain information at the time of filing of nomination. In that context, Justice P.V. Reddi examined in some detail the nature of the **right to vote** in the background of the observations made in two earlier decisions of this Court, in ***N.P. Ponnuswami*** *v.* ***Returning Officer, Namakkal Constituency, Namakkal, Salem,*** AIR 1952 SC 64 and ***Jyoti Basu & Others*** *v.* ***Debi Ghosal & Others***, (1982) 1 SCC 691 and recorded the categoric conclusion that the "right to vote" if not a fundamental right is certainly a "constitutional right" and "it is not very accurate to describe it as a statutory right, pure and simple". The learned Judge recorded nine of his conclusions in para 123. The 2nd conclusion reads as follows:

> "(2) **The right to vote** at the elections to the House of the People or Legislative Assembly **is a constitutional right but not merely a statutory right**; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter."

A conclusion with which Justice Dharamadhikari expressly agreed[13]. The third learned judge Justice M.B. Shah recorded no disagreement.

22. Following the ***PUCL case***, one of us held in ***Desiya Murpokku Dravida Kazhagam (DMDK) & Another*** *v.* ***Election Commission of India***, (2012) 7 SCC 340: "…… every citizen of this country has a constitutional right both to elect and also be elected to any one of the legislative bodies created by the Constitution ……".[14] No doubt, it was a part of the dissenting opinion. It was a case dealing with allotment of election symbols and the right of a political party to secure "……. an election symbol on a permanent basis irrespective of its participation and performance judged by the vote share it commanded at any election."[15] Though, the majority held that a political party cannot claim an election symbol on a permanent basis unless it satisfied norms stipulated under the symbols order issued by the Election Commission of India. Their Lordships did not record any disagreement regarding the conclusion that the right to participate in electoral process, either as a voter or as a candidate is a constitutional right.

23. Therefore, in our opinion, the question whether the **right to vote** at an election for either the Lok Sabha or the Legislative Assembly is a statutory right or a constitutional right is no more *res integra* and stands concluded by the abovementioned judgments, in ***PUCL*** and ***DMDK cases*** (supra).

> For complete discussion - see paras 86 to 104.

24. However, the learned Attorney General brought to our notice certain observations in some of the judgments to the effect that rights to vote and contest elections are purely statutory. The context and the precedentiary value of those judgments need examination.

25. In ***Shyamdeo Prasad Singh*** *v.* ***Nawal Kishore Yadav,*** (2000) 8 SCC 46, a Bench of three learned Judges observed:

> "20. … It has to be remembered that right to contest an election, a right to vote and a right to object to an ineligible person exercising right to vote are all rights and obligations created by statute…."

It was a case dealing with election to the Legislative Council of Bihar from the Patna Teacher's Constituency. The limited question before this Court was whether the High Court in an election petition could examine the legality of the inclusion of certain names in the electoral roll? We are of the opinion that the said judgment leaves open more questions than it answers. The correctness of the judgment requires a more closer scrutiny in an appropriate case for more than one reason. One of them is that the inquiry in the said judgment commenced with the examination of Article 326 which has no application to elections to the Legislative Councils. The text of Article 326 is express that it only deals with the adult suffrage with respect to Lok Sabha and Legislative Assemblies. In our opinion the statement (extracted earlier from para 20 of the said judgment) is made without analysis of relevant provisions of the Constitution apart from being unnecessary in the context of the controversy before the Court and is further in conflict with the later judgment in ***PUCL's case*****.**

26. In ***K. Krishna Murthy (Dr.) & Others*** *v.* ***Union of India & Another***, (2010) 7 SCC 202 para 77, speaking for a Constitution Bench of this Court, Balakrishnan, CJ. Recorded that: "…… it is a well-settled principle in Indian Law, that the right to vote and contest elections does not have the status of fundamental rights. Instead, they are in the nature of legal rights……". For recording such conclusion reliance was placed on certain observations made in an earlier judgment (decided by a bench of two judges) of this Court in ***Mohan Lal Tripathi*** *v*. ***District Magistrate, Rai Bareilly & Others***, (1992) 4 SCC 80.

27. The challenge before this Court in ***K Krishna Murthy case*** was regarding the legality of Article 243D(6) and Article 243T(6) which enabled reservation of seats in favour of backward classes etc.[16] The challenge to the abovementioned provisions is that they "are violative of principles such as equality, democracy and fraternity, which are part of the basic structure doctrine".[17]

28. The decision in ***PUCL case*** was unfortunately not noticed by this Court while deciding ***K. Krishna Murthy case***. Further a specific request "to reconsider the precedents wherein the rights of political participation have been characterized as

statutory rights" was not given any consideration[18]. Their Lordships also failed to notice that the observations made in ***Mohan Lal case***, prior to the 74th Amendment of the Constitution regarding the nature of the electoral rights with regard to the elections to the Municipal bodies are wholly inapplicable and without examining provisions of the Constitution as amended by the 74th Amendment.

29. They relied upon observation19 from ***Mohan Lal case***, in our opinion, are too sweeping and made without any appropriate analysis of law. The limited issue before this Court in ***Mohan Lal case*** was the legality of a 'no confidence motion' moved against the President of Rai Bareilly Municipal Board who was elected directly by voters of the municipality. The U.P. Municipalities Act provided for removal of the President so elected through the process of a no confidence motion moved by the Councilors who themselves, in turn, are elected representatives of the territorial divisions of the Municipality. The question whether the right to vote in or contest an election is a constitutional or statutory right was not in issue. ***Mohan Lal case*** was dealing with provisions of the U.P. Municipalities Act, 1916 as amended by Act [19] of 1990 i.e. prior to 74th Amendment of the Constitution[20]. Therefore, the right to vote and contest at an election for a municipality was certainly a statutory right by the date of the judgment[21] in ***Mohan Lal case***.

30. Again in ***Krishnamoorthy*** *v.* ***Sivakumar & Others***, (2015) 3 SCC 467, this court observed that the right to contest an election is a plain and simple statutory right[22].

31. We are of the opinion that observations referred to above are in conflict with the decisions of this Court in ***PUCL case*** and ***DMDK case***, which were rendered after an elaborate discussion of the scheme of the Constitution. We are of the clear opinion that the Constitution recognises the distinction between the **'Right to Vote'** at various elections contemplated under the Constitution and the **'Right to Contest'** at such elections. There are various other electoral rights recognised or created by the statutes and the Representation of the People Act, 1951 recognises the same[23].

Right to Vote

32. Prior to the 73rd and 74th amendments, the Constitution contemplated elections to be held to offices of the President and the Vice President under Articles 54 and 66 respectively. It also contemplated elections to the two chambers of Parliament i.e. Rajya Sabha and Lok Sabha. A small fraction of the Members of the Rajya Sabha are nominated by the President while other Members are elected[24]. In the case of the Lok Sabha, subject to stipulations contained in Article 331 providing for nomination of not more than two Members belonging to the Anglo Indian Community all other Members are required to be elected. In the case of the Legislative Council, in States where they exist, a fraction of the Members of the

Council are required to be nominated by the Governor under Article 171(2)(e) and the rest of the Members are to be elected from various constituencies specified under Article 171 (3)(a), (b), (c), (d). Legislative Assemblies shall consist of only elected members subject to provisions for nomination contained in Article 333 in favour of the Anglo Indian Community.

33. The **right to vote** of every citizen at an election either to the Lok Sabha or to the Legislative Assembly is recognised under Articles 325 and 326 subject to limitations (**qualifications** and **disqualifications**) prescribed by or under the Constitution. On the other hand the **right to vote** at an election either to the Rajya Sabha or to the Legislative Council of a State is confined only to Members of the Electoral Colleges specified under Article 80(4) & (5) and Article 171 (3)(a), (b), (c), (d)[25] respectively. In the case of election to the Rajya Sabha, the Electoral College is confined to elected members of Legislative Assemblies of various States and representatives of Union Territories[26]. In the case of the Legislative Council, the Electoral College is divided into four parts consisting of; (i) Members of various local bodies specified under Article 171 (3) (a); (ii) certain qualified graduates specified under Article 171 (3)(b); (iii) persons engaged in the occupation of teaching in certain qualified institutions described under Article 171 (3)(c); and (iv) Members of the Legislative Assembly of the concerned State. Interestingly, persons to be elected by the electors falling under any of the above-mentioned categories need not belong to that category, in other words, need not be a voter in that category[27].

34. The Electoral College for election to the Office of the President consists of elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the State while the Electoral College with respect to the Vice President is confined to Members of both Houses of Parliament.

Right to Contest

35. The Constitution prescribes certain basic minimum **qualifications** and **disqualifications** to contest an election to any of the above mentioned offices or bodies. Insofar as election to the Office of the President and Vice President are concerned, they are contained under Articles 58 and 66 respectively. Insofar as Parliament and the State Legislatures are concerned, such **qualifications** are stipulated under Articles 84 and 173, and **disqualifications** under Articles 102 and 191 respectively. The Constitution also authorises Parliament to make laws prescribing both further **qualifications** and **disqualifications.**

36. Interestingly, insofar as elections to Office of the President and Vice President are concerned, the Constitution does not expressly authorise either Parliament or Legislative Assemblies of the State to prescribe any further **qualifications** or **disqualifications** to contest an election to either of these Offices. It stipulates only two conditions which qualify a person to contest those Offices, they

are - citizenship of the country and the minimum age of 35 years. Under Articles 58(1)(c) and 66(3)(c), it is further stipulated that a person who was otherwise eligible to contest for either of the above mentioned two Offices shall not be eligible unless he is qualified for election as a Member of the Lok Sabha or the Rajya Sabha respectively.

37. An examination of the scheme of these various Articles indicates that every person who is entitled to be a voter by virtue of the declaration contained under Article 326 is not automatically entitled to contest in any of the elections referred to above. Certain further restrictions are imposed on a voter's right to contest elections to each of the above mentioned bodies. These various provisions, by implication create a constitutional **right to contest** elections to these various constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a nonexistent constitutional right.

38. Articles 84 and 173 purport to stipulate **qualifications** for membership of Parliament and Legislatures of the State respectively. Articles 102 and 191 purport to deal with **disqualifications** for membership of the above mentioned two bodies respectively. All the four Articles authorise the Parliament to prescribe further **qualifications** and **disqualifications,** as the case may be, with reference to the membership of Parliament and Legislatures of the State as the case may be.

39. The distinction between the expressions **qualification** and **disqualification** in the context of these four Articles is little intriguing. There is no clear indication in any one of these four Articles or in any other part of the Constitution as to what is the legal distinction between those two expressions. In common parlance, it is understood that a qualification or disqualification is the existence or absence of a particular state of affairs, which renders the achievement of a particular object either possible or impossible. Though there are two sets of Articles purporting to stipulate **qualifications** and **disqualifications**, there is neither any logical pattern in these sets of Articles nor any other indication which enables discernment of the legal difference between the two expressions. We reach such a conclusion because citizenship of India is expressly made a condition precedent under Articles 84 and 173 for membership of both Parliament and State Legislatures. Lack of citizenship is also expressly stipulated to be a disqualification for membership of either of the above mentioned bodies under Articles 102 and 191. In view of the stipulation under Articles 84 and 173 - citizenship is one of the requisite qualifications for contesting election to either Parliament or the State Legislature, we do not see any reason nor is anything brought to our notice by learned counsel appearing on either side to again stipulate under the Articles 102 and 191 that lack of citizenship renders a person disqualified from contesting elections to those bodies. Learned counsel appearing on either side are also unanimously of the same opinion.

We are, therefore, of the opinion that the distinction between **qualifications** and **disqualifications** is purely semantic[28].

40. We, therefore, proceed on the basis that, subject to restrictions mentioned above, every citizen has a constitutional right to elect and to be elected to either Parliament or the State legislatures.

41. Insofar as the Rajya Sabha and the Legislative Councils are concerned, such rights are subject to comparatively greater restrictions imposed by or under the Constitution. The **right to vote** at an election to the Lok Sabha or the Legislative Assembly can only be subjected to restrictions specified in Article 326. It must be remembered that under Article 326 the authority to restrict the **right to vote** can be exercised by the 'appropriate legislature'. The **right to contest** for a seat in either of the two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by the Parliament.

42. The next question is – whether such constitutional rights exist in the context of elections to the PANCHAYATS? Having regard to the scheme of Part IX of the Constitution, the purpose[29] for which Part IX came to be introduced in the Constitution by way of an amendment, we do not see any reason to take a different view.

43. On the other hand, this Court in ***Javed & Others*** *v.* ***State of Haryana & Others,*** (2003) 8 SCC 369, held that "right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right …" .

44. We need to examine contours of the two rights, i.e. the **right to vote** (to elect) and the **right to contest** (to get elected) in the context of elections to PANCHAYATS. Part IX of the Constitution does not contain any express provision comparable to Article 326 nor does it contain any express provisions comparable to Article 84 and Article 173. The text of Article 326 does not cover electoral rights with respect to PANCHAYATS. Therefore, questions arise:

i) Whether a non-citizen can become a voter or can contest and get elected for PANCHAYATS?

ii) In the absence of any express provision, what is the minimum age limit by which a person becomes entitled to a constitutional right either to become a voter or get elected to PANCHAYATS?

iii) Are there any constitutionally prescribed qualifications or dis-qualifications for the exercise of such rights?

Questions No.(i) and (ii) do not arise on the facts of the present case. Therefore, we desist examination of these questions.

45. In contradiction to Article 326, Constitution does not contain any provision which stipulates that a person to be a voter at elections to PANCHAYAT is required to be either (i) a citizen of India or (ii) of any minimum age. Similarly, in the context of **right to contest** an election to PANCHAYATS, Part IX is silent regarding **qualifications** required of a candidate. All that the Constitution prescribes is disqualification for membership of PANCHAYATS:

> **"243F. Disqualifications for membership.** - (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat –
>
> (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;
> (b) if he is so disqualified by or under any law made by the Legislature of the State.
> (2) If any question arises as to whether a member of a Panchayat has become subject to any of the **disqualifications** mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide."

46. It appears from the above, that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the Legislatures of the State concerned is also disqualified for being a member of PANCHAYAT. In other words **qualifications** and **disqualifications** relevant for membership of the Legislature are equally made applicable by reference to the membership of PANCHAYATS. Though such **qualifications** and **disqualifications** could be stipulated only by Parliament with respect to the membership of the Legislature of a State, Article 243F authorises the concerned State Legislature also to stipulate disqualifications for being a member of PANCHAYAT.

47. The **right to vote** and r**ight to contest** at an election to a PANCHAYAT are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate Legislature directly. Parliament can indirectly curtail only the **right to contest** by prescribing **disqualifications** for membership of the Legislature of a State.

48. It is a settled principle of law that curtailment of any right whether such a right emanates from common law, customary law or the Constitution can only be

done by law made by an appropriate Legislative Body. Under the scheme of our Constitution, the appropriateness of the Legislative Body is determined on the basis of the nature of the rights sought to be curtailed or relevant and the competence of the Legislative Body to deal with the right having regard to the distribution of legislative powers between Parliament and State Legislatures. It is also the settled principle of law under our Constitution that every law made by any Legislative Body must be consistent with provisions of the Constitution.

49. It is in the abovementioned background of the constitutional scheme that questions raised in this writ petition are required to be examined.

50. Section 173(1)[30] of THE ACT stipulates that every person whose name is in the "list of voters" shall be qualified "to vote at the election of a member for the electoral division to which such list pertains" unless he is otherwise disqualified. Persons who are qualified to be registered as voters and "list of voters" are dealt with under Sections 165 and 166, the details of which are not necessary for the present purpose. Under Section 173(2)[31] every person whose name is in the list of voters subject to a further condition that he has attained the age of 21 years is qualified to contest at an election to any PANCHAYAT unless such a person suffers from a disqualification prescribed by law.

