CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua, JJ.

BHAGIRATH SINGH, —*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1233 of 1964.

1964

October, 19th

Constitution of India (1950) — Art. 226 — Nature of jurisdiction under — Alternative remedy — Whether bar to granting relief under

Art. 226 — Punjab Panchayat Samitis and Zila Parishads Act (III of 1961) — S. 6 — Rejection of nomination paper of a candidate as a Primary Member on the ground that his nomination papers for election as a member of Gram Sabha had already been rejected and that he was also in arrears of rent — Whether proper — Provision for speedy disposal of election petitions to be made in the Act suggested — Returning Officers — How to perform their duties.

Held, that the jurisdiction conferred on the High Court by Article 226 of the Constitution is not appellate and the High Court is accordingly not empowered to act as a Court of appeal. What is conferred by this Article is supervisory jurisdiction which reserves to the writ Court power to remedy failure of justice caused, *inter alia,* by violation of Rule of law. Justice, it may be remembered, as enshrined in the Preamble of our Constitution, occupies the first place on the list of cherished human values which have been sought to be secured to all citizens of this Republic. Article 226 seems to have its roots in this purpose and is apparently designed to assure to the citizen justice denied to him by the subordinate Tribunals. Consistently with this superior status the writ Court does not ordinarily compete or come into conflict with the subordinate Tribunals in their normal functioning, nor is it intended to serve as a substitute for them. It is for this, among other reasons, that if a citizen can have justice elsewhere, the extraordinary jurisdiction of the writ Court is ordinarily not allowed to be invoked and the citizen is expected first to seek redress of his grievances from the subordinate Tribunals. But this is not a constitutional bar; it is merely a self-imposed restriction dictated by considerations of practical working, with the result that if the alternative remedy is not equally adequate, efficacious and speedy, this self-imposed restriction must give way in favour of interference to facilitate the cause of substantial justice and further its ends. The question as to whether or not the alternative remedy in a given case is equally adequate, efficacious and speedy also depends on its peculiar facts and circumstances and no rigid and inflexible rule can be formulated to cover every case. Any attempt to do so would be futile. The Court of writ has, strictly speaking, to apply its judicial mind to all the facts and circumstances before it and then come to a judicial determination whether or not in the interest of justice it should exercise its jurisdiction or relegate the aggrieved party to the alternative remedy.

Held, that the disqualifications of candidates for election as Primary Members are prescribed in section 6 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 and none of the various clauses of this section entitles the Returning Officer to reject the nomination paper of a candidate on the ground that his nomination paper for election as a member of the Gram Sabha had already been rejected and that he was also in arrears of rent.

Held, that it is desirable to make a provision for speedy disposal of election petitions in the Punjab Panchayat Samitis and Zila Parishads Act, 1961 and such provision must be effectively enforced, if an election petition is to serve the purpose of being an effective alternative remedy. Another aspect which is no less necessary to emphasise is that the Returning Officers must not only be properly posted with the relevant law on the subject of elections but they must also be properly trained and disciplined so as to be able to discharge their duties with the objective detachment of a judicial mind, completely free and insulated from administrative, political or personal considerations and influences. In the absence of this essential prerequisite, our representative institutions may not be able to inspire confidence and our democratic set-up founded on the principle of people's representation would seem to rest on weak foundations. If our experiment in Panchayati Raj in villages is to succeed and if we ~~except~~ expect effectively to train rural India in the democratic way of life as envisaged by our Constitution, then the election process must be worked strictly in accordance with law wholly uninfluenced by collateral considerations. It may be remembered that detailed and high democratic principles enshrined in written constitutions do not automatically establish democracy; it is the way these principles are acted upon in practice and enforced, and the way the citizens adopt the democratic way of life, both in public and private, which determines whether or not a country is a true democracy.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 15th September, 1964, to a larger Bench for decision owing to the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Inder Dev Dua on 19th October, 1964.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order rejecting the petitioner's nomination papers and holding of the election and further praying that the declaration of the result of the election be stayed pending the decision of this writ petition.

