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(S. S. Sandhawalia, C.J.)

months. It is also necessary to make a provision for such members as well.....”

(3) Now viewed in the aforesaid context of the legislative history, it appears to be plain that as originally enacted the statute had the clear intent of prescribing a minimum period of five years for eligibility for pension. It is equally not in dispute that the full term of a Legislative Assembly visualised by the Act is fixed by the Constitution to be five years. The working of the Act, however, brought to the fore the fact that Legislative Assemblies are sometimes dissolved a little before the period of five years for the purposes of the next general elections. The amendment of 1979 was, therefore, necessitated primarily for the cases of those members who had virtually served for the full term of five years of the Legislative Assembly but were marginally short thereof by three months. Sub-section (1A) of section 3 of the Act was, therefore, directed to this end alone and has little relevance or application to the cases of members who may have served in the Legislative Assembly in two terms or more.

In view of the above, the writ petitioner cannot derive any advantage from sub-section (1A) of section 3 of the Act. The writ petition is, therefore, wholly without merit and has to be dismissed *in limine*. There will be no order as to costs.

N.K.S.

Before G. C. Mital and I. S. Tiwana, JJ.)

SUNDER SINGH AND OTHERS,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 3284 of 1983.

September 21, 1983.

Punjab Gram Panchayat Act (IV of 1953) as applicable to the State of Haryana—Sections 5 and 13-O—Haryana Gram Panchayat Election Rules, 1971—Rules 6 to 13, 18, 21, 29, 35 and 43—Constitution of India 1950—Article 226—Elections to Gram Panchayat—Section 5 read with the Rules— Whether envisages reservation of

any constituency or seat for a Scheduled Caste candidate—Seats reserved for Scheduled Caste Candidates—Number of Scheduled Caste candidates contesting the elections the same as the number of seats reserved for them—Such Scheduled Castes candidates—Whether to be declared elected or to go through the process of elections alongwith the non-Scheduled Caste candidates—Number of non-Scheduled Caste candidates same as the number of seats available for them—Such candidates—Whether could be declared elected without joining the election process—Election results declared by the Returning Officer—Deputy Commissioner—Whether has power under Rule 43 to modify the result in whole or in part—Illegal election—Whether could be challenged in a writ petition filed after the period of limitation prescribed for an election petition.

Held, that on a reading of the provisions of the Punjab Gram Panchayat Act, 1952 particularly section 5 and Rules 6 to 13 of the Haryana Gram Panchayat Election Rules, 1971, the only conclusion which can be drawn is that there is no reservation of any constituency or seat for Scheduled Castes. Proviso (c) to sub-section (4) of section 5 provides that if the required number of successful candidates does not include one or two members from the Scheduled Castes then the Scheduled Caste candidate or candidates, securing the highest number of votes from amongst themselves, shall be deemed to have been elected as the last, or the last two panches. If the requisite number of members of the Scheduled Caste candidates are not elected in this manner, by virtue of proviso (d) to sub-section (4) of section 5, the prescribed authority has to make up the deficiency by nominating duly qualified person or persons of such castes. Therefore, what provisos (c) and (d) of sub-section (4) of section 5 provides is that there should be minimum one or two Scheduled Caste panches and not that there can be only one or two Scheduled Caste panches and not more. If the required number of successful candidates does not include one or two members of the Scheduled Castes, then such number of Scheduled Caste candidates have to be elected who may have secured highest votes amongst the Scheduled Caste candidates and if no Scheduled Caste candidate contests the election, then the requisite number of Scheduled Caste panches have to be nominated under proviso (d) to sub-section (4) of section 5. Therefore, the minimum limit is fixed and not the maximum. If all the required number of successful candidates are Scheduled Castes or include more than the requisite number of Scheduled Caste candidates, then provisos (c) and (d) would not come into operation.

(Paras 13 and 14).

Held, that section 5(4) of the Act read with Rules 10, 12, 13, 18 and 21 of the Rules shows that the entire election process of panches is one and if the nomination papers are more than the number of panches to be elected, then the procedure of the election provided under rule 10 and subsequent rules, has to be followed by

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allocation of separate symbols, providing separate ballot boxes etc. If the law framers had intended that election of Scheduled Caste panches was to be held separately from the election of non-Scheduled Caste panches, then rule 21 would have been differently worded. It would have been specifically provided that for the election to the offices of the panches, every elector shall be entitled to two non-transferable ballot papers—one to be cast in favour of non-Scheduled Caste panch and the other in favour of Scheduled Caste panch. This further strengthens the conclusion that the entire election process for the offices of panches is an indivisible one. Moreover, it is not that one or two Scheduled Caste panches are to be elected. They can be more than the requisite number also. Therefore, if the total nomination papers, whether of Scheduled Caste candidates or of Non-Scheduled Caste candidates, are more than the requisite number of seats, then the whole election process has to be gone through. The Returning Officer cannot declare one panch or two panches as Scheduled Caste candidates unopposed without election when one or two Scheduled Caste panches are left in the field. Similarly, the Returning Officer cannot declare the remaining Non-Scheduled Caste panches as elected unopposed without going through the election process because the nomination papers of the non-Scheduled Caste candidates were not more than the seats which were considered to go to them. According to rule 13, the total number of candidates is to be seen without allocating them to the seats for Scheduled Castes and non-Scheduled Castes. It is, therefore, held that the whole election is one and if the total number of candidates collectively of both categories is more than the requisite number of seats, then the whole election process has to be gone through and while declaring the result if it is found that the requisite number of panches who have secured highest votes including one or two Scheduled Caste panches, then the persons securing highest number of votes would be declared elected. In case one or two Scheduled Caste panches, do not come amongst the successful candidates, whosoever has secured the highest number of votes would be declared elected to make up the minimum number of Scheduled Caste panches. In case no Scheduled Caste candidate had filed nomination papers, then the requisite number of offices of panches have to be left vacant to be filled in by the prescribed authority under proviso (d) to section 5 (4) of the Act.