51. Section 175 of THE ACT stipulates that "No person shall be a Sarpanch[32] or a Panch[33] of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such", if he falls within the ambit of any of the clauses of Section 175. Section 175 reads as follows:

> "Section 175. Disqualifications.—(1) No person shall be a Sarpanch or a Panch of aGram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who—
>
> (a) has, whether before or after the commencement of this Act, been convicted—
>
> (i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or
>
> (ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release; or

(a) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years;

(b) has been adjudged by a competent court to be of unsound mind; or

(c) has been adjudicated an insolvent and has not obtained his discharge or

(d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the Official Gazette been relieved from the disqualifications arising on account of such removal from office; or

(e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed; or

(f) holds any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti, or Zila Parishad; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad;

(h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or ZilaParishad subordinate thereto or any sum recoverable from him in accordance with theChapters and provisions of this Act, within three months after a special notice inaccordance with the rules made in this behalf has been served upon him;

(j) is servant of Government or a servant of any Local Authority; or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign state; or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed; or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one percentum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or

(p) being a Sarpanch or Panch or a Chairman, Vice-Chairman or Member, President or Vice-President or Member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order; or

(q) x x x

(r) admits the claim against Gram Panchayat without proper authorization in this regard;

(s) furnishes a false caste certificate at the time of filing nomination:

Provided that such disqualifications under clauses (r) and (s) shall be for aperiod of six years.

(t) fails to pay any arrears of any kind due to him to any Primary Agriculture Co-operative Society, District Central co-operative Bank and District Primary cooperative Agriculture Rural Development Bank; or

(u) fails to pay arrears of electricity bills;

(v) has not passed matriculation examination or its equivalent examination from any recognized institution/board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:

Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; or

(w) fails to submit self declaration to the effect that he has a functional toilet at his place of residence.

Explanation 1. – A person shall not be disqualified under clause (g) for membership of a Gram Panchayat, Panchayat Samiti or Zila Parishad by reason only of such person,--

(a) having share in any joint stock company or a share or interest in any society registered under any law for the time being in force which shall contract with or be employed by or on behalf of Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of a Gram Panchayat, Panchayat Samiti or Zila Parishad may be inserted; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(d) being professionally engaged on behalf of any Gram Panchayat,

Panchayat Samiti or Zila Parishad as a Legal Practitioner; or

(e) having any share or interest in any lease of immovable property in which the amount of rent has been approved by the Gram Panchayat, Panchayat Samiti or Zila Parishad in its own case or in any sale or purchase of immovable property or in any agreement for such lease, sale or purchase ; or

(f) having a share or interest in the occasional sale to the Gram Panchayat, Panchayat Samiti or Zila Parishad of any article in which he regularly trades or in the purchase from the Gram Panchayat of any article, to a value in either case not exceeding in any year one thousand rupees.

Explanation 2. – For the purpose of clause (1)-

(i) A person shall not be deemed to be disqualified if he has paid the arrears or the sum referred to in clause (i) of this sub-section, prior to the day prescribed for the nomination of candidates;

(ii) x x x."

52. By the IMPUGNED ACT five more contingencies specified in clauses (aa), (t), (u), (v) and (w) have been added which render persons falling in the net of those contingencies disqualified from contesting elections.

53. At the outset, we must make it clear that neither learned counsel for the petitioners nor other learned counsel (who were permitted to make submissions though they are not parties, having regard to the importance of the matter) made any specific submission regarding constitutionality of subsection (1)(aa) of Section 175 which prescribes that "(1) No person shall be a ….. or continue as such who … **(aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years".** The challenge is confined to clauses (t), (u), (v) and (w) of Section 175(1).

54. We first deal with the submission of violation of Article 14 on the ground of arbitrariness.

55. The petitioners argued that the scheme of the Constitution is to establish a democratic, republican form of Government as proclaimed in the Preamble to the Constitution and any law which is inconsistent with such scheme is irrational and therefore 'arbitrary'.

56. In support of the proposition that the Constitution seeks to establish a democratic republic and they are the basic features of the Constitution, petitioners placed reliance upon ***His Holiness Kesavananda Bharati Sripadagalvaru*** *v.* ***State of Kerala & Another****,* (1973) 4 SCC 225 para 1159 and ***Indira Nehru Gandhi*** *v.* ***Raj Narain****, (*1975) Supp SCC 1, paras 563 and 578. There cannot be any dispute about the proposition.

57. In support of the proposition that a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14, petitioners relied upon judgments of this Court reported in ***Subramanian Swamy*** *v.* ***Director, Central Bureau of Investigation & Another***, (2014) 8 SCC 682, ***Indian Council of Legal Aid*** *v.* ***Bar Council of India,*** (1995) 1 SCC 732, ***B. Prabhakar Rao & Others*** *v.* ***State of Andhra Pradesh & Others***, 1985 (Supp) SCC 432 and ***D.S. Nakara & Others*** *v.* ***Union of India***, (1983) 1 SCC 305 and certain observations made by Justice A.C. Gupta in his dissenting judgment in ***R.K. Garg*** *v.* ***Union of India***, (1981) 4 SCC 675.

58. In our opinion, none of the abovementioned cases is an authority for the proposition that an enactment could be declared unconstitutional on the ground it is “arbitrary”.

59. In ***Subramanian Swamy case***, the dispute revolved around the constitutionality of Section 6A of the Delhi Special Police Establishment Act 1946, which was introduced by an amendment in the year 2003. It stipulated that the Delhi Special Police Establishment shall not conduct any ‘enquiry’ or ‘investigation’ into any offence falling under the Prevention of Corruption Act 1988, alleged to have been committed by certain classes of employees of the Central Government etc. The said provision was challenged on the ground it was arbitrary and unreasonable[34] and therefore violative of Article 14. The submission was resisted by the respondent (Union ofIndia) on the ground that such a challenge is impermissible inview of the decision in ***State of Andhra Pradesh*** *v.* ***McDowell & Co.***, (1996) 3 SCC 709. But the Constitution Bench eventually declared the impugned provision unconstitutional not on the ground of it being arbitrary but on the ground it makes an unreasonable classification of an otherwise homogenous group of officers accused of committing an offence under the Prevention of Corruption Act without there being reasonable nexus between the classification and the object of the Act.[35]

60. Coming to the ***Indian Council of Legal Aid & Advice & Others*** *v.* ***Bar Council of India & Others,*** (1995) 1 SCC 732***,*** it was a case where the legality of a rule made by the Bar Council of India prohibiting the enrolment of persons who completed the age of 45 years was in issue. The rule was challenged on two grounds. Firstly, that the rule was beyond the competence of the Bar Council of India as the Advocates Act 1961 did not authorise the Bar Council of India to prescribe an upper age limit for enrolment. Secondly, that the rule is discriminatory and thirdly, the fixation of upper age limit of 45 years is arbitrary.

61. On an examination of the scheme of the Advocates Act, this Court came to a conclusion that the impugned rule was beyond the rule making power of the Bar Council of India and, therefore, *ultra vires* the Act. This Court also held that the rule was “unreasonable and arbitrary”[36].

62. We are of the opinion that in view of the conclusion recorded by the Court that the rule is beyond the competence of Bar Council of India, it was not really necessary to make any further scrutiny whether the rule was unreasonable and arbitrary. Apart from that, in view of the conclusion recorded that the rule was clearly discriminatory, the inquiry whether the choice of the upper age limit of 45 years is arbitrary or not is once again not necessary for the determination of the case. At any rate, the declaration made by this Court in the said case with regard to a piece of subordinate legislation, in our view, cannot be an authority for the proposition that a statute could be declared unconstitutional on the ground that in the opinion of the Court the Act is arbitrary.

63. Now we shall examine ***Prabhakar Rao case***.

The facts of the case are that the age of superannuation of employees of the State of Andhra Pradesh was 55 till the year 1979. In 1979, it was enhanced to 58 years. The Government of Andhra Pradesh in February, 1983 decided to roll back the age of superannuation to 55 years and took appropriate legal steps which eventually culminated in passing of Act 23 of 1984. The said Act came to be amended by Ordinance 24 of 1984, again enhancing the age of superannuation to 58 years which was followed up by Act 3 of 1985. While enhancing the age of superannuation to 58 for the second time by the above-mentioned Ordinance 24 of 1984 and Act 3 of 1985, benefit of the enhanced age of superannuation was given to certain employees who had retired in the interregnum between 20.2.1983 and 23.08.1984; while others were denied such benefit. Prabhakar Rao and others who were denied the benefit challenged the legislation. This Court placing reliance on ***D.S. Nakara Case*** concluded that the impugned Act insofar as it denied the benefit to some of the employees who retired in the interregnum between two dates mentioned above was unsustainable and held as follows:-

> "The principle of *Nakara* clearly applies. **The division of Government employees into two classes**, those who had already attained the age of 55 on February 28, 1983 and those who attained the age of 55 between February 28, 1983 and August 23, 1984 on the one hand, and the rest on the other and **denying the benefit of the higher age of superannuation to the former class is as arbitrary** as the division of Government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. …" (Para 20)

The Bench also observed:-

> "Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realized that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counselor, "the common man", if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammeled

by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory." (Para 20)

64. Petitioners placed reliance on the last sentence which said that the "action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory" in support of their submission that an Act could be declared unconstitutional on the ground that it is arbitrary.

65. We are of the opinion that ***Prabhakar Rao case*** is not an authority on the proposition advanced by the petitioners. The ratio of ***Prabhakar Rao case*** is that there was an unreasonable classification between the employees of the State of Andhra Pradesh on the basis of the date of their attaining the age of superannuation.

66. Observations by Justice Gupta in ***R.K. Garg Case***[37] no doubt indicate that the doctrine propounded by this Court in ***E.P. Royappa*** *v.* ***State of Tamil Nadu & Another***[38] and ***Maneka Gandhi*** *v.* ***Union of India & Another***[39] that arbitrariness is antithetical to the "concept of equality" is also relevant while examining the constitutionality of a statute but such observations are a part of the dissenting judgment and not the *ratio decidendi* of the judgment.

67. Learned Attorney General heavily relied upon para 43 of the ***State of Andhra Pradesh & Others*** *v.* ***McDowell & Co.***, (1996) 3 SCC 709 which dealt with the question of declaring a statute unconstitutional on the ground it is arbitrary.

"43. Sri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of Tamil Nadu & Ors. v. Ananthi Ammal & Others [(1995) 1 SCC 519]. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No Court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The

power of the Parliament or for that matter, the State Legislatures is restricted in two ways. **A law made by the Parliament or the Legislature can be struck down by courts on twogrounds and two grounds alone**, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III ofthe Constitution or of any other constitutional provision. **There is no thirdground.** We do not wish to enter into a discussion of the concepts ofprocedural unreasonableness and substantive unreasonableness - conceptsinspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment challenged as violative of Article 14, it can bestruck down only if it is found that it is violative of the equalityclause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on**. No enactment can be struck down by just saying that it is arbitrary**[40]* or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. **An enactment cannot be struck down on the ground that Court thinks it unjustified**. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. **The Court cannot sit in judgment over their wisdom**. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety [See Council of Civil Services Union v. Minister for Civil Services (1985 A.C.374) which decision has been accepted by this Court as well]. The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. [See the opinions of Lords Lowry and Ackner in R. *v.* Secretary of State for Home Department *ex p Brind,* [1991 AC 696 at 766-67 and 762]. **It would be rather odd if an enactment were to be struck down by applying the**

said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate,excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in Ananthi Ammal, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Acts 1978 as violative of Articles 14, 19 and 300A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded Rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed:

"7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labeled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

68. From the above extract it is clear that courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such

an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This court long back in ***A.S. Krishna & Others*** *v.* ***State of Madras****,* AIR 1957 SC 297 declared that the doctrine of due process has no application under the Indian Constitution[41]. As pointed out by Frankfurter, J., arbitrariness became a mantra.

69. For the above reasons, we are of the opinion that it is not permissible for this Court to declare a statute unconstitutional on the ground that it is 'arbitrary'.

70. We shall examine the next facet of the challenge i.e. each of the four impugned clauses have created a class of persons who were eligible to contest the elections to Panchayats subject to their satisfying the requirements of law as it existed prior to the IMPUGNED ACT but are rendered now ineligible because they fail to satisfy one of the other conditions prescribed under clauses (t), (u), (v) and (w) of Section 175(1) of the Act. The case of the petitioners is that such a classification created by each of the impugned clauses amount to an unreasonable classification among people who form one class but for the IMPUGNED ACT, without any intelligible difference between the two classes and such classification has no nexus with the object sought to be achieved.

71. Learned Attorney General submitted that the object sought to be achieved is to have "model representatives for local self government for better administrative efficiency which is the sole object of the 73rd constitutional amendment".

72. In the light of the above submissions, we shall now deal with the challenge to each of the abovementioned four clauses.

73. Clause (v) prescribes a minimum educational qualification of matriculation[42] for anybody seeking to contest an election to any one of the offices mentioned in the opening clause of Section 175(1). However, the minimum educational qualification is lowered insofar as candidates belonging to scheduled castes and women are concerned to that of "middle pass" whereas a further relaxation is granted in favour of the scheduled caste woman insofar as they seek to contest for the office of Panch.

74. It is argued that stipulation of minimum educational qualification would have the effect of disqualifying more than 50% of persons who would have otherwise been qualified to contest elections to PANCHAYATS under the law prior to the IMPUGNED ACT. It is further submitted that poorer sections of the society, women and scheduled castes would be worst hit by the impugned stipulation as a majority of them are the most unlikely to possess the minimum educational qualification prescribed in the IMPUGNED ACT.

75. On the other hand, it is stated in the affidavit filed on behalf of respondent as follows:

> "10. That as per the National Population Register 2011, total rural population in the State is 1.65 cr out of which 96 lac are above 20 years of age. Further 57% of such population, who are over 20 years of age, is eligible to contest even after the introduction of impugned disqualification in respect of having minimum education qualification."

76. According to the Annexure-5 (to the said affidavit of the respondents) the details of the educational qualification of the persons above 20 years of age (under Section 173(2)43 of THE ACT the minimum qualifying age for contesting any PANCHAYAT election is 21 years) are as follows:

NATIONAL POPULATION REGISTER – 2011
Number of persons above 20 years of age vis-à-vis their educational qualification

	Total Population						SC Population					
	Total		Male		Female		Total		Male		Female	
Illiterate	3660892	38%	1211555	24%	2449337	53%	980908	48%	367755	34%	613153	63%
Unspecified Literate & below primary	494348	5%	291058	6%	203290	4%	125442	6%	77233	7%	48209	5%
Primary/ Middle /Matric & above	5458464	57%	3489821	70%	1968643	43%	949306	46%	631180	59%	318126	32%
Total Population above 20 years of age	9613704		4992434		4621270		2055656		1076168		979488	
Total Rural Population	16509359		8774006		7735353		3720109		1973294		1746815	

77. It can be seen from the above extract that the total rural population44 of the State of Haryana is 1.65 crores approximately. (All figures to be mentioned hereinafter are 'approximate')

78. Of the 1.65 crore rural population, 96 lakhs are in the age group of 20 years and above. In other words, *dehors* the IMPUGNED ACT, 96 lakhs would be eligible to contest elections to various PANCHAYATS subject of course to other qualifications and disqualifications prescribed by law. Of the 96 lakhs, 36 lakhs are illiterate and about 5 lakhs are literate but below primary level of education. The

remaining 54.5 lakhs are educated, though the chart does not clearly indicate the exact break-up of the above 54.5 lakhs and their respective educational qualifications i.e. whether they are educated up to primary or middle or matriculation level and above. The said 54.5 lakhs constitute 57% of the rural population who are otherwise eligible to contest PANCHAYATS election by virtue of their being in the age group of 20 years and above. Of the 96 lakhs of rural population, 50 lakhs are men and 46 lakhs are women. Of them, 35 lakhs men, 20 lakhs women are literate above primary level, though exact break-up of educational qualification is not available. Even if we assume all the 20 lakhs women are matriculate and, therefore, eligible to contest any election under THE ACT, they would contribute less than 50% of the otherwise eligible women.