D. S. TEWATIA AND N. C. JAIN, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, for the ADVOCATE-GENERAL, and R. L. SHARMA, ADVOCATE, H. L. SARIN, H. S. SAWHNEY AND MISS ASHA KOHLI, ADVOCATES, for the Respondents.

ORDER

Dua, J. DUA, J.—The facts giving rise to this petition and the reasons for reference to a larger Bench are stated in my

referring order and need not be repeated. The referring order may accordingly be treated as a part of this order.

Before dealing with the petition on the merits, I may first dispose of the preliminary objection on which great reliance has been placed on behalf of the respondents. It is urged with force that the petitioner can challenge the impugned order rejecting his nomination paper by an election petition and that this Court should for this reason decline relief to the petitioner on the writ side. According to the submission, the alternative remedy provided by proceedings for election petition is equally adequate and efficacious and the petitioner should, therefore, not be permitted to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution. In support of this preliminary objection reliance has been placed on the following, among other, decided cases:—

(1) *Tek Chand* v. *Banwari Lal* (1),

(2) *Daulat Ram* v. *State of Rajasthan* (2),

(3) *Rattan Singh* v. *The Deputy Commissioner, Rohtak* (3),

(4) *Messrs Avtar Singh-Ranjit Singh* v. *The Assessing Authority* (4),

(5) *Thansingh Nathmal* v. *The Superintendent of Taxes* (5),

(6) *Rameshwar Kalyan Singh* v. *The State of Rajasthan* (6), and

(7) *Lakshman Lal* v. *Rameshwar Ram* (7).

It is unnecessary to refer in detail to these decisions, because in my view the position is now settled beyond controversy by the Supreme Court in more cases than one and the ratio of the Supreme Court decisions and the decisions of this Court cited on behalf of the respondents does not militate against that position. It

(1) A.I.R. 1956 Raj. 185.
(2) A.I.R. 1960 Raj. 86.
(3) I.L.R. (1962) 2 Punj. 533.
(4) 1963 P.L.R. 422.
(5) A.I.R. 1964 S.C. 1419.
(6) A.I.R. 1952 S.C. 64.
(7) 1963 Bihar L.J.R. 710.

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is true that in *Tek Chand's case* in head-note (a) we find the following observation:—

"* * * * * *
* * * * * *

The petitioner has a remedy to question the validity of the election by an election petition on the ground that his nomination paper was wrongly rejected by the Returning Officer. The High Court should never interfere before the remedy by way of election petition is exhausted."

It is on this observation that the respondent has placed his principal reliance. I regret my inability to read these sentences to mean that the learned Judges intended to lay down any rigid and absolute rule prohibiting the High Court from interfering in a fit case with an order improperly rejecting a nomination paper without exhausting remedy by way of election petition. The question of interference by this Court on its writ side is a matter of judicial discretion which must from the very nature of things call for determination after considering all the facts and circumstances of a given case. In the reported case the Court was influenced by more considerations than one in declining interference on the writ side and one of the important factors which weighed with the Court was that under section 19 of the Rajasthan Town Municipalities Act an appeal is provided to the High Court from the decision of the District Judge hearing the election petition where the decision is challenged on a point of law. Some of the decided cases cited on behalf of the respondents relate to taxation matters and one of them is concerned with election to a State Legislature under the Representation of the People Act, 1951. It need hardly be pointed out that in cases relating to elections to either House of Parliament or to the House or either House of the State Legislature, Article 329 of the Constitution operates as a constitutional bar in challenge to the elections by any mode other than an election petition. In respect of taxation matters also, I am aware of decided cases in which the approach of the Courts of writ has been somewhat more rigid against interference with orders of assessment, though even in taxation cases where challenge is clear-cut and is based on attack on the *vires* of the imposition or on jurisdictional or grave legal infirmity manifest on the face of the record which does not require probe into