(Para 17)

Held, that the proper remedy to challenge the election is by filing an election petition within the period of limitation. If the defeated candidates or the voters do not choose to challenge the election result and allow the same to become final, then after the expiry of limitation, it will not be open to the aggrieved person to challenge the same by filing a writ petition under Article 226 of the Constitution of India beyond the period of limitation provided for

filing election petition. Therefore, if a defeated candidate comes to this Court under Article 226 of the Constitution after the expiry of limitation provided for filing election petition, he would not be entitled to any relief from this Court. However, in suitable cases, writ petitions may be entertained within the period of limitation provided for filing election petition and relief may be given in writ jurisdiction instead of driving the party concerned to election petition.

(Para 20).

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (a) *the Oath Ceremony which is to take place on the 15th of July, 1983 be stayed.*
- (ii) *Advance notices on the respondents may kindly be exempted.*
- (iii) *the records of the case be called for.*

Madhu Tewatia, Advocate, for the Petitioner.

B. S. Pawar, A.A.G. Haryana, H. L. Sarin, Sr. Advocate, with R. L. Sarin, M.M.S. Bedi, Advocates, for private respondents.

JUDGMENT

(1) In this bunch of writ petitions, the following questions arise on some of which there is no direct decision. Moreover, the same provisions have been interpreted or understood differently by different Deputy Commissioners and different Returning Officers and similarly by the candidates and the voters. This has necessitated the interpretation of relevant law by this Court for the guidance of all concerned :—

- (1) Whether section 5 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act) as amended in Haryana up-to-date, read with the Haryana Gram Panchayat Election Rules, 1971 (hereinafter referred to as the Rules) with specific reference to Rules 6 to 13, 18, 21, 23, 29 and 35 of the Rules, envisages reservation of any constituency or seat for Scheduled Caste candidates. If not so, whether separate election is envisaged for the non-Scheduled Caste candidates meaning thereby that if in a constituency at least one seat must go to a Scheduled

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Caste candidate and if there is only one Scheduled Caste candidate, whether he is to join the election, i.e., the process of allotment of symbols, putting a separate ballot box for him; has to be gone through and whether he can be declared elected unopposed without allotting a symbol and a separate ballot box for him? Similarly, if the total Panches to be elected are five, out of whom one has to be a Scheduled Caste and there are two Scheduled Caste candidates or more, but there are four non-Scheduled Caste candidates, whether the four non-Scheduled Caste candidates can be declared elected unopposed without election or they have also to join the election process, i.e., by allotting separate symbols, separate ballot boxes etc.?

- (2) Whether under Rule 43 of the Rules, the Deputy Commissioner is empowered to change the result of election declared by the Returning Officer wholly or partly?
- (3) Assuming the elections to be illegal, whether the same can be set aside in a writ petition filed beyond limitation prescribed for filing of election petition?

(2) The first two points have arisen before us because different Deputy Commissioners have taken different views of the provisions of the Act and the Rules and have acted differently in interfering with the election result in exercise of their powers under Rule 43 of the Rules. Similarly, different Returning Officers have taken different views of the same and have followed different election processes which would be clear from the following facts.

I. C.W.P. No. 3284 of 1983.

(3) In this writ petition, total eight Panches had to be elected out of whom there were to be two Scheduled Caste Panches. 15 nomination papers were received and out of them, two nomination papers related to Scheduled Caste candidates. The two Scheduled Castes candidates were declared elected unopposed and the election had taken place amongst the remaining 13 candidates. Writ petition has been filed within the limitation provided for filing the election petition.

II. C.W.P. No. 3611 of 1983.

(4) In this writ petition, one Scheduled Caste candidate was left in the field after withdrawal. Since there had to be one Scheduled

Caste Panch, he was declared elected unopposed without joining him in the election process, i.e., without putting a separate ballot box for him. The election was held amongst the remaining non-Scheduled Caste candidates for the remaining seats of Panches. In this case, writ petition has been filed in this Court beyond the limitation provided for filing the election petition.

(5) Facts of Civil Writ Petition No. 3509 of 1983 are similar to the facts of C.W.P. No. 3611 of 1983, namely, two Scheduled Caste candidates had to be elected and since there were only two Scheduled Caste candidates in the field, they were declared elected without their actual participation in the election. This writ petition has been filed in this Court beyond the limitation prescribed for filing of election petition.

III. C.W.P. 3563 of 1983.

(6) In this writ petition, total five Panches were to be elected out of which one had to be a Scheduled Caste. There were four Scheduled Caste candidates and four non-Scheduled Caste candidates. The four non-Scheduled Caste candidates were declared elected unopposed without any election and the election was held amongst the four Scheduled Caste candidates for electing one Scheduled Caste Panch from amongst them and the person who get the highest votes, was declared elected. After the expiry of limitation provided for filing election petition, the Deputy Commissioner, in exercise of his powers under Rule 43 of the Rules, declared the entire election null and void and ordered fresh elections.

Similar are the facts in C.W.P. No. 3960 of 1983.

IV. C.W.P. No. 3355 of 1983.

(7) In this writ petition, total four Panches had to be elected out of whom one had to be Scheduled Caste. After withdrawal and scrutiny of nomination papers, six candidates were left. All the six candidates were Scheduled Caste but three of them had not filled in their nomination forms as Scheduled Caste candidates. The remaining three candidates had filled in their nomination forms as Scheduled Caste candidates. The three Scheduled Caste candidates, who had not filled in their nomination forms as such, were declared elected unopposed for the three non-Scheduled Caste seats. The election was held amongst the remaining three Scheduled Caste candidates who had filled in their nomination forms as such and the

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candidate, who got the highest number of votes, was declared as the fourth elected candidate. The Deputy Commissioner, in exercise of his powers under Rule 43 of the Rules, set aside the entire election and ordered that fresh election should be conducted amongst the six candidates who had filed their nomination papers. This order was passed before the expiry of limitation provided for filing the election petition.

Similar are the facts in C.W.P. No. 3403 of 1983.