79. The abovementioned figures include all classes of the population including scheduled caste.

80. Coming to the statistics regarding scheduled caste population, the total scheduled caste population of Haryana, it appears, is 21 lakhs of which 11 lakhs are men and 10 lakhs are women of which only 6.3 lakhs men and 3.1 lakhs women constituting 59% and 32% respectively are educated. In other words, 68% of the scheduled caste women and 41% of the scheduled caste men would be ineligible to contest PANCHAYAT elections.

81. An analysis of the data in the above table indicates that a large number of women (more than 50% of the otherwise eligible women) in general and scheduled caste women in particular would be disqualified to contest PANCHAYAT elections by virtue of the IMPUGNED ACT. Even with regard to men, the data is not very clear as to how many of the literate men would be qualified to contest the elections for PANCHAYATS at various levels. Because for men belonging to general category (39 lakhs), a uniform requirement of matriculation is prescribed in respect of posts for which they seek to contest. Coming to men candidates belonging to the scheduled caste, a uniform academic qualification of “middle pass” is prescribed. How many men under these categories would be qualified to contest is not clear, as the exact data regarding their respective educational qualifications is not available on the record.

82. Coming to scheduled caste women and the proviso to clause (v) of Section 175(1), though educational qualification required is 5th (primary) pass, such a qualification only entitles them to contest an election for the post of PANCH of a village but to no other post. Therefore, if a scheduled caste woman desires to contest either to the post of SARPANCH or any other post at ‘Samiti’ or District level, she must be “middle pass”. The exact number of scheduled caste women who possess that qualification is not available on record. Even assuming for the sake of argument that all educated scheduled caste women indicated in the Annexure-5 are middle pass, they only constitute 32% of the scheduled caste women. The remaining

68% of the women would be disqualified for contesting any election under the IMPUGNED ACT.

83. The question is - whether the impugned provision which disqualifies a large number of voter population and denies their right to contest for various offices under THE ACT is discriminatory and therefore constitutionally invalid for being violative of Article 14.

84. The learned Attorney General referred to Section 21 of THE ACT which catalogues the functions and duties of Gram Panchayat falling under 30 broad heads. To demonstrate the range of those heads, he pointed out some of the duties of a Gram Panchayat[45] and submitted that in the light of such responsibilities to be discharged by members elected to the Gram Panchayat, the legislature in its wisdom thought it fit to prescribe a minimum educational qualification and such a prescription cannot be said to be making an unreasonable classification among the voters attracting the wrath of Article 14. Several judgments of this Court are referred to emphasise the importance of education[46].

85. The impugned provision creates two classes of voters - those who are qualified by virtue of their educational accomplishment to contest the elections to the PANCHAYATS and those who are not. The proclaimed object of such classification is to ensure that those who seek election to PANCHAYATS have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the PANCHAYATS. The object sought to be achieved cannot be said to be irrational or illegal or unconnected with the scheme and purpose of THE ACT or provisions of Part IX of the Constitution. It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the PANCHAYATS. The classification in our view cannot be said either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved.

86. The only question that remains is whether such a provision which disqualifies a large number of persons who would otherwise be eligible to contest the elections is unconstitutional. We have already examined the scheme of the Constitution and recorded that every person who is entitled to vote is not automatically entitled to contest for every office under the Constitution. Constitution itself imposes limitations on the right to contest depending upon the office. It also authorises the prescription of further disqualifications/qualification with respect to the right to contest. No doubt such prescriptions render one or the other or some class or the other of otherwise eligible voters, ineligible to contest. When the Constitution stipulates[47] undischarged insolvents or persons of unsound mind as ineligible to contest to Parliament and Legislatures of the States, it certainly disqualifies some citizens to contest the said elections. May be, such persons are small in number.

Question is not their number but a constitutional assessment about suitability of persons belonging to those classes to hold constitutional offices.

87. If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible. We, therefore, reject the challenge to clause (v) to Section 175(1).

88. We shall now deal with the challenge to clauses (t) and (v) of Section 175(1) of THE ACT. These two clauses disqualify persons who are in arrears of amounts to cooperative bodies specified in clause (t) and the electricity bills. These provisions are challenged on the ground that they impose unreasonable burden on voters who are otherwise eligible to contest the election and therefore create an artificial and unreasonable classification which has no nexus to the objects sought to be achieved by the ACT.

89. Constitution makers recognised indebtedness as a factor which is incompatible in certain circumstances with the right to hold an elected office under the Constitution. Article 102(1) (c)[48] and Article 191(1)(c)[49] declare that an undischarged insolvent is disqualified from becoming a Member of Parliament or the State Legislature respectively. By virtue of the operation of Article 58(1)(c) and 66(1)(c), the same disqualification extends even to the seekers of the offices of the President and the Vice-President.

90. The expression “insolvency” is not defined under the Constitution. In the absence of a definition, the said expression must be understood to mean a person who is considered insolvent by or under any law made by the competent legislature. Sections 6[50] of the Provincial Insolvency Act, 1920 and Section 9[51] of the Presidency – Towns Insolvency Act, 1909 declare various activities which constitute acts of insolvency. It is an aspect of indebtedness - a specified category of indebtedness. If the Constitution makers considered that people who are insolvent are not eligible to seek various elected public offices, we do not understand what could be the constitutional infirmity if the legislature declares people who are indebted to cooperative bodies or in arrears of electricity bills to be ineligible to become elected representatives of the people in PANCHAYATS. It must be remembered that insolvency is a field over which both the Parliament as well as the legislatures of the State have a legislative competence concurrently to make laws as it is one of the topics indicated under Entry 9[52], List III of the Seventh Schedule to the Constitution.

91. The submission is that rural India is heavily indebted and particularly agriculturists who constitute a majority of our rural population are deeply indebted and reportedly a large number of agriculturists have been committing suicides as they are not able to bear the burden of indebtedness. Therefore, prescriptions under clauses (t) and (v) of Section 175(1) of the Act is an arbitrary prescription creating a class of persons who would become ineligible to contest Panchayat elections and such classification has no rational nexus to the object of the Panchayati Raj Act whose constitutional goal is to empower the rural population by enabling them to play a role in the decision making process of the units of local self government, is the contention.

92. No doubt that rural India, particularly people in the agricultural sector suffer the problem of indebtedness. The reasons are many and it is beyond the scope of this judgment to enquire into the reasons. It is also a fact that there have been cases in various parts of the country where people reportedly commit suicides unable to escape the debt trap. But, it is the submission of the respondents that such incidents are very negligible in the State of Haryana as the agricultural sector of Haryana is relatively more prosperous compared to certain other parts of the country. We do not wish to examine the statistical data in this regard nor much of it is available on record. In our view, such an enquiry is irrelevant for deciding the constitutionality of the impugned provision. We are also not very sure as to how many of such people who are so deeply indebted would be genuinely interested in contesting elections whether at PANCHAYAT level or otherwise. We can certainly take judicial notice of the fact that elections at any level in this country are expensive affairs. For that matter, not only in this country, in any other country as well they are expensive affairs. In such a case the possibility of a deeply indebted person seeking to contest elections should normally be rare as it would be beyond the economic capacity of such persons. In our opinion, the challenge is more theoretical than real. Assuming for the sake of argument that somebody who is so indebted falling within the prescription of clauses (t) and (v) of Section 175(1) of the Act is still interested in contesting the PANCHAYAT elections, nothing in law stops such an aspirant from making an appropriate arrangement for clearance of the arrears and contest elections. At this stage, an incidental submission is required to be examined. It is submitted that there could be a genuine dispute regarding the liability falling under the clauses (t) and (v) and therefore it would be unjust to exclude such persons from the electoral process even before an appropriate adjudication. Justness of such a situation is once again in the realm of the wisdom of the legislation. We do not sit in the judgment over the same. But we must make it clear nothing in law prevents an aspirant to contest an election to the PANCHAYAT to make payments under protest of the amounts claimed to be due from him and seek adjudication of the legality of the dues by an appropriate forum. We do not see any substance in the challenge to clauses (t) and (v) of Section 175(1) of the Act.

93. Clause (w) disqualifies a person from contesting an election to the Panchayat if such a person has no functional toilet at his place of residence. Once again the submission on behalf of the petitioners is that a large number of rural population simply cannot afford to have a toilet at their residence as it is beyond their economic means. To render them disqualified for contesting elections to the PANCHAYATS would be to make an unreasonable classification of otherwise eligible persons to contest elections to PANCHAYAT and, therefore, discriminatory.

94. It is submitted on behalf of respondents that the submission of the petitioner is without any factual basis. According to statistical data available with the State, there are approximately 8.5 lakhs house holders classified as families falling below poverty line (BPL) in the State of Haryana. It is further submitted that right from the year 1985 there have been schemes in vogue to provide financial assistance to families desirous of constructing a toilet at their residence[53]. In the initial days of such a scheme Rs.650/- was given by the State and from time to time the amount was revised and at present Rs.12000/- is provided by the State to any person desirous of constructing a toilet. As per the data available with the State, of the abovementioned 8.5 lakhs households, classified to be below the poverty line, approximately 7.2 lakhs households had availed the benefit of the above scheme. Therefore, according to the respondents if any person in the State of Haryana is not having a functioning toilet at his residence it is not because that he cannot afford to have a toilet but because he has no intention of having such facility at his residence. It is very forcefully submitted by the learned Attorney General that a salutary provision designed as a step for eliminating the unhealthy practice of rural India of defecating in public, ought not to be invalidated.

95. It is a notorious fact that the Indian[54] population for a long time had this unhealthy practice of defecating in public. The Father of the Nation wrote copiously on this aspect on various occasions. He took up with a missionary zeal the cause to eradicate this unhealthy practice. At some point of time, he even declared that the priority of this country should be to get rid of such unhealthy practice than to fight for independence. It is unfortunate that almost a hundred years after Gandhiji started such a movement, India is still not completely rid of such practice. The reasons are many. Poverty is one of them. However, this unhealthy practice is not exclusive to poorer sections of rural India. In a bid to discourage this unhealthy practice, the State has evolved schemes to provide financial assistance to those who are economically not in a position to construct a toilet. As rightly pointed by the respondents, if people still do not have a toilet it is not because of their poverty but because of their lacking the requisite will. One of the primary duties of any civic body is to maintain sanitation within its jurisdiction. Those who aspire to get elected to those civic bodies and administer them must set an example for others. To the said end if the legislature stipulates that those who are not following basic norms of hygiene are ineligible to become administrators of the civic body and disqualifies them as a class from seeking election to the civic body, such a policy, in our view, can neither be said to

create a class based on unintelligible criteria nor can such classification be said to be unconnected with the object sought to be achieved by the Act.

96. For the above-mentioned reasons, we see no merit in this writ petition, and the same is dismissed.

Abhay Manohar Sapre, J.

1. I have had the advantage of going through the elaborate, well considered and scholarly draft judgement proposed by my esteemed brother Jasti Chelmeswar J. I entirely agree with the reasoning and the conclusion, which my erudite brother has drawn, which are based on remarkably articulate process of reasoning. However, having regard to the issues involved which were ably argued by learned counsel appearing in the case, I wish to add few lines of concurrence.

2. While examining the question of constitutionality of the impugned amendment made under Section 175 (1) of the Haryana Panchayati Raj Act (for short "the Act"), which are under attack in this writ petition, the question arose regarding the true nature of the two rights of the citizen - "**Right to Vote**" and "**Right to Contest**" viz- whether they are statutory right or constitutional right?

3. A three Judge Bench in **PUCL** vs. **Union of India** [(2003) 4 SCC 399] examined the question regarding nature of "**Right to Vote**". The learned Judge P.V. Reddi, in his separate opinion, which was concurred by Justice D.M. Dharmadhikari, examined this question in great detail and in express terms, answered it holding that the "**Right to Vote**" is a constitutional right but not merely a statutory right. We are bound by this view taken by a three Judge Bench while deciding this question in this writ petition.

4. Similarly, another three Judge Bench in **Javed** vs. **State of Haryana** [(2003) 8 SCC 369] examined the question regarding the nature of "**Right to Contest**" while examining the constitutional validity of certain provisions of The Act. The learned Judge R.C. Lahoti (as his Lordship then was) speaking for the Bench held that right to contest an election is neither a Fundamental Right nor a common right. It is a right conferred by statute. His Lordship went on to hold that "at the most, in view of Part IX having been added in the Constitution, a right to contest the election for an office in Panchayat may be said to be a constitutional right. We are bound by this view taken by a three Judge Bench while deciding this question in this writ petition.

5. In the light of aforementioned two authoritative pronouncements, we are of the considered opinion that both the rights namely "**Right to Vote**" and "**Right to Contest**" are constitutional rights of the citizen.

6. Indeed, my learned brother rightly took note of the few decisions, which had while deciding the main questions involved in those cases also incidentally made some observations on these two issues, which we feel were not in conformity with the law, laid down in the aforementioned two decisions.

7. Coming now to the question of constitutional validity of Section 175 (1)(v) of the Act which provides that candidate must possess certain minimum educational qualification if he/she wants to contest an election. In my opinion, introduction of such provision prescribing certain minimum educational qualification criteria as one of the qualifications for a candidate to contest the election has a reasonable nexus with the object sought to be achieved.

8. In fact, keeping in view the powers, authority and the responsibilities of Panchayats as specified in Article 243-G so also the powers given to Panchayats to impose taxes and utilization of funds of the Panchayats as specified in Article 243-H, it is necessary that the elected representative must have some educational background to enable him/her to effectively carry out the functions assigned to Panchyats in Part IX. It is the legislative wisdom to decide as to what should be the minimum qualifications, which should be provided in the Act.

9. No one can dispute that education is must for both men and women as both together make a healthy and educated society. It is an essential tool for a bright future and plays an important role in the development and progress of the country.

10. In my view, therefore, Section 175 (v) of the Act is intra vires the Constitution and is thus constitutionally valid.

11. Now coming to the question regarding constitutionality of Section 175(w) of the Act, which provides that if a person has no functional toilet at his place of residence, he/she is disqualified to contest the election. In my view, this provision too has reasonable nexus and does not offend any provision of the Constitution.

12. Indeed, there are no grounds much less sustainable grounds available to the petitioners to question the validity of this provision. This provision in my view is enacted essentially in the larger public interest and is indeed the need of the hour to ensure its application all over the country and not confining it to a particular State. Moreover, the State having provided adequate financial assistance to those who do not have toilet facility for construction of toilet, there arise no ground to challenge this provision as being unreasonable in any manner. Since this issue has already been elaborately dealt with by my learned brother, therefore, I do not wish to add anything more to it.

13. In the light of the foregoing discussion agreeing with my learned brother, I also hold that Section 175 (v) is intra vires the Constitution and is thus constitutionally valid.

14. In my view, therefore, the writ petition deserves to be dismissed and is accordingly dismissed. As a consequence, interim order stands vacated.