conflicting or disputed facts, the Writ Courts have not hesitated from investigating into the grievance and they have not infrequently granted relief on proper case being made out to further the cause of justice. Even the Supreme Court has on more occasions than one granted relief under Article 32 of the Constitution on the view that a threat by the State to realise without authority of law tax from a citizen by using coercive machinery of an impugned Act is an infringement of guaranteed fundamental right and has also upheld High Court's interference under Article 226. *See Tata Iron and Steel Co., Ltd.* v. *S. R. Sarkar* (8), and cases noticed therein.

That the existence of an alternative remedy does not *per se* operate as an absolute legal bar to the exercise of jurisdiction of the High Court to issue a writ of *certiorari*, etc., under Article 226 of the Constitution or to such relief being granted on its writ side and that this factor has only self-created relevance in the exercise of the Court's judicial discretion is not disputed and indeed is no longer open to question in face of repeated unequivocal decisions of the Supreme Court to which it is no longer necessary to refer. In so far, however, as interference on writ side with grievances relating to elections to Municipal Committees or to the Panchayats, etc., is concerned, this Court has recently considered the legal position in more cases than one A Division Bench in *Devi Ram* v. *The State of Punjab, etc.*, Civil Writ No. 1408 of 1964 has very recently observed:—

> ". . . . that the existence of an alternative remedy, though an extremely important factor, and more particularly so in those election contests in which the Legislature has provided remedy by way of election petition, does by no means *per se* affect, curtail or impinge upon the jurisdiction of this Court under Article 226 which can legitimately be invoked by an aggrieved party in a fit case, when the true dictates of justice so demand. One of the basic and fundamental considerations which largely influence the judicial mind of the writ Court inducing it to interfere is when manifest injustice resulting from jurisdictional or grave and material legal

(8) A.I.R. 1961 S.C. 65.

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infirmity, patent on the face of the record, is plainly discernible without requiring deep probe into conflicting facts, and the alternative remedy, if any, is not equally effective. The matter being pre-eminently one of judicial discretion, no inflexible and rigid rule can or should be formulated to serve as a straight jacket in all cases. Each case would accordingly have to be dealt with in its own peculiar setting and circumstances and the mere existence of an alternative remedy does not of itself impose an obligation on this Court to relegate the aggrieved party to such remedy."

The fact that the bar on the basis of the existence of alternative remedy has again been pressed by the respondents' learned counsel in all seriousness, though without controverting that such bar does not go to the jurisdiction of the writ Court, impells me briefly to re-emphasise the legal position on the point. The jurisdiction conferred on this Court by Article 226 is not appellate and this Court is accordingly not empowered to act as a Court of appeal. What is conferred by this Article is supervisory jurisdiction which reserves to the writ Court power to remedy failure of justice caused, *inter alia*, by violation of Rule of law. Justice, it may be remembered, as enshrined in the Preamble of our Constitution, occupies the first place on the list of cherished human values which have been sought to be secured to all citizens of this Republic. Article 226 seems to me to have its roots in this purpose and is apparently designed to assure to the citizen justice denied to him by the subordinate Tribunals. Consistently with this superior status the writ Court does not ordinarily compete or come into conflict with the subordinate Tribunals in their normal functioning, nor is it intended to serve as a substitute for them. It is for this, among other reasons, that if a citizen can have justice elsewhere the extraordinary jurisdiction of the writ Court is ordinarily not allowed to be invoked and the citizen is expected first to seek redress of his grievances from the subordinate Tribunals. But this is not a constitutional bar, it is merely a self-imposed restriction dictated by considerations of practical working, with the result that if the alternative remedy is not equally adequate, efficacious and speedy, this self-imposed restriction must give way in favour of interference

to facilitate the cause of substantial justice and further its ends. Very recently, a Bench of this Court, of which my learned brother Grover J., was a member, speaking through the learned Chief Justice, in *Fateh Singh* v. *K. C. Grover*, Civil Writ No 927 of 1964, reaffirmed the legal position in these words:—

> "It may, however, be safely said that the existence of an alternative remedy is not by itself a bar to a petition under Article 226 and that whether Court should interfere or not would depend entirely on the facts and circumstances of the particular case in which the point arises."