V. C.W.P. No. 3665 of 1983.

(8) In this writ petition, total five Panches were to be elected, out of whom one had to be a Scheduled Caste. After withdrawal and scrutiny of nomination papers, the two Scheduled Caste candidates were left in the field and four non-Scheduled Caste candidates. Although in the writ petition it is averred that no election was held amongst the non-Scheduled Caste candidates and they were elected against the open category seats and that election took place amongst the two Scheduled Caste candidates to elect one of them, but from the election result placed by the petitioners on record, we find that ballot boxes for all the six candidates were placed and voting for all the six candidates was held. The two Scheduled Caste candidates polled 374 and 295 votes out of whom the candidate who got 374 votes, was declared elected whereas the remaining non-Scheduled Caste candidates polled 24, 18, 12 and 10 votes and all these four persons were declared elected for the seats other than the Scheduled Caste seat. One thing is clear from the petitioners' averments that it was given out by the Returning Officer that since there were four candidates for the four general seats, therefore, they have to be elected and that is why the great majority of voters concentrated in voting only for the two Scheduled Caste candidates. After the four non-Scheduled Caste candidates and one Scheduled Caste candidate, who got the highest votes, were declared elected by the Returning Officer, the Deputy Commissioner in exercise of his powers under Rule 43 of the Rules, declared the defeated Scheduled Caste candidate, who polled 295 votes, as elected and declared defeated the non-Scheduled Caste candidates who had polled 10 votes after modifying/changing/cancelling the result as declared by the Returning Officer. The Deputy Commissioner passed the order before expiry of limitation provided for filing the election petition.

VI. C.W.P. No. 3862 of 1983.

(9) In C.W.P. 3862 of 1983, five Panches had to be elected out of whom, one had to be of Scheduled Caste. In this case election was held amongst nine candidates, five non-Scheduled Caste and four Scheduled Caste. The Returning Officer declared elected one Scheduled Caste who polled the highest votes amongst Scheduled Caste candidates who had secured 99 votes. The Returning Officer also declared elected four non-Scheduled Caste candidates, who had polled 170, 138, 106 and 52 votes. Lachhman was non-Scheduled Caste candidate who had polled 52 votes and was declared elected by the Returning Officer. Roop Ram, a Scheduled Caste candidate, had secured 64 votes and was declared defeated by the Returning Officer on the basis that only one Scheduled Caste candidate had to be declared elected and not more. The Deputy Commissioner, in exercise of his powers under Rule 43 of the Rules, interfered with the election result prepared by the Returning Officer and declared Roop Ram, Scheduled Caste candidate, as duly elected and declared Lachhman as defeated. The Deputy Commissioner passed the order before expiry of limitation provided for filing the election petition.

VII. C.W.P. No. 3420 of 1983.

(10) In C.W.P. No. 3420 of 1983, six Panches had to be elected out of whom two had to be of Scheduled Caste. After the counting was done, the Returning Officer declared four non-Scheduled Caste candidates who had secured the highest votes amongst the non-Scheduled Caste candidates and declared elected two Scheduled Caste candidates who secured the highest votes amongst the Scheduled Caste candidates, and sent the result to the Deputy Commissioner. The same day, afterwards, he found that Bir Singh, Scheduled Caste candidate, who had been declared defeated, had secured 135 votes whereas the last non-Scheduled Caste candidate declared elected, namely, Prem, had secured 112 votes, and considering that minimum Scheduled Caste candidates had to be two and not that only two Scheduled Caste candidates had to be elected, he prepared another election result the same day and declared Bir Singh, Scheduled Caste candidate, elected and Prem, non-Scheduled Caste candidate, defeated and sent this result also to the Deputy Commissioner. When the oath ceremony took place, at that time Bir Singh was administered oath and not Prem. Prem has filed writ petition within limitation provided for filing the election petition.

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VIII. C.W.P. No. 3542 of 1983.

(11) In this writ petition, total five Panches including one Scheduled Caste candidate, had to be elected. In the field there were seven non-Scheduled Caste candidates and two Scheduled Caste candidates. The Returning Officer declared one Scheduled Caste candidate elected, who secured higher votes amongst the two Scheduled Caste candidates and declared elected four non-Scheduled Caste candidates who had secured highest votes amongst the non-Scheduled Caste candidates. Later on, the Deputy Commissioner modified the result of election and declared the second Scheduled Caste candidate as elected who had secured 69 votes and declared defeated the fourth candidate (non-Scheduled Caste candidate), who had secured 41 votes and who had been wrongly declared elected by the Returning Officer. On the peculiar facts of this case, it is important to note that amongst all the Scheduled Caste candidates and non-Scheduled Caste candidates, the highest votes were obtained by the Scheduled Caste candidate, who was declared elected by the Returning Officer and the second highest votes were obtained by the second Scheduled Caste candidate, who was declared defeated by the Returning Officer and all the remaining four non-Scheduled Caste candidates, who were declared elected by the Returning Officer, had secured votes less than both the Scheduled Caste candidates. This order was passed by the Deputy Commissioner within the period of limitation prescribed for filing of election petition.

(12) A reading of the aforesaid facts clearly goes to show the divergent views which have been taken by various Deputy Commissioners and Returning Officers and, therefore, they have to be resolved so that whenever election is held in future on the present provisions of the Act and the Rules, no confusion is caused either to the officers or to the voters and the candidates. The relevant provisions of the Act, which deserves to be noticed, are reproduced as follows:—

“S.5. Establishment and constitution of Gram Panchayat—

- (1) Government may, by notification, establish a Gram Panchayat by name in every Sabha area.
- (2) Every such Gram Panchayat shall consist of such number of Panches including the Sarpanch not being less than

five or more than nine as the Government may determine taking into account the population of the Sabha area and such Panches and the Sarpanches shall be elected by the Sabha in, the prescribed manner from amongst its members:

Provided that if no woman is elected as a Panch of any Gram Panchayat, a woman member of the Sabha, who is qualified to be so elected, shall be co-opted by the Panchayat as a Panch in the manner prescribed.

- (3) Every woman co-opted as a Panch under the proviso to sub-section (2) shall have the right to vote at a meeting of the Gram Panchayat.
- (4) The election shall be by secret ballot and direct vote in the manner prescribed and the prescribed number of candidates securing the highest number of valid votes shall be deemed to have been elected :

Provided that for the period expiring on 25th January, 1990.