Female voters after casting votes

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE VINOD K. SHARMA

Manjit Kaur Vs. State of Haryana and others

CWP No.11106 of 2010, Decided on 29th July, 2010

Present: - Mr. S.S. Nara, Advocate, for the petitioner.
Mr. Rajiv Prashad, DAG, Haryana.
Mr. J.S. Virk, Advocate, for respondent No.5.
Mr. S.M. Sharma, Advocate, for respondent No.7.
Sh. Kuldeep Singh, P.O.-cum-Returning Officer (SDM), Panchayat Naraingarh, Distt. Ambala, in person.

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VINOD K. SHARMA, J (ORAL)

The petitioner has invoked the writ jurisdiction of this Court to challenge the result Annexure P-3, attached with this petition vide which respondent No.5, Presiding Officer-cum-Returning Officer, has declared respondent No.7 as sarpanch of village Jolly, Tehsil Naraingarh, District Ambala.

The brief facts leading to the filing of this writ petition are, that the election for the post of sarpanch of village Jolly, Tehsil Naraingarh, District Ambala, was held on 12.6.2010 through electronic voting machines (EVM).

The petitioner, respondents No.6 and 7 contested the election for the post of sarpanch of village Jolly. Polling station of village Jolly was divided in two booths i.e. booths No.136 and 137. When the votes of booths were counted, there were 535 valid For Subsequent orders see LPA-946-2010 votes in booth No.136, and 687 valid votes in booth No.137. Thus, total valid votes polled were 1222.

The votes secured by the candidates were duly entered in Form-15 and Form-19. As per the result in polling booth No.136, Smt. Gurnamo Devi secured 14 votes, Smt. Manjit Kaur secured 349, votes and Rajindero secured 172 votes. The counting sheet was signed by the Presiding Officer as well as all the candidates. The original counting sheet for booth No.136 is taken on record as Ex. P-1.

Similarly, the counting sheet for booth No.137 shows that Gurnamo Devi got 43, votes Manjit Kaur got 378 votes, and Rajindero got 266 votes. The copy of the counting sheet duly prepared at the time of counting, is taken on record as Ex. P-2.

From the counting sheets it was clear that Manjit Kaur should have been declared as elected candidate, however, in Part-II of the form while preparing the result-sheet, the Presiding Officer instead of counting votes polled by Manjit Kaur

in booth No.136 as 349 mentioned it to be 172, and votes of Smt. Rajindero were shown as 379. The Presiding Officer in the result-sheet showed the votes polled by Manjit Kaur to the credit of Smt. Rajindero, and declared Smt. Rajindero as elected to the post of sarpanch.

This change of result sheet was thus a case of fraud, whereby votes of one candidate were shown to be in favour of other, to declare the losing candidate as winning candidate.

The writ petition is contested by the respondents.

Respondent No.7 has raised preliminary objection regarding the maintainability of the writ petition, on the ground, that the petitioner For Subsequent orders see LPA-946-2010 2 has alternative statutory remedy of filing election petition against respondent No.7, therefore, the writ petition is not competent. Respondent No.7 has also placed reliance on the Rules of the Haryana Panchayati Raj Election Rules, 1994 (hereinafter referred to as 'Rules') to support her election.

The contention of the learned counsel for respondent No.7 is, that as per sub rule (2) of Rule 66 of the Rules referred to above, after counting of all ballot papers contained in all the ballot boxes, the Returning Officer appointed or the officer authorised by him is to make entries in the result sheet in Form Nos. 14, 15, 16 and 17, for a Panch, Sarpanch, members of Panchayat Samiti and Zila Parishad, respectively, and announce the result.

This Rule stands complied with, as already referred to above, as the votes in respective booths were duly entered in the forms prescribed for this purpose. Other sub-rules of this Rule are not relevant as this election was held through EVMs.

The learned counsel for respondent No.7 also placed reliance on Rule 69. As per Rule 69 of the Rules, Returning Officer (Panchayat) or such other officer authorised by him, is to record in the result sheet in forms mentioned in sub-rule (2) of Rule 66, the total number of votes polled for each candidate and announce the result. Sub-rule (2) of Rule 69 provides that a candidate or, in his absence election agent may apply in writing to the Returning Officer (Panchayat), or the other officer authorised by him, for recount of all or any of the ballot papers already counted, stating the grounds on which he demands such a recount.

On application being made, the Returning Officer (Panchayat) For Subsequent orders see LPA-946-2010 or the officer authorised by him, gets jurisdiction to decide the matter by either allowing the application in whole, or in part, or can reject the application in toto, if it appears to be frivolous or unreasonable. The decision is further required to be given in writing by the Presiding Officer.

It is not in dispute, that in this case neither any application was made for recount, nor any order was passed by the Presiding Officer and without any basis, as already noticed above, he changed the votes by counting the votes of

Manjit Kaur for the other candidate i.e. respondent No.7 so as to declare respondent No.7 elected.

The plea raised by respondent No.7, therefore, deserves to be rejected, that Presiding Officer had the jurisdiction to change the result, after recount, when there was no such application or order in terms of Rule 69 passed by the Presiding Officer.

Interestingly, even though the result has been changed, from the one shown in counting sheet, furthermore no reasons have been given for this change, rather Ex.P1 and Ex.P2 show that Presiding Officer was in such a hurry to help respondent No.7, that he did not bother to change the result sheet, to support his stand that the counting was wrongly done.

The prayer of the learned counsel for respondent No.7 that he has no objection to recounting of the votes, cannot be accepted, as no such application was moved by her, when the counting was complete.

The State of Haryana, in defence has taken a stand that the correction was made in the result because of the clerical error.

This plea on the face of it deserves to be rejected, as it is not For Subsequent orders see LPA-946-2010 even the case, of respondent No7 that correction was required as there was any clerical error. It is very sorry state of affairs, that the State is trying to protect an officer, who is prima facie guilty of tampering with the result sheets and has declared the candidate having less number of votes as a winning candidate. It is because of such stand of the State that the officers are encouraged to commit such illegalities, which are patent on the face of record.

In view of the facts stated above, specially keeping in view the fact that the result sheet of counting of votes, placed on record does show that Manjit Kaur had polled 378 votes in booth No.137, and 349 votes in booth No.136, which leaves no manner of doubt that the result sheets was a result of manipulation, to help the loosing candidate. The result sheets placed on record clearly show that Manjit Kaur had polled the highest number of votes, than other two candidates.

For the reasons stated, this writ petition, is allowed with costs of Rs.50,000/- (Rupees fifty thousand only), the election of respondent No.7 is set aside and the petitioner is declared elected as sarpanch of village Jolly. The State of Haryana is directed to issue notification declaring petitioner as elected Sarpanch. Costs of Rs.50,000/- (Rupees fifty thousand only) imposed are directed to be recovered from Mr. Kuldeep Singh, Presiding Officer, guilty of changing the result sheet by manipulations.

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Matdata Jagrook Manch & others Vs. **State of Haryana & others.**

C.W.P. No.7780 of 2011, Decided on 3rd May, 2011

Present:- Mr. Akshay Bhan, Advocate
for the petitioners.

ADARSH KUMAR GOEL, ACJ.

This petition seeks a direction for taking steps for recovery of records of Haryana Assembly constituency 77, Gurgaon.

Case of the petitioners is that there are irregularities in electoral rolls in the assembly constituencies of Gurgaon and Badshahpur which may affect conduct of impartial elections. The petitioners represented to the concerned authorities pointing out violation of the provisions of Representation of the People Act, 1950 in the electoral rolls but to no avail.

We are of the view that updation of electoral rolls is of continuous nature subject to the control, supervision and directions of the Chief Election Commission constituted under Article 324 of the Constitution. Procedure has also been laid down in the statutory provisions for redressal of grievances on the issue. We, thus, cannot adjudicate upon the points raised except to say that the petitioners may move the Chief Election Commission of India in accordance with law and if such recourse is taken, there is no doubt that the said authority will take such appropriate action as may be found necessary.

The petition is disposed of.

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE A.B. CHAUDHARI

Suman Lata Vs. State of Haryana & Others

CWP No.9328 of 2016 (O&M), Decided on 12th May, 2016

Present: Mr. Vivek Goyal, Advocate for the petitioner
Ms. Kirti Singh, DAG Haryana
None for respondent No.6

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JUDGEMENT (Oral)

(1) The petitioner seeks a direction to respondents No.2 to 4 to allow her to file nomination papers and contest election for the post of Municipal Councillor for Ward No.19, Thanesar. It is alleged that respondent No.6 who is wife of MLA Kurukshetra and is Ex-Municipal Chairman has got the name of the petitioner removed from the Electoral Roll for the said Ward at the last moment to keep the petitioner out of fray.

(2) Upon notice, service of respondent No.6 is reported to be still awaited. Learned State counsel has produced all the relevant records. Assistant RO is also present.

(3) In view of the facts that (i) the petitioner's name was very much there in the Electoral Roll of 2014 and she exercised her franchise in the last Assembly elections; (ii) the notification dated 29.01.2016 was issued only "for updating the existing electoral rolls of all wards of…" Kurukshetra and obviously the existing voters were not expected to submit any objections/claim in response thereto; (iii) there appears a last moment effort to delete the names of some of the voters from the Electoral Roll, we direct (i) the State Election Commission, Haryana; (ii) the Principal Secretary, Urban and Local Bodies Department, Haryana; and (iii) the Deputy Commissioner, Kurukshetra to invite a fresh objections against deletion of names from the Electoral Roll by giving one day opportunity to the affected voters and thereafter re-schedule the election programme including the date for filing nomination papers so as to enable the affected persons like the petitioners to file nominations, if so desired. However, the authorities shall be at liberty to hold the election as per the final date of election already notified.

(4) We are sanguine that the District Administration is fully aware of its responsibility to ensure fair and impartial election so that no political person succeeds in misusing his/her position and impair with the purity of election process.

(5) Let a dasti copy of this order be handed over to Ms. Kirti Singh, learned DAG Haryana during the course of day for information and necessary compliance.

(6) Disposed of.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s): 14730/2016

(Arising out of impugned final judgement and order dated 12/05/2016 in CWP No.9328/2016 passed by the High Court of Punjab and Haryana at Chandigarh)
State Election Commissioner, Haryana

Petitioner(s)

Versus

Suman Lata and Ors.

Respondent (s)

(with interim relief and office report)

Date: 17/05/2016 This petition was called on for hearing today.
CORAM: HON'BLE MR.JUSTICE ABHAY MANOHAR SAPRE
HON'BLE MR.JUSTICE ASHOK BHUSHAN
(VACATION BENCH)

For Petitioner (s) Mr.Tushar Mehta, ASG
Mr.B.K.Satija, Adv.
For Respondent (s) Mr.Shubham Bhalla, Adv.
Mr.Ritesh Khatri, Adv.

UPON hearing the counsel the Court made the following

ORDER

Issue notice.

Heard learned counsel for the petitioner on the question of grant of stay.

In the meantime, operation of the impugned order dated 12.05.2016 passed in CWP No.9328 of 2016 (O&M) by High Court of Punjab & Haryana at Chandigarh shall remained stayed.

List the matter for further orders after summer vacation and no service to the respondent before appropriate Bench as per Roster.

(SWETA DHYANI) **(RAJINDER KAUR)**
Sr.P.A. **COURT MASTER**

Handicapped senior citizen being escorted to Polling Station

PUNJAB & HARYANA HIGH COURT

HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.

Narender Kumar and another Vs. State of Haryana and others
CWP No.9190 of 2016, Decided on 17th May, 2016

Present: Mr.Amit Jhanji, Advocate, for the petitioners.
Mr.Vishal Garg, Additional AG, Haryana.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Judegment (Oral)

The instant writ petition has been filed seeking a writ of mandamus for inclusion of names of the petitioners in the electoral roll of Ward No.12, Municipal Committee, Ladwa, District Kurukshetra.

The allegations of the petitioners are that they are permanent residents of the given address and their names earlier figured in the Electoral Roll of legislative assembly at Sr.Nos.51 & 52 including in the voter list for the Assembly election of the year 2014. The petitioners in fact exercised the franchise in the previous assembly elections. However, their names have been deleted under the garb of a fresh survey soon before the municipality elections.

On May 11, 2016, counsel for the parties were heard and original record summoned.

It is the conceded position that names of the petitioners were there in the voter list of the year 2014. The official respondents claim that during the fresh survey, 'some relative' of the petitioners informed that they have shifted to some other place and on the basis of such a reckless statement, the names of petitioners have been deleted from the voter list.

The manner in which the authorities are functioning in the matter of updating the electoral rolls might require a deeper probe in an appropriate case. As of now, we are satisfied that names of the petitioners have been deleted for extraneous reasons. The writ petition is accordingly allowed with costs of Rs.10,000/-. The names of the petitioners are directed to be restored/included in the

voter list of Ward No.12, Municipal Committee, Ladwa, within two days. Since the petitioners have been deprived of contesting the election for no fault on their part, we direct the (i) State Election Commission, Haryana; (ii) Principal Secretary, Urban and Local Bodies Department, Haryana and (iii) the Deputy Commissioner, Kurukshetra to invite fresh objections against deletion of names from the electoral roll by giving one day opportunity to the affected voters and thereafter re-schedule the election programme including the date for filing nomination papers so as to enable the affected persons like the petitioners to file nominations, if so desired. However, the authorities shall be at liberty to hold the elections as per the final date already notified.

Let a copy of this order be given dasti to Mr.Vishal Garg, Additional Advocate General, Haryana, for information and necessary action.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s): 15025/2016

(Arising out of impugned final judgement and order dated 17/05/2016 in CWP No.9190/2016 passed by the High Court of Punjab and Haryana at Chandigarh)

State Election Commissioner

Petitioner(s)

Versus

Narender Kumar and Ors.

Respondent (s)

(with appln.(s) for exemption from filing c/c of the impugned judgement, interim relief and office report)

WITH

S.L.P. (C) … CC No.10154/2016

(With appln.(s) for permission to file SLP and Interim Relief and office report.

Date: 19/05/2016 These petitions were called on for hearing today.

CORAM: HON'BLE MR.JUSTICE ABHAY MANOHAR SAPRE
HON'BLE MR.JUSTICE ASHOK BHUSHAN
(VACATION BENCH)

For Petitioner (s) Mr.Tushar Mehta, ASG
Mr.B.K.Satija, Adv.

For Respondent (s)

UPON hearing the counsel the Court made the following

ORDER

SLP(C) No.15025/2016

Exemption from filing certified copy of the impugned order is allowed.

Issue notice on the SLP.

Heard learned counsel for the petitioner on the question of grant of stay.

The operation of the impugned order dated 17.05.2016 passed by the High Court of Punjab & Haryana at Chandigarh in CWP No.9190/2016 shall remain stayed, in the meanwhile.

Tag with SLP (C) No.14730/2016.

Exemption from filing certified copy of the impugned order is allowed.

Permission to file SLP is granted.

Issue notice on the SLP.

Heard learned counsel for the petitioner on the question of grant of stay.

The operation of the impugned order dated 16.05.2016 passed by the High Court of Punjab & Haryana at Chandigarh in CWP no.9545/2016 shall remain stayed, in the meanwhile.

Tag with SLP(C) No.14730/2016.

(O.P. SHARMA) **(SUMAN JAIN)**
AR-cum-PS **COURT MASTER**

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Veena Kohli Vs. State of Haryana and Others

CWP No. 12940 of 2016, Decided 12th December, 2016

Present: Mr. Jagdish Manchanda, Advocate with
Mr. Sunil Sharma, Advocate for the petitioner(s)
In CWP Nos. 12940-41 of 2016.
None for petitioner in CWP No. 13806 of 2016.