Shri Sarin for the respondents has submitted that the decisions cited by him were not considered by that Bench, inferentially suggesting thereby that the question requires re-examination. I am not impressed by this submission. The legal position is settled beyond controversy and it was wholly unnecessary for that Bench to notice various authorities in this judgment. I must say that I am in complete and respectful agreement with the view taken in the unreported decision and indeed sitting with the learned Chief Justice, I myself took the same view in *M/s. Puran Chand-Gopal Chand* v. *The State of Punjab* (9).

The question as to whether or not the alternative remedy in a given case is equally adequate, efficacious and speedy also depends on its peculiar facts and circumstances and no rigid and inflexible rule can be formulated to cover every case. Any attempt to do so would, in my view, be futile. The Court of writ has, strictly speaking, to apply its judicial mind to all the facts and circumstances before it and then come to a judicial determination whether or not in the interest of justice it should exercise its jurisdiction or relegate the aggrieved party to the alternative remedy. In the case in hand, the petitioner's nomination papers were rejected on 18th June, 1964 and within four days he presented the writ petition in this Court in which *ad interim* prayer for staying the election fixed for 22nd June, 1964, was also made. Bedi, J., who was acting as Vacation Judge on 22nd June, 1964, granted stay of declaration of result of the election up to 13th July, 1964, the date

(9) A.I.R. 1963 Punj. 28.

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fixed for preliminary hearing. The stay order was to be communicated telegraphically. On 13th July, 1964, the Motion Bench issued notice for 3rd August, 1964, and also continued the stay till the said date. It is noteworthy that Shri M. R. Sharma, the learned counsel appearing for respondents Nos. 1 to 3 and accepting notice on their behalf on 3rd August, 1964 did not oppose the order continuing the stay on the ground that the result had already been announced on 22nd June, 1964. It has been stated at the bar by the learned counsel that he was not aware of this fact, but I have not the least doubt that his client must have received the intimation pursuant to the order of Bedi, J. dated 22nd June, 1964, and it was presumably as a result of the receipt of that notice that he appeared on 13th July, 1964, and accepted notice. As a matter of fact, even in the return it has nowhere been explained as to in what circumstances the result of the election was announced on 22nd June, 1964, in face of the stay order of which telegraphic information was ordered to be given. An election petition can, under Rule 4 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules), 1961, be presented within 20 days from the date of announcement of the result of the election. This would mean that the election petition by the present petitioner could be presented within 20 days from 22nd June, 1964, and such a petition would clearly be now barred by time. It is not suggested that there is any provision of law enabling presentation of election petition after the prescribed period by showing sufficient cause for the delay except Rule 4(2) which does not concern us. In this connection, it may not be out of place to observe that the earlier election petition filed by the petitioner questioning the election held on 5th January, 1964 is still in the preliminary stages and up to 5th August, 1964 attempts were being made to secure attendance of the parties. Such delays in the disposal of the election petitions do seem to me to detract from the efficaciousness of this alternative remedy on the facts and circumstances of the case in hand. In order to determine whether or not a given alternative remedy is equally adequate and quick so as to merit refusal by this Court to go into the controversy, it is necessary to consider the nature of the challenge to the impugned order as also the conduct of the writ petitioner. In the case in hand, the challenge is based on a clear-cut legal argument urging grave error of law on

the face of the record which does not require enquiry into disputed facts. The petitioner's conduct is also free from blame and the writ petition was presented with the utmost expedition. I am, therefore, clearly of the view that on the facts and circumstances brought to our notice in this case the existence of alternative remedy cannot and should not deprive the petitioner of his right to claim adjudication of his grievance from this Court on the writ side.