- (a) every Gram Panchayat shall, subject to the provisions of sub-clause (b), have one Panch belonging to the Scheduled Castes if their population is five per centum or more of the population of the Sabha area concerned ;
- (b) every Gram Panchayat with seven or more Panches shall have two Panches who are members of the Scheduled Castes if their population is ten per centum or more of the population of the Sabha area concerned ;
- (c) if the required number of successful candidates does not include one or two members from the Scheduled Castes, as the case may be, then the Scheduled Caste candidate or candidates, as the case may be, securing the highest number of votes from amongst themselves shall be deemed to have been elected as the last, or the last two Panches ;
- (d) in case the requisite number given in sub-clauses (a) and (b) of members of the Scheduled Castes are not elected in the manner given above, the

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prescribed authority shall make up the deficiency by nominating duly qualified person or persons of such castes ;

Provided further that the expiry of the period referred to above shall not affect the constitution of a Gram Panchayat existing at the time ;

Provided further that if Government is of the opinion that the basis of population adopted for the purposes of determining the representation of the members belonging to the Scheduled Caste for any particular Gram Panchayat is incorrect, with the result that the requisite number of Panches belonging to such castes is not elected, the Government may nominate the required number of duly qualified person or persons of such castes as additional Panches, and on such nomination being made the number of Panches, determined under sub-section (2), shall be deemed to have been increased by the number of Panches so nominated. The number of Panches so increased and their term of office shall cease to have any effect after the next election of the Gram Panchayat concerned, when the number of Panches of that Gram Panchayat shall be determined afresh under sub-section (2)."

"11. Appointments in cases of default—If for any reason, the requisite number of Panches are not elected, the prescribed authority may make up the deficiency by nomination from amongst persons eligible for election as such. The term of the office of the Panch so nominated shall be coterminus with that of the elected Panches."

"13-B. Election petitions. No election of a Sarpanch or Panch shall be called in question except by an election petition presented in accordance with the provisions of this Chapter."

"13-C. Presentation of petitions. (1) Any member of the Sabha may, on furnishing the prescribed security in

the prescribed manner,—

- (a) where an election was held after the 12th August, 1960, and before the 27th September, 1962, within thirty days of the latter date ; or
- (b) where an election is held after the 27th September, 1962, within thirty days of the date of announcement of the result thereof;

present on one or more of the grounds specified in sub-section (1) of section 13-0 to the prescribed authority an election petition in writing against the election of any person as a Sarpanch or Panch.”

“13-0. *Grounds for setting aside election.* (1) If the prescribed authority is of the opinion:—

- (a) that on the date of his election the elected person was not qualified or was disqualified, to be elected under this Act ; or
- (b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or
- (c) that any nomination has been improperly rejected ; or
- (d) that the result of the election in so far as it concerns the elected person, has been materially affected—
 - (i) by the improper acceptance of any nomination ; or
 - (ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void ; or
 - (iii) by any non-compliance with the provisions of this Act or of any rule made under this Act, the prescribed authority shall set aside the election of the elected person ;
- (2) When an election has been set aside under sub-section (1), a fresh election shall be held.

“13-00. (1) Grounds for which candidate other than returned candidate may be declared to have been elected. A

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petitioner may in addition be claiming a declaration that the election of all or any of the returned candidates is void, claim a declaration that he himself or any other candidate has been duly elected.

- (2) If a petitioner has claimed an additional declaration specified in sub-section (1) and the prescribed authority is of the opinion that in fact the petitioner or any other candidate received a majority of void votes, it shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected."

"13-V. Appeal.—(1) Any party aggrieved by an order made by the prescribed authority under section 13-N, may appeal to the Court of District Judge within a period of thirty days of the date of such order.

(2) Subject to the provisions of sub-section (3) an appeal to the Court of the District Judge shall be heard by the District Judge or by an Additional District Judge.

(3) An Additional District Judge shall hear only such appeals as the District Judge make over to him.

"13-V (4). The rules contained in Order XLI of the first Schedule to the Code of Civil Procedure, 1908, shall ; as far as may be, apply to appeals filed under this section."

The relevant provisions of the Rules are also reproduced below :—

"3. Election Programme. (1) The Deputy Commissioner shall frame an election programme specifying the date, time and place for—

- (i) the filing of nomination papers;
- (ii) the scrutiny of nomination papers;
- (iii) the withdrawal of nomination papers;
- (iv) the taking of poll, if necessary;"

- "4. Nomination of symbols. The Director shall, with the previous approval of the State Government; by notification in Official Gazette, publish a list of symbols and may in like manner add to or vary such list."
- "6. Nomination of candidates. (1) Any person who is not disqualified under sub-section (5) of section 5 of the Act may nominate himself as a candidate for election as Sarpanch or Panch : Provided that on the date, time and place fixed under rule 3, he delivers in person to the Returning Officer a nomination paper completed in the prescribed form."
- "6(2) The nomination of each candidate shall be made on a separate nomination paper in Form I and must be subscribed by the candidate himself as assenting to the nomination.
- (3) The nomination papers of a member of the Scheduled Castes shall also be accompanied by a declaration verified by a Magistrate, Kanungo, Patwari, Lambardar, or a member of a local authority, or the Haryana State Legislature, that the candidate is a member of the Scheduled Castes, specifying the particular caste to which the candidate belongs."
- "7. Deposits. (1) Each candidate nominated under the provisions of rule 6 shall, at or before the time of delivery of his nomination paper, deposit or cause to be deposited, a sum of Rs. 50 and in the case of a Scheduled Caste candidate a sum of Rs. 20, either in the treasury or Sub-treasury or with the local Lambardar or the Returning Officer and produce a receipt obtained from the treasury or sub-treasury or from the Lambardar, or the Returning Officer, as the case may be, and no candidate shall be deemed to be duly nominated unless such deposit has been made."
- "10. Allocation of symbols to candidates.—The Returning Officer shall, on the expiry of the time fixed for withdrawal of nomination papers, allocate by lot to each validly nominated candidate (hereinafter called contesting candidate) for the offices of Sarpanch and Panches, a symbol out of the approved list of symbols."