Mr. Gaurav Bansal, Assistant Advocate General Haryana
Mr. Satya Pal Jain, Senior Advocate with
Mr. Dheeraj Jain, Advocate.
Mr. A.K. Chauhan, Advocate for
Mr. Arvind Singh, Advocate for respondent No.3
In CWP No. 13806 of 2016.
Mr. Lokesh Sinhal, Advocate for respondent No.6
In CWP No. 13806 of 2016.
Mr. Vijay Saini, Advocate for respondent Nos. 7 & 8
In CWP No. 12940 of 2016.

AJAY KUMAR MITTAL, J. (ORAL)

This order shall dispose of three writ petitions CWP Nos. 12940, 12941 and 13806 of 2016 as the learned counsel for the parties point out that issue involved herein is identical. However, the facts are extracted from CWP No. 12940 of 2016.

2. The petitioner has filed civil writ petition under Articles 226/227 of Constitution of India for quashing of letter memo no. 4AE/2016/48763-853 dated 24.06.2016 issued by respondent No.2 in violation of the judgment passed by Hon'ble Larger Bench of this Court and directing the respondents to hold the election of the President without counting the votes of Member of Parliament/Member of Legislative Assembly of the area of Shahabad (M) and Kurukshetra.

3. The primary issue that arises for challenge in these writ petitions', is whether the votes of Member of Parliament/Member of Legislative Assembly of the area of Shahabad and Kurukshetra are to be counted for the election of President.

4. Learned counsel for the respondent relied upon the judgment of the Division Bench of this Court in CWP No. 15972 of 2016 titled as Monika and others Vs. State of Haryana and others decided on 05.12.2016 wherein it has been held that the Member of Parliament/Member of Legislative Assembly cannot contest the election of the President/Vice President of the Municipal Council but at the same time are competent to vote for the election of the President/Vice President. It has been further held that the notification whereby they have been nominated as member of the Municipal Council under Section 9(3) (ii) of the Haryana Municipal Act 1973 shall come to an end only on the dissolution of the Legislative Assembly/Parliament.

5. In view of the detailed reasons recorded in CWP No. 15972 of 2016, the present writ petitions are dismissed.

Polling through EVM in progress

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Monika and others Vs. State of Haryana and Others

CWP No. 15972 of 2016, Decided on 5th December 2016

Present: Mr.M.L.Sharma, Advocate in CWP No15972 and Mr Chetan Mittal, Sr. Advocate with Mr. Kunal Mulwani, Advocate in CWP No. 18730 for the petitioners.

Ms. Shubhra Singh, Additional AG Haryana and
Mr. Gaurav Bansal, AAG, Haryana.

Mr. Parveen Sharma, Advocate for
Mr. Arvind Singh, Advocate for respondent No.4.

Mr. Deepak Balyan, Advocate for respondent No.5.

Mr. Puneet Bali, Senior Advocate with
Mr. Rajat Mor, Advocate for respondent No.7.

JUDGEMENT

1. This order shall dispose of CWP Nos.15972 and 18730 of 2016, as according to the learned counsel for the parties, the issues involved in both the petitions are common. However, the facts are being extracted from CWP No.15972 of 2016.

2. In CWP No.15972 of 2016, the petitioners pray for a direction to the respondents to hold elections of Pradhan, Nagar Parishad, Bahadurgarh in view of the provisions of Section 24 of the Haryana Municipal Act, 1973 (in short, "the Act") which provides that every election of the President shall be notified by the State Government in the Official Gazette within 30 days from the date of the declaration of the result in view of the provisions of Section 24 of the Act and Rule 70 of the Haryana Municipal Election Rules, 1978 (in short, "the Rules"). Direction has also been sought to the respondents to hold elections of the Pradhan, Nagar Parishad, Bahadurgarh, District Jhajjar within 48 hours as per the provisions of Section 24 of the Act and Rule 70 of the Rules. Prayer has also been made for a direction to the

respondents not to allow Member of Parliament/Member of Legislative Assembly (MP/MLA), Bahadurgarh constituency to exercise their vote in the elections to the post of Pradhan, Nagar Parishad, Bahadurgarh in view of the law laid down by this Court in LPA No.592 of 2013, ***Sanjeev Kumar Verma vs. Director, Local Bodies, Chandigarh,*** decided on 11.02.2015. The petitioners further pray that the respondents be directed to keep the votes of the MP/MLA separate and not to count the same in the elections and if a candidate gets majority without considering their votes with a margin of three, then the result be declared forthwith. However, in CWP No.18730 of 2016, additionally, it has been urged that after the constitution of new Nagar Parishad, Bahadurgarh in the absence of any subsequent notification whereby MP/MLA have been notified to have voting rights, the earlier notification having lapsed, the writ petition is liable to be accepted.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are residents of Bahadurgarh, District Jhajjar. They have been elected as members of the Nagar Parishad, Bahadurgarh and have also been administered the oath for the same on 22.5.2016. As per the case of the petitioners, earlier the election was held on 13.11.2009 and the oath was taken on 16.12.2009. The Pradhan was elected on 11.1.2010. Now the elections have been held on 22.5.2016 and oath was given on 24.6.2016. The election for the President, Nagar Parishad was fixed on 22.5.2016. One of the petitioners i.e. Monika wife of Kapoor Rathee resident of Ward No.15, Jatwara Mohalla, Bahadurgarh filed CWP No.14404 of 2016 seeking a writ of mandamus directing respondent Nos. 3 to 6 not to allow Member of Parliament from Rohtak and MLA, Bahadurgarh to exercise their vote in the election for the post of Pradhan Nagar Parishad, Bahadurgarh in view of the provisions of Article 243R of the Constitution of India, Section 9 of the Act and the law laid down by this Court in ***Sanjeev Kumar Verma***'s case (supra). The said writ petition came up for hearing before this Court. Vide order dated 22.7.2016, it was directed that the respondents shall keep the votes cast by the MLA and MP in a separate sealed cover and produce the same in court on the next date of hearing. However, the declaration of result shall be subject to further order to be passed by this court. Vide order dated 27.7.2016, learned counsel for the petitioner stated that the election which was scheduled for 22.7.2016 had not been conducted. In view thereof, the said writ petition had been rendered infructuous and was disposed of as such. According to the petitioners, the ruling party BJP had no majority and they had only six members. They were bent upon not to hold election. The Administrator had been appointed for the last one and a half years which was hampering the development of the area and smooth running and functioning of the Nagar Parishad. The ruling party was bent upon to influence the members of the Municipal Council and they were doing day and night work to persuade the members of the Nagar Parishad to come to their side and increase the majority but all the members except six which belonged to BJP

were not coming to the side of BJP. Therefore, the ruling party was not holding the elections of the Pradhan Nagar Parishad.

4. Thereafter, the official respondents held meeting for elections on 22.7.2016 at 4 PM and order was passed by the Sub Divisional Magistrate on 19.7.2016. The same was received by one of the petitioners on 20.7.2016 at 2 PM. As there was no alternative remedy except to file the writ petition, the petitioners after reaching Chandigarh on 20.7.2016 at 6 PM filed the present petition on 21.7.2016 in view of the urgency and the same was fixed for hearing on 22.7.2016 wherein notice of motion was issued. As the respondent ruling party had no majority, the SDM proceeded on leave on the day the elections were to be held intentionally with malafide intention. Had the elections been held, BJP would have lost the elections. Therefore, with manipulation, the SDM was sent on leave and the election was not held with intentional and malafide motive. On representation of the members of the Nagar Parishad, elections were held. The total strength of the members is 31 and the petitioners who are filing the present writ petition are 16. The petitioners have also the support of six members of INLD and in case both the Member of Parliament/MLA are not allowed to cast their votes and their votes are not considered in elections, the petitioners are in winning position as they are in majority and, thus, the respondents are bent upon not to hold the elections under the pressure of the ruling party. Therefore, the petitioners apprehend that the elections will not be held at any cost and they have no other alternative remedy except to file the present writ petition for directing the respondents to hold the elections in view of the provisions of Section 24 and Rule 70 of the Rules.

5. According to the petitioners, as per Section 24 of the Act and Rule 70 of the Rules, every election of the member shall be notified in the Official Gazette by the State Election Commission not earlier than one week before the expiry of duration of the existing municipality. Every election of the President shall be notified by the State Government in the Official Gazette within thirty days from the date of declaration of the result of such election. It has been reiterated that the election was held on 22.5.2016 and the same should have been notified in the Official Gazette within 30 days from the date of the declaration of result i.e. 21.6.2016. On representation made by the members, the date was fixed for 22.7.2016. On that day again, the election was not held as the SDM was on leave. Further, as per Rule 70 of the Rules, the Deputy Commissioner or any Gazetted Officer appointed by him in this behalf shall within a period of 30 days of the publication of notification of the names of the members elected to the committee convene first meeting of the newly constituted committee on 48 hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance will be administered to the members present and that the election of President and Vice President shall be held in the meeting.

The convener shall administer the oath to the members and shall preside over the meeting till the election of the President and Vice President. In the present case, the meeting was not held intentionally with malafide motive not to hold the elections to the post of President Nagar Parishad as the ruling party was not in majority. The petitioners also pray not to allow Member of Parliament/MLA of Bahadurgarh constituency to cast their vote in the elections of Nagar Parishad and in the alternative, if they cast their votes, the same be kept separate and be not counted. Hence the instant writ petitions by the petitioners with the prayers mentioned above.

6. A short reply has been filed by respondent No.7 Smt. Sheela Devi wherein it has been inter alia stated that the petitioners did not disclose the fact that the election process has already been completed and respondent No.7 has been declared President/Chairperson/Municipal Council, Bahadurgarh. The only remedy available with the petitioners is to file an election petition in accordance with the rules. Therefore, the prayer made by the petitioners for a direction to the official respondents to conduct elections has been rendered infructuous. Secondly, the prayer of the petitioners that MP/MLA shall not have any right to vote in the elections of President and the Vice President, it may be noticed that proviso to Section 9 of the Act only contemplates that the MP/MLA shall not have any right to contest for the election of President or Vice President. There is no restriction on their casting vote at the time of election of President or Vice President being nominated Members. Further, Rules 74 prescribes that the only remedy with the petitioners is to file an election petition. On these premises, prayer for dismissal of the writ petitions has been made. The State and other respondents have has also supported the version of respondent No.7.

7. We have heard learned counsel for the parties.

8. The prayer for directions to hold the election of President has been rendered infructuous as the election has taken place on 22.8.2016. Now, the following issues arise for consideration in these petitions:-

(i) Whether Member of Parliament and Member of Legislative Assembly have right to vote in the election of President and Vice President of the Municipal Council;

(ii) Whether notification by virtue of section 9(3)(ii) of the Act for including the name of Member of Parliament or Member of Legislative Assembly as nominated members of the Municipal Council for exercising the right to vote in the election of President/Vice President is required to be

issued afresh after the expiry of the period of original term of the municipal council whereas their term as MP/MLA is still existing?

9. Taking up first issue, the matter is no longer res-integra. It may be noticed that proviso to Section 9(3) (ii) & (iii) of the Act clearly specifies that MP/MLA shall not have a right to contest the election for the post of President or Vice President whereas there is no restriction on their right to vote for such election. The Full Bench of five Judges of this Court in ***Sanjeev Kumar Verma vs. Director, Urban Local Bodies, Chandigarh and others***, 2015(1) RCR (Civil) 991 had opined to this effect in the following terms:-

> "31. As far as the issue with regard to restriction of the right of nominated members is concerned, in our opinion, it does not survive as subsequently in the year 2000 the first proviso to sub-section (3) of Section 9 was substituted providing that the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice-President, and the further amendment made in this proviso in the year 2005 by Haryana Act No.10 of 2005, which was omitted vide Haryana Act No.18 of 1996, was again inserted. After the said amendment the proviso to Section 9(3), which is in existence today, provides that the persons referred to in clause (i) above shall not have any right to vote and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice- President. This amendment in this proviso is in consonance of Section 18(1) of the Act which provides that only an elected member of the Committee can be elected as President or Vice- President of the Committee. Now in this proviso there is no limitation or restriction to the right of vote of these persons. Therefore, at present there is no issue before us that the right of the nominated members, who have been nominated under clauses (ii) and (iii) has been restricted by the proviso added to Section 9(3) of the Act. Nobody has challenged this provision. Though we have strong reservation against the interpretation given by the Full Bench ***in Raj Pal Chhabra*** and ***Krishan Kumar Singla's*** cases (supra) in this regard, as in our view, the Full Bench have not properly appreciated clause (b) of Article 243R(1) and Article 243ZA(2) of the Constitution, which have given ample powers to the State legislature to make provisions by law with respect to all matters relating to or in connection with, election to the Municipality and election of the President or Vice-President. In our view, the

State legislature in its wisdom had restricted the voting right of the nominated members under clauses (ii) and (iii) to the extent that these persons shall not have voting rights in the election or removal of President or Vice-President of the Committee and according to us such restriction cannot be said to be arbitrary or ultra vires to Article 243R. Since as held above this issue does not arise at present, we are not commenting further on this issue.

On the second issue, it was held in ***Raj Pal Chhabra's*** case, particularly in view of unamended provisions of Section 21(3) which made no distinction between nominated members and elected members of the Committee, and where Section 21(3) itself provided that no confidence motion could be carried out against the President or Vice-President with the support of not less than two-third members of the Committee, that the nominated members of the Committee under clause (ii) of Section 9(3) of the Act being members of the Committee would have the right to vote while carrying out no confidence motion against the President or Vice- President. It was held that such persons could not be excluded from the right to vote in the meeting convened for no confidence motion. When the matter was pending before the Full Bench in ***Raj Pal Chhabra's*** case, an amendment was made in sub-section (1) of Section 18 of the Act substituting the words "one of its members" with the words "one of its elected members", and further an amendment was also made in sub-section (3) of Section 21 and the words "not less than two-thirds of the members" were substituted with words "not less than two thirds of the elected members". This amendment was not taken into consideration by the Full Bench in Raj Pal Chhabra's case (supra) on the ground that in that case the resolution of no confidence motion was passed much before the aforesaid amendment came into force and was held to be not applicable in that case but when this issue again came up for consideration in ***Krishan Kumar Singla's*** case (supra), these amendments were considered by the Full Bench and it was held that nominated members of the Committee, who have been nominated under clause (ii) of Section 9(3) would be deemed to be the elected members of the Committee and fall under the expression "elected members" used in Section 21(3) of the Act as these members having been elected from a larger constituency than that of the Municipal Committee and being nominated to the Municipal Committee by virtue of their being

elected as members of the House of People, Legislative Assembly or Council of States, as the case may be, for the constituency of which Municipal Committee is a segment. When the Full Bench in ***Krishan Kumar Singla's*** case gave the aforesaid interpretation to Sections 18 and 21(3) of the Act, Section 13-B had already been inserted in the Act vide Haryana Act No.13 of 1997 which clearly provided that no person shall be elected as member of the Municipal Committee, Member of the Legislative Assembly or Member of Parliament simultaneously, and if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as elected member of the Committee from the day he is elected as a Member of the Legislative Assembly or Member of Parliament. This mandatory provision was not considered by the Full Bench in ***Krishan Kumar Singla's*** case (supra). It appears that this provision was not brought to the notice of the Full Bench.