This brings me to the merits of the legal infirmity. The impugned order dated 18th June, 1964, does not specifically mention the clause of section 6 of the Punjab Panchayat Samitis and Zila Parishads Act (Act No. 3 of 1961) (hereinafter called the Act) under which the petitioner's nomination paper was rejected. All that this order shows is that Hari Singh, had raised an objection against the petitioner's nomination paper on the ground that the latter's nomination paper for election as member of Gram Sabha had already been rejected and that he was also in arrears of rent. After going through the affidavits of Hari Singh and Bhagirath Singh, petitioner, the Returning Officer came to the conclusion that Bhagirath Singh, had been disqualified for being elected as a member of the Gram Sabha because his nomination paper had been rejected. It was on the basis of this conclusion that the petitioner's nomination paper for election as a Primary Member of the Block Samiti representing the Co-operative Societies was rejected. Before us, the respondents' learned counsel have attempted to support the impugned order by reference to clause (f), (j) and (k) of section 6 of the Act. These clauses are in the following terms:—

> "Disqualifications of candidates for election as Primary Members:—
>
> 6. No person shall be eligible for election as a Primary Member if such person—
>
> * * * * * *
>
> (f) is so disqualified by or under any law made by the Legislature of the Punjab State; or
>
> * * * * * *
>
> (j) is disqualified from membership of a Municipal Committee, Gram Panchayat, Panchayat Samiti, Zila Parishad or any other local

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authorities as a result of his election having been set aside under rules made under this Act or any other enactment for the time being in force relating to Municipalities, Panchayats or other local authorities; or

(k) is disqualified for being elected or co-opted as a member; or

* * * * *."

None of these three clauses seems to me to apply to the petitioner. It has not been shown under which law made by the Legislature of the Punjab State the petitioner is disqualified for being elected as a Primary Member of the Panchayat Samiti. That the expression "so disqualified" in clause (f) refers to disqualification in regard to eligibility for election as a Primary Member appears to me to be clear on the language of this clause read with section 5 in the light of the definition of the word "member" contained in section 2(9) of the Act. Similarly, there is nothing on the record to show that the petitioner is disqualified as a result of his election having been set aside within the contemplation of clause (j). For bringing the petitioner's case under clause (k), it has been argued that as the petitioner was held to be disqualified for being elected as a member of the Gram Sabha on 5th January, 1964 when his nomination paper for that election was rejected, he must be considered to be disqualified for being elected or co-opted as a member within this clause. It may be pointed out that it was on this identical reasoning that the impugned order was apparently passed. The fallacy underlying this argument appears to me to be based on failure to apply the definition of the word "member" contained in section 2(9), according to which "member" means a member of the Panchayat Samiti or Zila Parishad as the case may be. The submission that this definition is not intended to be rigid and if the context otherwise requires, the Court can depart from it, is of no avail to the respondents and indeed their counsel are unable to point out any cogent reason which in the context would justify such departure. As a matter of fact, the respondents' contention seems to me to be almost circular, in that, it is first assumed without urging any cogent reason that the word "member" as used in clause (k) is wide enough to include member of a Gram Sabha, and then it is sought on the basis of this assumption to induce the Court to depart from the statutory

definition and to give this word a wider meaning so as to justify the assumption. The bald submission is thus unsupported by any cogent or convincing reason. I have accordingly no hesitation in repelling it. I may point out that when the Legislature has intended a wider meaning of the word "member", it has expressed its intention specifically as is clear from clause (j). The position, therefore, boils down to this: that there is absolutely no material on the record establishing disqualification of the petitioner from being eligible for election as a Primary Member of the Panchayat Samiti on the dates when his nomination paper was either filed or rejected. The ground in support of the impugned order which has, as a last resort, been urged is, that, since in January, 1964, the petitioner's nomination paper for election to the Gram Sabha was rejected on the ground of his being a lessee of the Panchayat land, he must be held to be disqualified for being elected as member of the Panchayat Samiti in the present election as well. It is not denied that an election petition in regard to the earlier election to the Gram Sabha is still pending in which the correctness of the order rejecting the petitioner's nomination paper is in issue.