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- "11. List of nominations to be posted. The Returning Officer shall, immediately after symbols have been allotted to each contesting candidate, prepare and publish by affixing outside his camp office, two separate lists in alphabetical order of the contesting candidates for the offices of Sarpanch and Panches showing against each candidate the symbol allotted to him."
- "12. Procedure to be observed when number of candidates is equal or less than number of seats to be filled. (1) The Returning Officer shall, subject to the provisions of subsection (4) of section 5 of the Act, deem and declare the validity nominated candidate(s) elected, if—
- (a) there is only one validly nominated candidate for the office of Sarpanch ; or
 - (b) the number of validly nominated candidates for the office of Panches is equal to or less than the number of seats of Panches to be filled.
- (2) If the number of validly nominated candidates is less than the number of seats to be filled, the Returning Officer shall forward a list of the elected candidates to the Director as well as the Deputy Commissioner together with a report, specifying the number of unfilled seats."
- "13. *Poll to be taken if number of candidates is greater than number of seats.*—If the number of contesting candidates in any Sabha area is greater than the number of members to be elected for such area, a poll shall be taken on the date specified under rule 3 in this behalf for the election."
- "18. *Ballot-box.*—A separate ballot-box capable of being locked shall be provided for each candidate and the symbol allotted to him shall be pasted both inside and outside the ballot-box. The ballot-box shall be marked with the name of the candidate and, if there are more than one polling stations in the Sabha area also with the number of polling station at which it is to be used."

- "21. *Voting to be in person and not by proxy.*—Voting shall be by ballot and every person wishing to record his vote shall do so in person and not by proxy by means of a ballot-paper to be supplied to a voter which shall bear a serial number and such official mark, if any as may be specified under rule 16. Every elector shall be entitled to two non-transferable ballot-papers, one for the office of Sarpanch and the other for the offices of Panches."
- "23. *Procedure before recording of votes.*—Before a ballot-paper is delivered to an elector, his number, name and description as stated in the electoral roll shall be called out and a mark shall be placed in the copy of the electoral roll against the number of the elector to denote that he has received the ballot-paper and also the serial number of the ballot-paper issued to him shall be noted against the entry pertaining to him in the electoral roll."
- "29. *Return of ballot-paper by voter.*—(1) If a voter after obtaining any ballot-paper for the purpose of recording his vote decides not to use the same, he shall return the ballot-paper to the Presiding Officer, and the ballot paper so returned shall, then be marked 'cancelled returned' and kept in a separate packet set apart for the purpose and a record shall be kept by the Presiding Officer of all such ballot-papers.
- "29. (2) If any ballot-paper which has been issued to any voter for the purpose of recording his vote has not been put in the ballot-box but has been left by the voter at the polling station or the polling compartment, it shall be presumed as cancelled and dealt with in accordance with the provisions of sub-rule (1) as if it has been returned to the Presiding Officer."
- "35. *Preparation of return.*—When the counting of votes has been completed and the result has been declared under rule 31 or 32, as the case may be, the Presiding Officer or the Returning Officer, as the case may be, shall forthwith prepare two returns, one for the election of Sarpanch and the other for the election of Panches, showing:—
- (i) the names of contesting candidates ;

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- (ii) the number of valid votes given for each candidate ;
- (iii) the name(s) of the candidate(s) declared to have been elected ; and
- (iv) the name(s) of candidate(s) deemed to have been elected ;

and shall forthwith forward a copy of the return together with the name(s) of the candidate(s) declared to have been elected under the provisions of these rules, to the Deputy Commissioner."

"43. *Final authority for the interpretation of these rules.*—If any question arises regarding the interpretation of these rules otherwise than in connection with an election petition which has actually been presented, it shall be referred by the person interested or the official concerned to the Deputy Commissioner for decision. The Deputy Commissioner, if he thinks fit may refer it to the State Government whose decision shall be final."

(13) Adverting to question No. 1, on a reading of the provisions of the Act and the Rules, particularly section 5 and Rules 6 to 13, 18, 21, 23, 29 and 35, we find that the only conclusion which can be drawn is that there is no reservation of any constituency or seat for Scheduled Castes. Proviso (c) to sub-section (4) of section 5 provides that if the required number of successful candidates does not include one or two members from the Scheduled Castes, as the case may be, then the Scheduled Caste candidate or candidates, as the case may be, securing the highest number of votes from amongst themselves, shall be deemed to have been elected as the last, or the last two Panches. If the requisite number of members of the Scheduled Caste candidates are not elected in the afore-said manner, by virtue of proviso (d) to sub-section (4) of section 5, the prescribed authority has to make up the deficiency by nominating duly qualified person or persons of such castes. Therefore, what provisos (c) and (d) of sub-section (4) of section 5 noticed above, provide is that there should be minimum one or two Scheduled Caste Panches and not that there can be only one or two Scheduled Caste Panches and not more.

(14) Our pointed attention was drawn to rule 6(3) and rule 7 of the Rules providing for filing of nomination papers and making deposits. Whenever a candidate files a nomination paper as a Scheduled Caste candidate, he is to state so in the nomination paper in the column prescribed for the purpose and also to file a declaration that he is a member of the Scheduled Castes duly verified by a Magistrate etc. as provided in rule 6(3). Under rule 7 while candidates other than Scheduled Castes have to deposit Rs. 50, the Scheduled Caste candidates have to deposit only Rs. 20. From the above it was sought to be argued that the Scheduled Caste candidates form a different class from the remaining candidates and, therefore, one or two Scheduled Caste candidates can be elected, as the case may be, and from this it should be inferred that there is at least reservation of one seat or two seats, as the case may be, for the Scheduled Caste candidates. We are unable to agree with this interpretation of the Rules. Rule 6(3) only provides that a Scheduled Caste candidate, if he likes to contest as a Scheduled Caste, has to file the nomination papers as such and has also to attach a declaration duly attested by the specified officer/persons and he has been given a concession in making deposit of a lesser amount. These rules even remotely do not show that there cannot be more than one or two Scheduled Caste Panches, as the case may be. These rules, when read with section 5(4), provisos (c) and (d), show that there have to be minimum one or two Scheduled Caste Panches, as the case may be, and not that the maximum is also fixed. This is very clear from a reading of provisos (c) and (d) of sub-section (4) of section 5, which shows that if the required number of successful candidates does not include one or two members from the Scheduled Castes, as the case may be, then such number of Scheduled Caste candidates have to be elected who may have secured highest votes amongst the Scheduled Caste candidates and if no Scheduled Caste candidate contests the election, then the requisite number of Scheduled Caste Panches have to be nominated under proviso (d) to sub-section (4) of section 5. Therefore, the minimum limit is fixed and not the maximum. If all the required number of successful candidates are Scheduled Castes or include more than the requisite number of Scheduled Caste candidates, then provisos (c) and (d) would not come into operation.