The learned counsel for the appellant argued that the interpretation to Section 21(3) of the Act as given by the Full Bench in ***Krishan Kumar Singla's*** case is perfectly valid and reasonable and achieves the object of the provisions of the Act and the same does not require any re-consideration by this Bench. According to the learned counsel even insertion of Section 13-B in the Act does not have any impact on the interpretation given by the earlier Full Bench. According to the learned counsel, the whole scheme of making provisions for nominating the members of the Assembly or the Parliament, is to strengthen democracy at the grass root level and the nominated members cannot be debarred from participating in the process of considering no confidence motion against the President or Vice-President of the Committee. The learned counsel while referring to sub-section (3) of Section 21, particularly to the words "not less than two third of the elected members of the Committee" and while putting much emphasis on the word "the", argued that the nominated members, who are elected from the larger constituency, on their nomination also become elected members of the Committee. According to him, this was the only interpretation which could be given to harmonize the various provisions of the Act. It has been further argued that the nominated members under clause (ii) of Section 9(3) have an unrestricted right to vote in the meetings, therefore,

they cannot be restricted from exercising their right to vote in the special meetings convened for considering no confidence motion, and even if they have not participated in the meeting their number has to be taken into consideration for counting the percentage of two-thirds of the elected members for passing of the no confidence motion.

Article 243R provides that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. This part of Article 243R is mandatory as the word "shall" has been used. In sub-article (2) of Article 243R, the State Legislation has been given the power to enact laws with regard to the manner of election of the Chairperson of a Municipality and also for providing representation in a Municipality of-(i) persons having special knowledge or experience in Municipal administration; (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area. As far as the voting rights of such nominated members in the meetings of the Committee are concerned, it has been categorically stated that the persons mentioned in clause (i) shall not be given the right to vote in the meetings of the Municipality. However, with regard to the persons mentioned in clauses (ii), (iii) and (iv) nothing has been mentioned and it has been left to the wisdom of the State Legislature whether to give them the voting rights in the meetings of the Municipality or not. Thus, it is clear that Article 243R recognizes two types of members, i.e., the elected members and the nominated members of the Municipality. There is nothing in Article 243R which provides that the nominated members of the Municipality shall be considered as elected members of the Municipality. Rather, sub-Article (1) provides that save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. Thus, in Article 243R we find that there is no intention that the nominated members would be deemed to be the elected members of the Committee. There is also no mandate under Article 243R that such kind of nominated members under clauses (ii) and (iii) must be given the right to vote in the election and removal of the President or Vice-President of the Committee. Rather clause (b) of this Article clearly empowers the Legislature of a State to

provide by law the manner of election of the Chairperson of a Municipality. Obviously, being nominated members of the Committee, they could not have been given the right to contest the election of the President or Vice-President. Even this right only vests in the elected members of the Committee. Therefore, a clear distinction has been made by the State Legislature between the elected and nominated members of the Committee while enacting the law with regard to their right to vote in the election or removal of the President of the Municipal Committee. The proviso to Section 9(3) of the Act clearly provides that the nominated person has no right to contest the election of the President or Vice- President. The said right has been given only to the elected members of the Committee. In our view Section 9 (3) can be considered to be only in the nature of a removal of doubt clause. It appears to have been added as a matter of abundant caution. If the provisions are examined in the background of the objectives and purpose of the Seventy third and Seventy Fourth Amendment, which is to provide for direct democracy at the third tier, which is evident from the mandate whether in Article 243C (in relation to Panchayats) or Article 243R (in relation to Municipalities) that all seats shall be filled by persons chosen by direct election, then even in the absence of such a provision, persons provided representation in terms of clause (b) of Article 243R, could not justifiably be considered to have any right or claim to be elected as President or Vice President i.e., claim any elective office in these bodies. The emphasis is not only on direct democracy in the Panchayats and Municipalities (the third tier) as a whole, but direct democracy for each level therein. This is manifested when provisions of Article 243C(5)(b) are noticed which provide that the Chairperson of Panchayat at intermediate level or distinct level shall be elected, by and from amongst, the elected members thereof. The intention is only to enable providing for representation to them in the Municipalities. But providing for such representation is not mandatory. Legislature may or may not make provision for such representation. Further, Section 18 clearly provides that one of the elected members of the Committee shall further be elected as President of the Committee. This amendment was made vide Haryana Act No.18 of 1996 where "one of its elected members" was added in the said Section. We have to give a plain meaning to this amendment, i.e., only an elected member can become President of the Municipal Committee. The nominated member

cannot be elected as President or Vice-President of the Committee. This aspect has not been considered by the Full Bench in ***Krishan Kumar Singla's*** case (supra). This position was further clarified by the amendment made in 2005 vide Haryana Act No.10 of 2005, whereby in place of first proviso, the new proviso was substituted, namely, "Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of president or vice- president." Thus, as per the Scheme and provisions of the Act and the Constitution, there is a difference between an elected member of the Committee and a nominated member of the Committee, and a nominated member of the Committee cannot be deemed to be an elected member of the Committee. The above distinction was further made clear by the legislature while inserting Clause 14-A in Section 2 of the Act vide Haryana Act No.26 of 2006, which reads as under:-

"(14-A) "Member" means a member of the municipality duly elected or nominated by the State Government." This definition of the "Member" further provides that there are two categories of members, one is elected and other is nominated by the State Government. Therefore, in our opinion, a nominated member cannot be deemed to be the elected member of the Committee.

32 to 34 xxxxxxxxxxxxx

35. Now we will examine the impact of Section 13-B, which was inserted vide amendment made by Haryana Act No.13 of 1997, and was not taken into consideration by the Full Bench in ***Krishan Kumar Singla's*** case (supra) while giving the interpretation that a nominated member of the Committee under Clause (ii) of Section 9(3) of the Act is deemed to be the elected member of the Committee and would fall under the expression "elected member" as provided under Section 21(3) of the Act. Clause (b) of Article 243V(1) clearly provides that a person shall be disqualified for being chosen as, and for being, a member of a Municipality if he is so disqualified by or under any law made by the Legislature of the State. Thus, this clause clearly empowers the State Legislature to enact a law providing disqualification for being a member of a Municipality. In view of

the said provision, the State Legislature has enacted Section 13-B and inserted the same in the principal Act vide Haryana Act No.13 of 1997. Sub- section (1) of Section 13-B clearly provides that no person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously. Sub-section (2) further provides that if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament, as the case may be. This Section clearly mandates that the member of Legislative Assembly of the State or member of Parliament cannot be an elected member of the Committee, and if the elected member of the Committee is elected to the State Legislative Assembly or Parliament he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. It means that a member of State Legislative Assembly or member of Parliament cannot remain as elected member of the Committee. If he cannot remain as elected member of the Committee, then he cannot be deemed to be the elected member of the Committee and, thus, would not fall under the expression "elected member" as provided under Section 21(3) of the Act. The said interpretation given by the Full Bench is contrary to the provisions of Section 13-B which was not even discussed by the Full Bench. Thus, in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of sub-section (3) of Section 9, who has been nominated as member of the Committee by virtue of his office, can be considered to be member of the Committee, but in light of the aforesaid Sections 18(1), 13-B and 9(2) of the Act, he cannot be considered and held to be an elected member of the Committee. Being a nominated member, he may cast vote at the time of election of President or Vice- president, but in view of the bar created vide proviso added vide Haryana Act No.10 of 2005 he shall not have any right to contest the election of the President or Vice-president as he is not the elected member of the Committee, and as per Section 18(1) of the Act only the elected member of the Committee can be elected as President or Vice-president.”

In other words, only embargo for the nominated members under Proviso to Section 9(3)(ii) & (iii) of the Act is with respect to right to contest for the post of President or Vice President whereas there is no restriction so as to cast vote during their election. The above decision was followed by this Court in ***Darshan Singh Vs. State of Punjab*** 2016(1) RCR (Civil) 236.

10. Before adjudicating the second issue arising in the present petitions, it would be expedient to refer to the relevant statutory provisions which read thus:-

Section 2(14A)

"Member" means a member of the municipality duly elected or nominated by the State Government."

Section 3A

"3A. 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 constituted under Articles 243K and 243ZA of the Constitution of India in the manner as may be prescribed by rules:

Provided that the State Election Commission shall consult the State Government before announcing the date of elections so that the State Government may, if 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 State Election Commission under Articles 243K and 243ZA of the Constitution of India and this Act.

Section 9 (2) and (3) (i) & (ii)

9 (1) xxxxxxxx

(2) Save as provided in sub-section (3), all the seats in the municipality shall be filled in by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.

(3) In addition to person chosen by direct election from the territorial constituencies, the State Government shall, by notification in the Official Gazette, nominate the following categories of persons as members of a municipality :—

(i) not more than three persons in case of Municipal council and not more than two persons in case of Municipal Committee having special knowledge or experience in municipal administration;
(ii) members of the House of the People and the Legislative Assembly of the State, representing constituencies which comprise wholly or partly, the municipal area ; and
(iii) Members of the Council of States, registered as electors within the Municipal area:
Provided that the person referred to in clauses (ii) and (iii) above shall not have any right to contest for the election of President or Vice President.
Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of a Municipal Committee, shall have the right to attend all the meetings of the municipality and to take part in discussion but shall not have the right to vote therein.

Section 11(2)

11. (1) xxxxxxx
(2) The term of the nominated member shall be co-terminus with the term of elected members.

Section 12

12. (1) Every municipality 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 :

Provided that a municipality shall be given a reasonable opportunity of being heard before its dissolution :

Provided further that all municipalities existing immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992 shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the State Legislature.

(2) An election to constitute a municipality shall be completed,—

(a) before the expiry of its duration specified in subsection (I) ;

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

Provided that when the remainder of the period for which the dissolved municipality would have continued is less than six-months, it shall not be necessary to hold any election under this section for constituting the municipality for such period :

Provided further that the first election to a municipality constituted after the commencement of the Haryana Municipal (Amendment) Act, 1994, may be held within a period of one year of its being notified as a municipality:

Provided further that elections to the municipalities where no elected body exists at the time of commencement of this Act may be held within a period of one year.

(3) A municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under sub-section (1) had it not been so dissolved.

(4) If a municipality is not reconstituted before the expiration of its duration laid down in sub-section (1), it shall be deemed to have been dissolved on the expiry of the said duration and, thereupon, provisions of subsection (2) of section 254 shall be applicable.

Section 13

13. If a member of a committee wishes to resign his office, he shall submit an application in writing to the Deputy Commissioner. If such resignation is accepted, it shall be notified in the Official Gazette on a date not less than fifteen days and not more than sixty days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat :
Provided that if a member who has submitted an application to resign wishes to withdraw his resignation, he may apply to the Deputy Commissioner within fifteen days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.

Section 13A

13A. (1) A person shall be disqualified for being chosen as and for being a member of a municipality—
(a) If he is so disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State of Haryana :
Provided that no person shall be disqulified on the ground that he is less than twenty-five years of age if he had attained the age of twenty-one years;
(b) if he is so disqualified by or under any law made by the Legislature of the State of Haryana ;
(c) if he has more than two living children :
Provided that a person having more than two children on or upto the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified.
(2) If any question arises as to whether a member of a municipality has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of such authority and in such manner as may be prescribed by rules.

Section 13-B(1)

Restriction on simultaneous or double membership:

13B(1) No person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously.

Section 15

15. (1) Whenever a vacancy occurs by the death, resignation or removal, or by the vacation of a seat under the provisions of sub-section (4) of section 11, of any member, the vacancy shall be filled within six months of the occurrence of such vacancy in accordance with the provisions of this Act and the rules.
Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the holding of a general election.

(2) Every person elected or nominated, to fill a casual vacancy, shall be elected or nominated to serve for the remainder of his predecessor's term of office.

Section 18

18. (1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its elected members to be president for such period as may be prescribed, and the member so elected shall become president of the Municipal Committee or Municipal Council :
Provided that the office of the president in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes and women in accordance with the provisions made in section 10 :
Provided further that if the office of president is vacated during his tenure on account of death resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category. (2) Every Municipal Committee or Municipal Council shall also, from time to time, elect one of its elected members to be vice president :
Provided that if the office of the vice-president is vacated during his tenure on account of death, resignation or no confidence motion a fresh election for the remainder of the period shall be held.
(3) The term of office of the vice-president shall be for a period of five years or for the residue period of his office as a member, whichever is less.

Section 24(1) & (2)

24. (1) Every election or nomination of a member and election of a president of a Municipal Committee or Municipal Council shall be notified in the official Gazette and no member shall enter upon his duties until his election has been so notified and until, notwithstanding anything contained in the Oaths Act, 1969 elected members has taken or made at a meeting of the Municipal Committee or Municipal Council an oath or affirmation of hi-allegiance to India and the Constitution of India in the following form, namely :—

"I AB, having been elected member of a Municipal Committee or Municipal Council of_____ do solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and the Constitution of India as by law established and I will faithfully, discharge the duties upon which I am about to enter".

(2) Every election of a member shall be notified in the Official Gazette by the State Election Commission and every election of a president shall be notified by the State Government in the official Gazette within thirty days from the date of declaration of the result of such election, and if no notification is issued within the said period, the election shall be deemed to have been notified.

Section 26

26. (1) Every meeting of a committee shall be either ordinary or special.

(2) Any business may be transacted at an ordinary meetings unless required by this Act or the rules to be transacted at a special meeting.

(3) When a special and an ordinary meeting are called for the same day the special meeting shall be held as soon as the necessary quorum is present.

Section 27

27. (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the members of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee hall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present

shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present thereat or not.

Rule 19

19. Election programme and appointment of Returning Officer.- (1) The State Election Commissioner, Haryana shall frame a programme for elections hereinafter referred to as the "election programme" of a committee.

(2) The election programme shall be published at least five clear days before the first day fixed for making nominations and shall specify the date or dates, on, by or within which;

(i) the nomination papers shall be presented;

Provided that a period of not less than five days shall be prescribed for presentation of nomination papers.

(ii) the list of nomination papers shall be posted;

(iii) the nomination papers shall be scrutinised;

(iv) Omitted;

(v) Omitted;

(vi) a candidate may withdraw his candidature;

(vii) the list of contesting candidates shall be posted;

(viii) the list of polling stations shall be posted;

(ix) the poll shall be held;

Provided that the date of poll shall not be earlier than the seventh day after the last date fixed for the withdrawal of candidatures:

(x) the ballot papers shall be counted (here time and place fixed for the purpose shall also be specified); and

(xi) the result of election shall be declared.

(3) The State Election Commissioner, Haryana shall authorise the Deputy Commissioner to designate a Returning Officer who shall be an officer of the Government for every committee:

Provided that nothing in this rule shall prevent the Deputy Commissioner from designating the same person to be the Returning Officer for more than one committee;

(4) The Deputy Commissioner may appoint one or more Assistant Returning Officers in the performance of his functions.
(5) Every Assistant Returning Officer shall, subject to the control of Returning Officer, be competent to perform all or any of the functions of the Returning Officer:
Provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the scrutiny of nominations unless the Returning Officer is unavoidably prevented from performing the said functions.
(6) The election programme shall be published at least five clear days before the first date for making nominations, by posting a copy of it at the office of the Deputy Commissioner, at the office of the committee concerned and at such other conspicuous places in the said committee as may be determined by the Deputy Commissioner in this behalf. The last dates for making nomination papers, their scrutiny and withdrawal shall not be public holidays. If any of the last dates for these purposes happens to be a public holiday such nominations, scrutiny and withdrawal shall take place the next succeeding day, which is not a public holiday.
(7) Subject to the provisions of sub-rule (6), the State Election Commissioner, Haryana may, by an order amend, vary or modify the election programme at any time:
Provided that unless the State Election Commissioner, Haryana otherwise directs, no such order shall be deemed to invalidate any proceedings already taken before the date of the order.