Now, in the first instance, merely because on 5th January, 1964. the petitioner was considered to be a lessee of Panchayat land, it does not necessarily follow that he was also one in June, 1964. Secondly, non-eligibility for being elected as a member of the Gram Sabha need not necessarily mean non-eligibility for being elected as a Primary Member of Panchayat Samiti. Our attention has not been drawn to any provision of law which would suggest that a lessee of Panchayat land would be ineligible for election as a Primary Member of a Panchayat Samiti. Clause (j) of section 6 only speaks of disqualification as a result of the candidate's election having been set aside: this would obviously be different from initial ineligibility for election which does not arise out of an order setting aside the candidate's election; the context of this clause seems to me to be clear on this point. Clause (k) is also inapplicable as no disqualification of the petitioner has been brought to our notice; the word "member" in this clause, I may repeat, is intended to bear the defined meaning, no cogent or convincing reason having been urged for adopting a wider meaning, and even if the meaning

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is to be somewhat wider, there is nothing to suggest as to how wide it should be; in other words, what kind of membership and of which local body should be deemed to have been intended by the Legislature. It is worth noting that except for the earlier order of rejection of the petitioner's nomination paper on 5th January, 1964, there is no other material to which our attention has been drawn which would establish the petitioner's disqualification justifying the impugned order. I have, therefore, little hesitation in holding that the impugned order is wholly unsupportable and contrary to law and, therefore, liable to be quashed in these proceedings.

There is one aspect to which I am inclined to advert before concluding. If an election petition in a case like the present is to serve the purpose of being an effective alternative remedy, then it is desirable to make a provision for its speedy disposal and such provision must be effectively enforced. The Parliament has in its wisdom made such a provision in section 90(6) in the Representation of the People Act, 1951. It is true that in some cases parties have managed to defeat the purpose of this provision by unduly prolonging the proceedings, but by and large, this provision has promoted the cause of speedy disposal of election petitions. The authorities concerned in this State might also with advantage consider the question of making some effective provision for speedy disposal of election petitions like the present one, for otherwise an unscrupulous party may by adopting delaying tactics easily render an election petition futile for all practical purposes. Another aspect which is no less necessary to emphasise is that the Returning Officers must not only be properly posted with the relevant law on the subject of elections but they must also be properly trained and disciplined so as to be able to discharge their duties with the objective detachment of a judicial mind, completely free and insulated from administrative, political or personal considerations and influences. In the absence of this essential pre-requisite, our representative institutions may not be able to inspire confidence and our democratic set-up founded on the principle of people's representation would seem to rest on weak foundations. If our experiment in Panchayati Raj in villages is to succeed and if we expect effectively to train rural India in the democratic way of life as envisaged by our Constitution, then the election pro-

cess must be worked strictly in accordance with law wholly uninfluenced by collateral considerations. It may be remembered that detailed and high democratic principles enshrined in written constitutions do not automatically establish democrary; it is the way these principles are acted upon in practice and enforced, and the way the citizens adopt the democratic way of life, both in public and private, which determines whether or not a country is a true democracy. The most inspiring modern democracy, it may be pointed out, has no written Constitution and another great democracy has, comparatively speaking, a brief written Constitution.

As a result of the foregoing discussion, this writ petition succeeds and allowing the same I quash the impugned order dated 18th June, 1964 by which the petitioner's nomination paper was rejected. The election held on 22nd June, 1964, must also automatically be set aside and I order accordingly. The election in question would, therefore, have to be held again in which the petitioner would be entitled to contest. The petitioner must get his costs.

A. N. GROVER, J.—I agree.

B R.T.