(15) The aforesaid conclusion would be further supported from the facts of C.W.P. No. 3355 of 1983. There, all the six candidates, who were left in the field, were Scheduled Caste, although three candidates had filed the nomination papers after giving

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declaration as Scheduled Caste candidates and had made the concessional deposit of Rs. 20; whereas the remaining three Scheduled Caste candidates did not file any declaration of being Scheduled Caste candidates and deposited the full amount of Rs. 50. One more illustration will be noticed here. If in a given case, five Panches are to be elected out of whom minimum one has to be Scheduled Caste and there is one Scheduled Caste candidate, who has filed nomination as such after filing declaration and made concessional deposit of Rs. 20. One more Schedule Caste candidate did not file the nomination papers as a Scheduled Caste as he did not submit the declaration and instead of making concessional deposit of Rs. 20, made the full deposit of Rs. 50. After the voting, result is prepared and it is found that four candidates who have polled the highest votes are not Scheduled Caste and the fifth position is secured by the Scheduled Caste candidate who did not file the nomination papers after giving declaration that he is a Schedule Caste and who did not make the concessional deposit of Rs. 20 and the 6th or the last position is obtained by the Scheduled Caste candidate who had filed the nomination papers after submitting the declaration form as such and who had made the concessional deposit of Rs. 20. According to proviso (c) to section 5(4), the Scheduled Caste candidate, who had filed his nomination papers as such and who secured the 6th or the last position, would be declared elected and not the Scheduled Caste candidate who secured the 5th position because he did not contest the election as a Scheduled Caste candidate under the Act and the Rules. Of course, if the Scheduled Caste candidate who secured the 5th position, had secured any one of the first four positions then he would have been declared elected and the other Scheduled Caste candidate would have been declared elected on the 5th position. Therefore, the aforesaid illustration bears out the effect of filing the nomination papers by a Scheduled Caste candidate under rule 6(3) taking benefit of rule 7 of making the concessional deposit *vis-a-vis* a Scheduled Caste candidate, who does not take benefit of the concession provided to his caste under rule 7 read with rule 6(3).

(16) Therefore, on a reading of the Act and the Rules, we hold that the law provides for minimum number of one or two Scheduled Caste Panches, as the case may be, but in case the requisite number of successful Panches include more than the

requisite number of Scheduled Caste candidates then the election of such Scheduled Caste candidates will be valid.

(17) This brings us to the consideration of second limb of the first question, whether separate election is envisaged for Scheduled Caste candidates *vis-a-vis* non-Scheduled Caste candidates? Section 5(2) provides that a Gram Panchayat shall consist of such number of Panches including the Sarpanch, as the Government may determine but they shall not be less than five or more than nine. Section 5(4) prescribes for election by a secret ballot and direct vote in the prescribed manner. The candidates who get the highest number of votes, are to be deemed to have been elected. Rule 3 provides for election programme; rule 6 for nomination of candidates; rule 10 for allocation of symbols to the candidates and rule 11 for list of nominations to be posted. Rule 12(1) prescribes that if the number of candidates who have filed valid nomination papers, is equal or less than the number of seats to be filled, the Returning Officer shall declare them elected. In case the candidates declared under sub-rule (1) of rule 12 are less than the requisite number of candidates, then under sub-rule (2) a report has to be submitted regarding the unfilled seats to be filled in the manner provided under the Act and the Rules. Rule 13 provides for election if the number of candidates is greater than the number of seats Rule 18 provides for setting up separate ballot boxes for each candidate. Rule 21 provides for voting by ballot. It further specifically provides that every elector shall be entitled to two non-transferable ballot papers, one for the office of Sarpanch and the other for the offices of Panches. This provision makes it more than clear that every elector is given one ballot paper for casting in favour of any of the candidates for the offices of Panches. Therefore, section 5(4), read with rules 10, 12, 13, 18 and 21, shows that the entire election process of Panches is one and if the nomination papers are more than the number of Panches to be elected, then the procedure of election provided under rule 10 and rules subsequent thereto, has to be followed by allocation of separate symbols, providing separate ballot boxes etc. If the law framers had intended that election of Scheduled Caste Panches was to be held separately from the election of non-Scheduled Caste Panches, then rule 21 would have been differently worded. Therein it would have been specifically provided that for the election to the offices of Panches, every elector shall be entitled to two non-transferable ballot papers—one to be cast in favour of non-Scheduled Caste

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Panch and the other in favour of Scheduled Caste Panch. This further strengthens the conclusion that the entire election process for the offices of Panches is an indivisible one. Moreover, as already noticed above, it is not that one or two Scheduled Caste Panches, as the case may be are to be elected. They can be more than the requisite number also. Therefore, if the total nomination papers, whether of Scheduled Caste candidates or of non-Scheduled Caste candidates, are more than the requisite number of seats, then the whole election process has to be gone through. The Returning Officers, who declare one Panch or two Panches as Scheduled Caste candidates unopposed without election when one or two Scheduled Caste Panches were left in the field, as the case may be, clearly committed irregularity. Similarly, the action of the Returning Officers, who declared the remaining non-Scheduled Caste Panches as elected unopposed without going through the election process because the nomination papers of the non-Scheduled Caste candidates were not more than the seats which were considered to go to them, was also clearly illegal. According to rule 13, the total number of candidates is to be seen without allocating them to the seats for Scheduled Castes or for non-Scheduled Castes. Therefore, the second part of question No. 1 is answered to the effect that whole election is one and if the total number of candidates collectively of both categories is more than the requisite number of seats, then whole election process had to be gone through, and while declaring the result if it is found that the requisite number of Panches who have secured highest votes including one or two Scheduled Caste Panches, as the case may be, then the persons securing highest number of votes would be declared elected. In case one or two Scheduled Caste Panches, as the case may be, do not come amongst the successful candidates, then out of the Scheduled Caste candidates, whosoever has secured the highest number of votes would be declared elected to make up the minimum number of Scheduled Caste Panches. In case no Scheduled Caste candidate had filed nomination papers, then the requisite number of offices of Panches have to be left vacant to be filled in by the Prescribed Authority in exercise of his powers conferred on him by proviso (d) to section 5(4) of the Act.