Rule 70

70. Oath of allegiance and election of President etc.-
(1) (a) Unless the Government otherwise directs, the Deputy Commissioner or any gazetted officer appointed by him in this behalf shall within thirty days, after the publication of the notification of the names of the members elected to a committee, convene the first meeting of the newly constituted committee at forty-eight hours notice to be delivered at their ordinary place of

residence to administer an oath of allegiance under section 24 of the Act. The notice shall clearly state that the oath of allegiance will be administered to the members present.

(b) The Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, within a period of thirty days of the meeting referred to in clause (a), convene a meeting of the members of the committee at forty-eight hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance will be administered to the left over members of the committee and that the election of the President and Vice-President shall be held in the meeting. The convener shall preside over the meeting till the election of the President and Vice-President is over:

Provided that such meeting shall be deemed to be validly convened meeting of the committee. Notwithstanding anything contained in any bye-laws made under the provisions of section 31 of the Act, the administration of oath of allegiance and the election of the President and Vice-President shall be recorded as part of the proceedings in the minutes of the “meetings.”

(2) The oath of allegiance shall be administered to a member who was not present at the meetings convened under sub-rule (1) or to a member elected or nominated to fill a casual vacancy subsequently by the Chairman of the meeting at which such member appears to take such oath.

(3) The term of office of the President shall be for five years or the residue of the term of his office as a member whichever is less. The President shall be elected from amongst the members of the Committee.

(4) The offices of the Presidents in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation which will be determined in the manner as detailed below:

Provided that the number of offices of the President reserved for the Scheduled Castes and Backward Classes in the State shall bear as may be the same proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes

and Backward Classes in the State bears to the total population of the State:

Provided further that not less than one third of the total number of offices of the President in the municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Classes women. The reservation of offices for women shall rotate to different municipalities which will be determined by draw of lots by a committee consisting of the Director, Local Bodies and Deputy Commissioners of the districts concerned or their nominee. If women of the reserved category are not available, then the office of the President shall be filled up from the male member of the said reserved category:

Provided further that the number of offices of the President for Scheduled Castes and Backward Classes shall be determined on the basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, secondly, from the remaining municipalities having largest population of Backward Classes and they rotate in the subsequent terms of offices of the municipalities having their next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regards Backward Classes and Scheduled Castes is the same the reservation will be determined by draw of lots to be conducted by a committee consisting of Director, Local Bodies and Deputy Commissioner of district concerned or his nominee.

Provided further that in case of office of the Municipal Council reserved for the Backward Classes, the President shall be elected from amongst the members belonging to the Backward Classes and in case of Municipal Committees, the member of Backward Class shall be deemed to be elected as President of the municipality reserved for the Backward Classes.

Rule 74

74. Election not to be questioned except by petition:- No election shall be called in question except by an

election petition presented in accordance with these rules.

Rule 75

75. Election petition.- (1) An election petition against the return of a candidate to an election or against the return of a President or Vice-President or against unsuccessful candidate with a view to his disqualifications under section 272 on the ground of corrupt practices or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at such election or an elector, shall be presented to the Tribunal within thirty days after the day on which the result of the election is declared by the Returning Officer.
(2) The petitioner shall enclose with the petition copies of the petition and of its enclosures equal to the number of respondents.

Explanation:- For the purposes of this rule, in a constituency in which a candidate is deemed to be elected under the provisions of rule 31 the day on which the list of contesting candidates is posted under the provisions of sub-rule (1) of rule 30, shall be deemed to be the day on which the result of the election was declared.

Rule 76

76. Contents of petition.- (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall where necessary, be divided into paragraphs numbered consecutively and shall be signed by petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908 (5 of 1908).
(2) The petition shall be accompanied by a list signed and certified in the like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt

practice and the date and place of the commission of each such practice:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit sworn before a Magistrate of the first class or a Notary or a Commissioner of Oaths and shall be in form 9.

(3) The Tribunal may upon such terms as to cost and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particular in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring fair and effectual trial of the petition:

Provided that particulars as to any additional corrupt practice not contained in the said list shall not be added by means of any such amendment.

Article 243R of the Constitution of India "**243R. Composition of Municipalities**

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards

(2) The Legislature of a State may, by law, provide (a) for the representation in a Municipality of (i) persons having special knowledge or experience in Municipal administration;
(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of Article 243S: Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality; (b) the manner of election of the Chairperson of a Municipality.

Article 243ZG of the Constitution of India 243ZG. Bar to interference by Courts in electoral matters.- Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

11. A perusal of the above provisions shows that Section 2(14A) of the Act defines “member” of the municipality duly elected or nominated by the State Government. According to Section 3A of the Act, the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the municipalities has been vested in the State Election Commission. Section 9 of the Act prescribes the number of elected members of municipalities. Clause (i) of sub section 3 of section 9 of the Act provides that the State Government shall by notification in the Official Gazette nominate not more than three persons in case of Municipal Council and not more than two persons in case of Municipal Committee having special knowledge or experience in municipal administration. Section 9(3)(ii) of the Act provides for nomination of members of the House of people and the Legislative Assembly of State representing constituencies which comprise wholly or partly, the municipal area. According to the first proviso to this sub section, the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice President. Section 11(1) of the Act defines the term of the office of elected members of the municipality as five years. Section 11(2) of the Act provides that the term of the nominated members shall be coterminous with the term of the elected members. Section 12 of the Act prescribes the duration of municipality which shall continue for five years from the date appointed for its first meeting. Disqualification for membership of a municipality has been laid down under Section 13A of the Act. Section 15 of the Act relates to filling up of casual vacancies. Section 18 of the Act deals with election of President and Vice President of Municipal Committee or Municipal Council. According to Section 24(1) of the Act, every election or nomination of a member and election of a President of a Municipal Committee or Council shall be notified in the official gazette. Under Section 24(2) of

the Act, every election of a member shall be notified in the Official Gazette by the State Election Commission not earlier than one week before the expiry of the during of the existing municipality and every election of a President shall be notified by the State Government in the Official Gazette within thirty days from the date of declaration of the result of such election. Section 26 of the Act provides for ordinary and special meetings of a committee. Section 27 of the Act defines quorum of the meeting of a committee which is one half of the number of members actually serving at the time but not less than three. Rule 19 of the Rules prescribes election programme and appointment of Returning Officers. According to Rule 70 of the Rules, the Deputy Commissioner or any Gazetted Officer appointed by him shall within a period of thirty days of the publication of the notification of the names of the members elected to a committee convene the first meeting of the newly constituted committee at forty eight hours notice to be delivered at their ordinary place of residence stating that the oath of allegiance will be administered to the members present and that the election of President and Vice President shall be held in the meeting. Rules 74 of the Rules prescribes that no election shall be called in question except by election petition. The procedure of filing an election petition and contents of the petition are contained in Rules 75 and 76 of the Rules. Article 243R of the Constitution of India provides for composition of municipalities. Clause 2 thereof inter alia provides that the legislature of State may by law provide for the representation in a municipality of the persons having special knowledge or experience in municipal administration and the members of the House of people and the members of the Legislative Assembly of the State representing Constituencies which comprise wholly or partly the municipal area. Article 243ZG of the Constitution of India restricts interference by courts in electoral matters. It has been provided that no election of a municipality shall be called in question except in an election petition.

12. Examining the scope of Section 9(3) of the Act, the category of the nominated members has been specified therein which are divided into
different categories i.e. one who are nominated in their personal capacity being a person of special knowledge or experience in municipal administration, others who are nominated by virtue of being representatives of the people being elected as members of Parliament and Legislative assembly and also members of the Council of States registered as elector within the Municipal area. On plain reading of Section 9 (3) of the Act, it emerges that only mandatory requirement under the said provision is that every nomination in terms thereof is required to be notified in the Official Gazette. The complete scheme of the Act shows that MP/MLA are notified as nominated member by virtue of their office and as a necessary corollary in those circumstances they shall remain nominated member till the expiry of their term as MP/MLA. It nowhere envisages that fresh notification for nomination of MP/MLA is required to be issued after every municipal election. However, their term with the Municipal Council shall come to an end with the expiry of the term of the Municipal

Council. Even if accepting the plea of the petitioners that the tenure of the nominated member has to be coterminous with the tenure of the elected member and a fresh notification is required to be issued on the constitution of the fresh Municipal Council, the same can only be applicable in the case of persons defined in clause (i) as they are nominated due to personal special knowledge or experience in Municipal Administration and would not apply for the members falling under clause (ii) & (iii) as they are being nominated by virtue of their office and not as an individual. Their tenure as a nominated member shall end only on vacation of their office as MP/MLA and the same cannot be even extended or shortened by reading the word co-terminus alone without harmoniously construing the same with the object of the Act.

13. To put it differently, according to the statutory provisions, the basic legal requirement is that every election/nomination ought to be notified in the Official Gazette. Once having done so, there is no mandate of the Act on the basis of which it could be claimed that fresh notification is to be issued for nomination of MP/MLA after every municipal election. If we were to accord such a meaning to the provision, in that situation, it would tantamount to making addition of certain words in the statute which otherwise were not intended to be so. It is well settled that the statute should be read as it is and court cannot add words to a statute or read words into it which are not there. Reference may be made to the judgment in ***Union of India & another*** Vs. ***Deoki Nandan Aggarwal,*** 1992 Supp.(1) SCC 323 wherein it was observed by the Apex Court as under:-

> "14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot re- write, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is

subversive of the constitutional harmony and comity of instrumentalities….."

14. Further, in ***Union of India & another*** Vs. ***Shardindu,*** (2007) 6 SCC 276, it was recorded by the Supreme Court that the provisions of the statute have to be read as a whole and in its context. The court can interpret a law but cannot legislate. The relevant portion reads thus:-

"25. Our attention was also invited to a decision of this Court in ***Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors.*** [(2002) 3 SCC 533]. Their Lordships held that casus omissus cannot be supplied by the Court. The provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying casus omissus does not arise. The Court can interpret a law but cannot legislate. Therefore, the submission of learned Addl. Solicitor General that since the contingency which has arisen in the present case was not foreseen by the draftsmen or by the Parliament, therefore, the casus omissus may be supplied by this Court i.e. since the incumbent has been facing the charge, his tenure should be cut short. We regret we cannot cure the lacunae by exercising the power under Article 142 of the Constitution and uphold the order of termination especially when such contingency has not been made a ground for disqualification for holding the post. Therefore, the submission of learned Addl. Solicitor General cannot be accepted."

15. Still further, Apex Court in ***B.Premanand and others Vs. Mohan Koikal and others,*** (2011) 4 SCC 266, observed that the statute should be read as it is without distorting or twisting its language following literal rule of interpretation as under:-

24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we

> say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

16. The interpretation placed by us as noticed hereinbefore, is in accordance with the provisions of the Constitution of India as well in as much as, under sub clause (ii) of clause 2(a) of Article 243-R of the constitution of India, the State Legislature has been given powers to enact laws with regard to members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprises wholly or partly the municipal area whereby they have the right to vote in the meetings of the municipality. According to plain reading of Article 243-R of the Constitution of India read with Section 9(3) (ii) of the Act, wherever notification has been issued in respect of MP/MLA being nominated members of the municipality, there is no requirement that fresh notification has to be issued every time after the term of the municipality has expired where the MP/MLA still continues to be so. To hold otherwise, would be taking away the right of MP/MLA to vote in the election of President/Vice President of the Municipal Council which has been guaranteed to them by the Constitution of India read with Section 9(3) (ii) of the Act.

17. Learned counsel for the petitioners had laid great emphasis on the term "co-terminus" used in Section 11(2) of the Act to buttress their submission that fresh notification would mandatorily be required after the dissolution of the earlier municipality. We do not find any substance in this submission as well. On combined reading of sections 9, 11, 15, 18, 21 and 24 of the Act and Rule 70 of the Rules and applying the rule of literal interpretation and without doing any violence to the language of the statute, the only conclusion that would follow is that the use of the word co-terminus Section 11(2) of the Act signifies that the tenure of the nominated members shall end for the purpose of the Act with them. It shall, however, recommence as soon as the fresh election of the municipal council takes place. The term of the MP/MLA in such situation shall also start with them but it shall be for the remainder of their term as MP/MLA. On conjoint reading of Section 11(2) with Section 9 of the Act, giving any other meaning to 'co-terminus' could give dangerous results. To illustrate, the tenure of the MP/MLA as well as elected members is of 5 years. However, it is not essential that the tenure of both remains for the same period. MP/MLA are nominated members only by virtue of their office and not otherwise. If the expression 'co-terminus' was to be interpreted narrowly, then there

is every possibility of a situation where EX-MP/MLA whose balance term is shorter than the Municipal Council may ask for extended period in the office of Municipality claiming that his tenure as nominated member in Municipal Council is co-terminus with the Municipality. In other words, if the tenure of MP/MLA had expired but period of Municipality had subsisted, MP/MLA, who had lost his election, can still claim that under section 11(2) of the Act, he is entitled to the extended term of Nominated member of Municipal Council. This could not be the intention of the Legislature in enacting Sections 9(3) (ii) and 11(2) of the Act.

18. The upshot of the above discussion is that the issuing of fresh notification, in the present case was not required and therefore non-issuance thereof cannot be held to be fatal as the MP/MLA hold the office as nominated members of the municipality by virtue of their being Members of Parliament and Legislative Assembly and their nomination as well as right to vote is governed by the constitutional mandate of Article 243R of the Constitution of India read with Section 9(3) (ii) of the Act. The status of nominated member of the Municipality though would cease on the expiry of the term of Nagar Parishad but would be revived for the remaining term of their being MP/MLA on the election and constitution of fresh municipality and would come to an end only on the dissolution of the Legislative Assembly/Parliament.

19. In all fairness to learned counsel for the petitioners, adverting to the judgments relied upon by the learned counsel for the petitioners, it may be noticed that in ***State of MP and another vs. Mahendra Kumar Saraf and others***, 2005(4) MPHT 185, the words terminus and co-terminus had been interpreted. It was held that the term of the President and councillor comes to an end after five years from the appointed date of the first meeting. As per Section 47(1) of MP Municipalities Act, 1961, the President and Vice President shall be deemed to have entered their respective offices from the date of their election and the outgoing President or the Vice President, as the case may be shall cease to function as President or Vice President. Section 36(4) of the said Act says that the term of the President shall be co-terminus with the term of the Council. In ***Kashmiri Lal vs. The State of Punjab***, AIR 1984 Punjab 87, it was pronounced that notification in the Official Gazettee is a sine qua non. The word notification, its publication and effect of its non issuance has been discussed in detail by Full Bench of this Court. It was laid down that Notification' shall mean a notification published under proper authority in the Official Gazette. In ***Bhawani Deen Mishra vs. State of MP and others, Writ Petition No.2266 of 2015 decided on 22.4.2015,*** question was of notification of nominated members of a Mandi committee. It was concluded that without notification they are not entitled to be considered as members of the committee. The issue was whether in the absence of publication of notification in the Official Gazettee, persons nominated under Section 11(1)(h)(i) and (j) of the Adhiniyam actually become

members of Mandi Committee or not so as to entitle them to participate in the meeting for motion of No confidence. It was held that provisions of the Adhiniyam were mandatory in nature. The purpose of publication of election and nomination in the Official Gazettee was to make known to public the particulars of the persons constituting Mandi committee. Apex Court in ***Kulsum R. Nadiadwala vs. State of Maharashtra and others***, 2012(6) SCC 348, held that it is mandatory to comply with both cumulative requirements of notice under section 4 of the Land Acquisition Act, 1894, i.e., to publish the notification in Official Gazettee and by public notices of the substance of the notification to be published in the locality where the land was proposed to be acquired. In ***Kirti Parsad Jain and others vs. State of Haryana and others,*** 1991(1) PLR 693, this court required that acceptance of resignation by member of municipal committee is to be notified within 60 days of receipt of application. It is only on publication of notification that member shall be deemed to have vacated his seat. In ***Khaliquz Zaman vs. State of UP and others, 2005*** All. LJ 1537, the Allahabad High Court interpreted Article 243R(2) of the Constitution of India to hold that it excludes the nominated members to vote only in the meeting. It was held that the word meeting as has been used in proviso to Article 243R(2) of the Constitution cannot be interpreted to include an election. Consequently, nominated members can also vote in the election held for the post of vice President. The writ petition challenging the election of Vice President on that ground was dismissed. In ***Yogesh Mittal vs. State of UP and others***, 2015(3) All LJ 182, it was held by the Allahabad High Court that a nominated member of an elected body shall hold office during the pleasure of the State Government. Conferring on nominated members a right to vote and stipulating that such members shall hold office during the pleasure of the State Government would seriously encroach on their independence and would constitute a hanging sword on every nominated member. In ***Suman and others vs. state of Haryana and others,*** 2007(3) RCR (Civil) 16 (P&H), it was held that the rules which require conduct of election of President or Vice President of a Municipal committee and do not prescribe any quorum, their election cannot be challenged for want of quorum. In ***K. Venkatachalam vs. A Swamickan,*** 1999(4) SCC 526, the Apex Court was considering disqualification of an assembly member. It was laid down that bar of Article 239(b) of the Constitution of India will not come into play when case falls under Articles 191 and 193 or under Article 173(c) and Section 5 of the Representation of the People Act, 1951. Period and purpose for filing an election petition has been specified. It was further held that Article 226 of the Constitution of India is couched in widest possible terms and unless there is clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of the Constitution of India. In ***Smt.Naravadi Bai Choudhary and others vs. State of MP and others,*** 2005(2) MPHT 119, it was held by the Madhya Pradesh High Court that election process commences only when Election Commission notifies the election. The propositions of law enunciated in these decisions are unexceptionable.

However, each case has to be decided on its own facts. The factual matrix in the present cases being different, the petitioners cannot derive any advantage from the said decisions.

20. In view of the above, we do not find any merit in the writ petitions and the same are hereby dismissed.

PUNJAB AND HARYANA HIGH COURT

HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Rajinder Kumar and Anothers Vs. State of Haryana & Others

CWP No.16990 of 2016, Decided on 2nd December, 2016

Present: Mr.Shiv Kumar, Advocate, for the petitioners.
Mr.Sandeep S.Mann, Sr.DAG, Haryana.
Mr.Lokesh Sinhal & Mr.Anil Kumar Rana, Advocates,
for respondent No.3.
Mr.M.S.Sindhu, Advocate, for respondent Nos.7 & 8.
Mr.Arvind Singh, Advocate, for respondent No.10.

RAMESHWAR SINGH MALIK, J.(Oral)

Present writ petition is directed against the order dated 30.11.2015 (Annexure P-14) passed by the Principal Secretary to Government Haryana, Urban Local Bodies Department-respondent No.1, whereby Adhoc Body for the delimitation of wards of Municipal Corporation, Faridabad, comprising Deputy Commissioner, Faridabad as Chairman, Director local bodies as ex-offico member and Administrator-cum- Commissioner, Municipal Corporation also as ex-offico member, with five other members belonging to various interests/ groups, was reconstituted.

Notice of motion was issued and in compliance thereof, written statements were filed by the respondents. Petitioner filed his replication to the written statement filed by respondent No.3.

Heard learned counsel for the parties.

Facts necessary for disposal of the present writ petition are that vide order dated 18.06.2014 (Annexure P-1) at page 35-A of the paper book, Adhoc Body was constituted by the competent authority, deriving its powers under Rule 4 (1) of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994, ("Rules of 1994" in short). This Adhoc Body was consisting of Deputy Commissioner, Faridabad as Chairman, Mayor of Municipal Corporation, Faridabad, Director, Urban Local Bodies, Haryana and Commissioner Municipal Corporation or his representative, as ex-offico members. This Adhoc Body headed by the Deputy Commissioner was also authorized to associate with it not more than five members belonging to various interests/groups out of the sitting members of the Corporation or out of the members of dissolved municipality, as envisaged under sub-rule (2) of Rule 4 of the Rules of 1994.

Thereafter, vide communication dated 06.02.2015 (Annexure P-2) five Councillors, including both the petitioners, who were enjoying the status of Senior Deputy Mayor and Deputy Mayor at that time, were nominated by the Mayor as associate members for the Adhoc Body, constituted vide above said order dated 18.06.2014 (Annexure P-1). In the interregnum, when the term of elected Councillors of the Municipal Corporation, Faridabad, was about to expire, respondent No.1, vide order dated 26.05.2015 (Annexure P-9) appointed the Commissioner, Municipal Corporation, Faridabad, as Administrator of the Municipal Corporation, from the date of expiry of duration of the term of elected Councillors.

After having been appointed as Administrator of the Municipal Corporation, Faridabad, Commissioner, Municipal Corporation, Faridabad, in the capacity as Administrator, sought to change the associate members for the Adhoc Body, vide his order dated 20.07.2015 (Annexure P-10). This order dated 20.07.2015 (Annexure P- 10) came to be challenged by the petitioners before this Court by way of CWP No.18860 of 2015 (***Rajinder Kumar & Anr. vs. State of Haryana & Ors.***) which was allowed by this Court, vide order dated 13.10.2015 (Annexure P-13).

Operative part of the order dated 13.10.2015 passed by this Court, needs to be referred here and the same reads as under:-

> "*It needs to be clarified that when the house was dissolved the number of wards were less and vide subsequent notification, the number of wards increased keeping in view change in Rule 3 of 1994 Rules as the formula for fixation of seats of Corporation has been changed. Be that as it may, the fact remains that even the delimitation of wards is to be done by the Adhoc Body, I do not find any justified reason why the Administrator has changed the already existing associate members,*

who were appointed in consonance with Rule 4(2) of 1994 Rules. There was no occasion for changing the associate members.

There is allegation in para 14 of the petition that under pressure of the ruling party, the members of the ruling party have been inducted in place of already existing associated members, so that they may delimit the wards according to their choice and form new wards as per choice. Although I am not required to comment on this aspect but the fact remains that once the Adhoc Body Committee is already existing, there is no question to change the same by the Administrator with the dissolution of the existing House of Corporation. Rather, Administrator should proceed with the committee which was already existing. Otherwise also, once the term of the Corporation is over, there is no Mayor. In place of Mayor, Administrator is appointed. If at all associated members are to be replaced, some reasons must be recorded why the existing associate members are removed and new members are brought in. The authorities are required to follow the minimum principles of natural justice. They cannot exercise the power arbitrarily.

In view of above, impugned order dated 20.07.2015 (Annexure P/10) cannot be sustained. Resultantly, the instant writ petition is allowed, impugned order dated 20.07.2015 (Annexure P/10) is set aside. No order as to costs."

A bare perusal of the order dated 13.10.2015 passed by this Court, including its abovesaid operative part, would make crystal clear that only the order dated 20.07.2015 (Annexure P-10) was under challenge before this Court. There was no challenge to the earlier order dated 26.05.2015 (Annexure P-9), whereby Commissioner, Municipal Corporation was appointed as Administrator of the Municipal Corporation, Faridabad. This was the specific reason that there was no occasion for this Court to consider and appreciate the scope and ambit of sub-rule (3) of Rule 4 of the Rules of 1994.

Since the entire case revolves around the interpretation of Rule 4 of Rules of 1994, it would be appropriate to reproduce it and the same reads as under:-

"4. Constitution of Adhoc Body-(1) for the purpose of carrying out the provisions of these rules, the Government shall constitute on Adhoc Body for each Corporation consisting of the following members namely:-

(a) Deputy Commissioner ...Chairman
(b) Mayor or any member as his representative ...Member
(c) Director, Local Bodies or his representative ...Member
(d) Commissioner or his representative not below the ranks of Extra-Assistant Commissioner ...Member

(2) The Adhoc Body shall associate with itself not more (than) five members belonging to various interests or groups out of the sitting members of the Corporation or out of the members of the dissolved Municipality.
(3) In case municipality mentioned in sub-rule (2) does not exist, the Adhoc Body shall associate with itself not more than five members belonging to various interests or groupgs from Municipal area."

Now the only issue that falls for consideration before this Court is; whether respondent No.1 has exceeded his jurisdiction, while passing the impugned order dated 30.11.2015 (Annexure P-14) whereby Adhoc Body was reconstituted. Learned counsel for the petitioners vehemently contended that the impugned order dated 30.11.2015 (Annexure P-14) is in violation of the order dated 13.10.2015 (Annexure P-13) passed by this Court, whereby the earlier writ petition of the petitioners was allowed.

He further submits that expiry of the term of Mayor of Municipal Corporation, Faridabad, shall be of no consequence and the Adhoc Body which was rightly constituted vide initial order dated 18.06.2014 (Annexure P-1) must have been allowed to continue as it is. In support of his contentions, learned counsel for the petitioners places reliance on two judgments of the Hon'ble Supreme Court in ***State of Tamil Nadu & Ors.*** *vs.* ***K.Shyam Sunder & Ors., 2011(8) SCC 737*** and ***Madan Mohan Pathak & Anr.*** *vs.* ***Union of India & Ors., 1978(2) SCC 50.*** Concluding his arguments, learned counsel for the petitioners prays for setting aside the impugned order (Annexure P-14), by allowing the present writ petition.

Per contra, learned counsel for the respondents contended that once the Mayor of Municipal Corporation, Faridabad, ceased to be the member of Adhoc Body, in view of the order dated 26.05.2015 (Annexure P-9), whereby Commissioner, Municipal Corporation, Faridabad, was appointed as Administrator of the Municipal Corporation, Faridabad, Adhoc Body was bound to be reconstituted. They further submit that in such a peculiar fact situation, sub-rule (3) of Rule 4 of the Rules of 1994, would come into operation and neither the Mayor nor any former

councillor of the Municipal Corporation, would be in a position to claim any right under sub-rule (3) for becoming an associate member of the newly constituted adhoc body.

Learned counsels for the respondents further submit that since it was not the requirement of the provisions of sub-rule (3) of Rule 4 of the Rules of 1994 to nominate or appoint either the Mayor or former Councillors of the Municipal Corporation as associate members to the Adhoc Body, no error of law was committed by respondent No.1, while passing the impugned order dated 30.11.2015 (Annexure P-14). Neither any right of the petitioners was infringed nor any kind of prejudice was caused to them, while passing the impugned order and the same deserves to be upheld. They pray for dismissal of the writ petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant writ petition has been found without any merit. Respondent No.1 has not exceeded his jurisdiction, while passing the impugned order and the same deserves to be upheld, for the following more than one reasons. So far as the first judgment relied upon by learned counsel for the petitioners in ***K.Shyam Sunder's*** case (supra) is concerned, the question before the Hon'ble Supreme Court was about the legislative powers which is not the issue involved herein. As noticed herein above, once the impugned action taken by respondent No.1 has been found within the four corners of law, the judgment of the Hon'ble Supreme Court in ***K.Shyam Sunder's*** case (supra) has not been found to be of any help to the petitioners, being distinguishable on facts.

Similarly, second judgment relied upon by learned counsel for the petitioners in ***Madan Mohan Pathak's*** case (supra) is also not applicable to the peculiar facts and circumstances of the case in hand. This judgment was dealing with an order whereby a judgment rendered by a Court of competent jurisdiction was sought to be nullified. Such has not been found the fact situation obtaining on record of the present case.

It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Further, sometimes difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in ***Padmausundara Rao & Anr.*** vs. ***State of Tamil Nadu & Ors., 2002(3) SCC 533.***

During the course of hearing, when confronted as to why subrule (3) of Rule 4 of the Rules of 1994 would not come into operation immediately after expiry

of the term of election of the Mayor and Councillors of the Corporation, enabling respondent No.1 to reconstitute the Adhoc Body under sub-rule (3), learned counsel for the petitioners had no answer and rightly so, it being a matter of record. Learned counsel for the petitioners also could not point out any patent illegality or perversity in the impugned order (Annexure P-14). Further, no prejudice of any kind, whatsoever, has been shown, which might have been caused to the petitioners by passing the impugned order, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Once the term of election of Mayor and Councillors of Municipal Corporation, Faridabad, had expired, they would have no indefeasible right to put their claim for becoming or continuing as associate members of the Adhoc Body, which was bound to be reconstituted and was rightly reconstituted, vide impugned order (Annexure P-14). It is neither pleaded nor argued on behalf of the petitioners that the petitioners or former Mayor of Municipal Corporation, Faridabad, ever challenged the order dated 26.05.2015 (Annexure P-9), either at the time of filing the earlier writ petition or even by way of instant writ petition.

Once the order dated 26.05.2015 contained in Annexure P-9 has gone undisputed and unchallenged before any Court of law, respondent No.1 was well within his jurisdiction to reconstitute the Adhoc Body, invoking the provisions of sub-rule (3) of Rule 4 of the Rules of 1994. Having said that, this Court feels no hesitation to conclude that respondent No.1 committed no error of law, while passing the impugned order (Annexure P-14) and the same deserves to be upheld, for this reason also.

When there was no restraint order passed by this Court, while allowing the earlier writ petition of the petitioners, vide order dated 13.10.2015 (Annexure P-13), there was no legal impediment for respondent No.1 in passing the impugned order, thereby reconstituting the Adhoc Body for the delimitation of wards of the respondent- Municipal Corporation. It is neither pleaded nor argued on behalf of the petitioners that order dated 26.05.2015 (Annexure P-9) was suffering from any patent illegality.

It is also not in dispute that at the time of passing the impugned order (Annexure P-14) term of election of Mayor as well as Councillors of the respondent-Municipal Corporation, including the petitioners, had expired and no elected body of the Municipal Corporation was existing. Under this undisputed fact situation obtaining on the record of the present case, it can be safely concluded that impugned order (Annexure P-14) passed by respondent No.1 does not suffer from any patent illegality and the same deserves to be upheld, for this reason as well.

So far as the allegation levelled on behalf of the petitioners, that impugned order was passed by respondent No.1 with a view to nullify the previous order dated 13.10.2015 (Annexure P-13) passed by this Court, is concerned, it has been duly considered but found wholly misplaced. As observed herein above, neither

there was any restraint order passed by this Court precluding respondent No.1 from reconstituting the Adhoc Body nor there was any other legal hurdle in his way to pass the impugned order (Annexure P-14), with a view to reconstitute the Adhoc Body.

In fact, after the expiry of the term of election of the Mayor and the petitioners, being the former Councillors of Municipal Corporation, Faridabad, passing of impugned order had become a compulsive necessity as a result of natural consequences, which has also been found duly supported by the relevant provisions of law contained in Rule 4 of the Rules of 1994. Thus, by no stretch of imagination, it can be said that either respondent No.1 intended or, as a matter of fact, violated the order dated 13.10.2015 passed by this Court, by passing the impugned order (Annexure P-14). Ordered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs. All pending applications also stand disposed of.

56205—S.E.C.—H.G.P., Chd.

Electronic Voting Machine (EVM)

State Election Commission Haryana

NIRVACHAN SADAN, PLOT NO.2, Sector-17, PANCHKULA

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