(18) Assuming that the Returning Officers committed illegality in declaring duly elected the Scheduled Caste candidates or the non-Scheduled Caste candidates unopposed without going through the process of election, as the case may be, the next question which falls for consideration is whether on account of

this illegality, there can be interference in election petition ? Section 13-O of the Act provides for grounds for setting aside the election. A reading of that section would show that clauses (a) and (b) of sub-section (1) thereof would not be attracted to these facts. Clause (d) thereof would also not be applicable to these facts. Miss Madhu Tewatia, Advocate, very ably argued that the facts of the present case would be akin to clause (c), namely, that an election petition would be competent if the nomination paper has been improperly rejected because such a candidate would not be allowed to participate in the election and the same result would follow wherever the Scheduled Caste candidates were declared elected unopposed without going through the election because their non-participation in the election materially affected the result of election of the remaining candidates who were left in the field after other candidates were declared elected unopposed. In highlighting this argument, she argued that it has been fairly held by the highest Court that in case of improper rejection of nomination papers, the result of the declared candidates is affected and whole of the election has to be set aside and fresh election ordered. According to her, the same result would follow. In these cases because when the Scheduled Caste candidates or the non-Scheduled Caste candidates were not allowed to join the election process and the election was held amongst the remaining candidates, how the result of election is affected by the non-participation of the candidates in the election process, who were declared elected unopposed, cannot be precisely stated or known as cannot be stated or known in the case of improper rejection of nomination papers. We find considerable merit in this contention which was put forth before us only by her out of the several counsel appearing before us in different cases. As we have already held that the entire election process is one and if the candidates who have been declared elected unopposed had also joined the process of election, the votes which would have been cast in their favour, have been cast in favour of the remaining candidates between whom the election was held. It is impossible to visualise that if the candidates, who were declared elected unopposed and who were not allowed to join the election process, had also joined the election process what would have been the result ? Similar is the position in the case of improper rejection of a nomination paper. Undisputedly whenever it is held that the rejection of nomination papers was improper, the entire election is deemed to have been materially affected and is set aside and fresh election ordered. Therefore, it has to be held on the facts

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of the present cases that wherever some of the candidates were not made to join the election process, the result of election has been materially affected *ipso facto* and fresh poll could be ordered while accepting the election petition.

(19) Adverting to the second question, a reading of rule 43 shows that if on any rule, the Returning Officer, the Presiding Officer, any of the candidates in the election, a voter or any other person concerned with the election, has any doubt about its interpretation, the matter can be referred by such interested person or the official concerned to the Deputy Commissioner. If the Deputy Commissioner is able to give his opinion, he will do so; and if he is unable to do so, he may refer the matter to the State Government for its opinion. The facts of all the cases noticed above, show that various Returning Officers took different views of the Rules and none of them, nor any candidate or voter, sought the opinion of the Deputy Commissioner at any relevant time, and the election process was allowed to be completed and the results were declared. To illustrate, if in a given case, the Returning Officer finds that minimum one Scheduled Caste candidate had to be elected and there was only one Scheduled Caste candidate who had filed the nomination papers, whether he could be declared elected unopposed without going through the election process; and if he had any doubt about it, he could seek the opinion of the Deputy Commissioner before doing so. Similarly, where a Returning Officer was of the opinion that one Scheduled Caste candidate had to be elected and only four non-Scheduled Caste candidates were left in the field and if he had doubt that whether those four non-Scheduled Caste candidates could be declared elected unopposed without following the election process, he could seek the opinion of the Deputy Commissioner. This rule is only to this limited extent and the Deputy Commissioner has not been clothed with any jurisdiction to pass orders after the election process is completed under rule 43. A very limited jurisdiction has been vested in the Deputy Commissioner under rule 43 to interpret the rules in case there is doubt of interpretation to any person interested or the official concerned, but not to decide or pass orders in regard to specific cases, and to modify, amend or annul the results of election already declared. After the election result is declared, in pursuance of section 5(4) read with rule 35 and other allied rules, the election papers are forwarded to the Deputy

Commissioner under rule 36, which are kept by the Deputy Commissioner in his custody under rule 37 until the expiry of one year from the date of election or till the conclusion of election petition, whichever is later. Even if after the declaration of the result, some interested persons move the Deputy Commissioner for his opinion about the interpretation of rules, the Deputy Commissioner could merely give his opinion and the persons concerned could take whatever action was permissible to them in law, namely, to file the election petition on that basis, but the Deputy Commissioner had not been provided with jurisdiction under rule 43 to pass orders on merits in individual cases and to reverse, modify or vary the election results. This could be done only in an election petition by the Prescribed Authority and by none else. Accordingly, we answer question No. 2 in the negative and hold that neither the Deputy Commissioner, nor the State Government has power under rule 43 of the Rules to tinker with the election results declared by the Returning Officers wholly or partly. Hence the orders passed by the various Deputy Commissioners either declaring the elections null and void or changing the election results by declaring the defeated candidates elected and the elected candidates defeated, are clearly illegal and in excess of their jurisdiction.

(20) This brings us to the 3rd and the last question, namely, that assuming that election in a given case was illegal or there was erroneous declaration of result by the Returning Officer, whether such election can be set aside in writ proceedings which are filed beyond the period of limitation prescribed for filing election petition? It has been held in *Umrao Singh and others v. Mehar Chand and others* (1), that the proper remedy to challenge the election is by filing an election petition within the period of limitation. If the defeated candidates or the voters do not choose to challenge the election result and allow the same to become final, then after the expiry of limitation, it will not be open to the aggrieved person to challenge the same by filing a writ petition under Article 226 of the Constitution of India beyond the period of limitation provided for filing election petition. Therefore, wherever the defeated candidates (all the writ petitions are filed either by the candidates who are originally declared defeated or by those who are originally declared elected but whose election was set aside by the Deputy Commissioner in exercise of his powers under rule 43) who were shown as defeated in the

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original election result, have come to this Court under Article 226 of the Constitution after the expiry of limitation provided for filing election petition, they would not be entitled to any relief from this Court. However, in suitable cases, writ petitions may be entertained within the period of limitation provided for filing election petition and relief may be given in writ jurisdiction instead of driving the party concerned to election petition.

(21) As already noticed in the opening part of the judgment, different Returning Officers read the rules differently and to avoid different interpretation to be given by different prescribed authorities before whom the election petitions had to be filed, we entertain these writ petitions. In view of the interpretation of various rules given by us in regard to questions Nos. 1 and 2 and the procedure to be followed during election, C.W.P. No. 3284 of 1983 is allowed and the election result declared by the Returning Officer is quashed and direction is issued to hold election amongst the 15 candidates, who are left in the field for the offices of Panches, in accordance with law keeping in view the law laid down in this judgment.

(22) C.W.P. Nos. 3611 and 3509 of 1983, which were filed by the defeated candidates beyond the period of limitation provided for filing election petition, are hereby dismissed.

(23) C.W.P. Nos. 3653 and 3960 of 1983 are hereby allowed and the orders of the Deputy Commissioners passed under rule 43 of the Rules after the expiry of limitation provided for filing of election petition, are hereby quashed and the election results declared by the Returning Officers are sustained as no election petition was filed by any of the defeated candidates within the period of limitation.

(24) The facts of CWP Nos. 3355 and 3403 of 1983 are similar to the facts of C.W.P. No. 3284 of 1983 because the election was confined either to the non-Scheduled Caste candidates or to the Scheduled Caste candidates. The only difference in these two writ petitions *vis-a-vis* C.W.P. No. 3284 of 1983, is that before the defeated candidates could file an election petition within the period of limitation or could come to this Court within that period, the Deputy Commissioner stepped in and in exercise of his powers under rule 43, set aside the entire election of Panches and ordered fresh election amongst all the candidates who are left in the field

after withdrawal for the offices of Panches. The Deputy Commissioner passed the orders within the period of limitation provided for filing election petition. If he had passed the orders beyond the period of limitation, then these writ petitions would have also been allowed as we have allowed C.W.P. Nos. 3563 and 3960 of 1983, but here the Deputy Commissioner has passed orders within the period of limitation and set aside the entire election. After the passing of these orders by the Deputy Commissioner, the right of defeated candidates to file election petitions or writ petitions in this Court, was taken away because they were no longer aggrieved after the passing of orders by the Deputy Commissioner. Though the Deputy Commissioner had no jurisdiction to set aside the election in exercise of his powers under rule 43, and to that extent his orders are illegal, but we are not bound to interfere in writ jurisdiction because what has been proposed by the Deputy Commissioner is the correct view which we have taken regarding C.W.P. No. 3284 of 1983. Even if we were to set aside the orders of the Deputy Commissioner, since those orders were passed within the period of limitation provided for filing of election petition, we would have set aside the entire election result also with a direction to hold fresh election amongst the candidates who were left in the field after withdrawal for the offices of Panches. Since in both the events the result is the same, therefore, we decline to interfere in these writ petitions (C.W.P. Nos. 3355 and 3403 of 1983) which are hereby dismissed.

(25) C.W.P. No. 3665 of 1983 deserves to be dismissed as according to the answer given under question No. 1, minimum one Scheduled Caste Panch has to be there and since both the Scheduled Caste candidates got the highest votes, only three more non-Scheduled Caste candidates could be declared elected as there were to be five Panches. Although the Deputy Commissioner had no jurisdiction under rule 43 to change the election result as held by us under question No. 2, but since he passed orders within the period of limitation provided for filing of election petition and his order on merits is correct, we are not bound to interfere in writ jurisdiction. Even if we were to quash the order of the Deputy Commissioner, we would have substituted our order and would have held that both the Scheduled Caste candidates who polled 374 and 295 votes, are to be considered as elected besides three non-Scheduled Caste candidates who polled 24, 18 and 12 votes; and the other non-Scheduled Caste candidate who polled 10 votes, had to be declared defeated. Hence this writ petition is dismissed.

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(26) The facts of C.W.P. Nos. 3542 and 3862 of 1983 are similar to those of C.W.P. No. 3665 of 1983. Therefore, for the reasons given in the preceding paragraph regarding C.W.P. No. 3665 of 1983, both these writ petitions (C.W.P. Nos. 3542 and 3862 of 1983) also stand dismissed with the result that in C.W.P. No. 3542 of 1983 the Scheduled Caste candidate who had secured 69 votes rightly stands declared elected and the 4th non-Scheduled Caste candidate who had secured 41 votes rightly stands defeated; whereas in C.W.P. No. 3862 of 1983, the candidates who polled 170, 138, 106, 99 and 64 votes were rightly declared elected and the candidate who polled 52 votes, was rightly declared defeated.

(27) C.W.P. No. 3420 of 1983 deserves to be dismissed in view of the answer given by us to question No. 1. There had to be two minimum Scheduled Caste Panches in this case and not only two. The Returning Officer first prepared the election result declaring two Scheduled Caste candidates elected as also the four non-Scheduled Caste candidates. The 4th non-Scheduled Caste candidate had secured 112 votes whereas the 3rd Scheduled Caste candidate, who had been shown defeated, had polled 135 votes. The same day, the Returning Officer prepared a fresh election result and sent the same to the Deputy Commissioner showing the 3rd Scheduled Caste candidate, who polled 135 votes, as elected and the non-Scheduled Caste candidate who polled 112 votes, as defeated. When oath ceremony took place in the middle of July, 1983, oath was administered to the 3rd Scheduled Caste candidate and not to the non-Scheduled Caste candidate who had polled 112 votes. That gave him the cause of action to file the writ petition in this Court within the period of limitation provided for filing election petition. It is true that the Returning Officer could not have changed the result after declaring the result, but the fresh result prepared by him is in accordance with our decision. Even if we were to set aside the second result prepared by him, we would have set aside the first result also and would have declared elected all the candidates who polled more than 112 votes. Ultimately, the result would have been that three Scheduled Caste candidates including the one who got 135 votes, would have been declared elected and the non-Scheduled Caste candidate who polled 112 votes, would have been declared defeated. Therefore, we decline to interfere in this writ petition which is hereby dismissed.

(28) Since intricate questions were involved, we leave the parties to bear their own costs.

N. K. S.