

*Before Hemant Gupta, J.  
Ajay Tewari, J.  
Raj Rahul Garg, J.*

**PREM CHAND AND OTHERS—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 4752 of 2015**

October 28, 2015

*Punjab Municipal Corporation Act, 1976 (as amended in 1994)—  
Punjab Municipal Act, 191—S.11—Punjab Municipal Corporation Mayor,  
Senior Deputy Mayor and Deputy Mayor Election Rules, 1991—Punjab  
State Election Commission Act, 1994—Ss. 3, 74 and 87.*

- (i) *Election to post of officer bearers of Municipal Corporation challenged—Remedy of election petition is not available—Aggrieved parties, however, can invoke writ jurisdiction of High Court.*
- (ii) *Punjab Panchayati Raj Act, 1994—Punjab Panchayat Election Rules, 1994 Rule 2(d)—Election to post of Sarpanch and members of Gram Panchayat, Panchayat Samiti and Zila Parishad—Remedy of election petition available if election conducted under Election Act and not in respect of Municipal or Panchayat Laws.*

*Held that,* the election as per Rule 2(d) of The Punjab Panchayat Election Rules, 1994 includes the election to the post of Sarpanch of the Gram Panchayat and member of the Panchayat Samiti and Zila Parishad. The Sarpanch is elected by the Panches in terms of Section 13-A of The Punjab Panchayati Raj Act, 1994 as inserted by Punjab Act No.12 of 2008. Rule 45-A of the Punjab Panchayat Election Rules, 1994 contemplates that after the election of directly elected Panches is notified, the Deputy Commissioner or any other officer authorized by him in this behalf shall call a meeting, as laid down under Section 13-A of the Punjab Panchayati Raj Act, 1994, of the Panches to elect the Sarpanch in accordance with the provisions of these Rules. Therefore, election to the Panches are supervised and conducted by the Election Commission in terms of the Election Act whereas the election to the post of Sarpanch is conducted by Deputy Commissioner under the Punjab Panchayat Election Rules, 1994. The remedy of election petition is provided only if election is conducted under the Election Act and not in respect of the Municipal or Panchayat Laws. The distinction between the election conducted by the Election Commission and/or by the State

Government was not brought to the notice of the Court and, therefore, such judgment does not lay down correct law to that extent.

(Para 22)

Ranjivan Singh, Advocate  
*for the petitioners.*

Vinod S. Bhardwaj, Additional A.G. Punjab  
for respondents No.1 to 4.

Mukesh Berry, Advocate  
for respondent No.5.

S.P. Jain, Senior Advocate with  
Dheeraj Jain, Advocate as Amicus Curiae.

### **HEMANT GUPTA, J.**

(1) The matter has been placed before this Bench in pursuance of an order passed made by this Court on 21.05.2015 wherein the Bench expressed reservation with the view of Division Bench in *Shimla Rani versus State of Punjab*<sup>1</sup> wherein, it was held that the remedy of the election petition is not available to an aggrieved person in respect of elections to the post of office bearers of a Municipality/Panchayat.

(2) The petitioners are the elected Councillors of Municipal Corporation, Moga in an election conducted on 22.02.2015. The grievance of the petitioners is in respect of election to the office bearers of the Municipal Corporation such as to the post of Mayor, Senior Deputy Mayor and Deputy Mayor held on 09.03.2015. The grievance of the petitioners is that the election was not conducted in a fair manner when Mr. Akshit Jain was elected as Mayor, Mr. Anil Bansal as Senior Deputy Mayor and Mr. Jarnail Singh as Deputy Mayor. It was alleged that election has been conducted under the pressure of the ruling party and sitting MLA of the area.

(3) The challenge of the petitioners to the post of office bearers was also on the ground that election by 'show of hands' is not tenable as it defeats the right of secrecy of vote, but such contention was rejected by the Bench on 21.05.2015 relying upon an order passed in CWP No.4151 of 2015 titled *Kuljeet Singh Bedi versus State of Punjab and others*, decided on 24.03.2015. Therefore, the question

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<sup>1</sup> 2008(3) RCR (Civil) 138

which survives for consideration is whether the election for the post of Mayor, Senior Deputy Mayor and Deputy Mayor could be agitated before this Court in a writ petition or only through election petition.

(4) In *Shimla Rani's case* (supra), a Division Bench of this Court has taken a view that election petition is not maintainable in respect of elections to the post of office bearers of the Municipalities and Panchayats. It is the said view with which, the Division Bench expressed reservation and the matter is placed before us.

(5) A brief legislative history of the provisions of the Punjab Municipal Corporation Act, 1976 (for short 'Corporation Act') as amended by the Punjab Act No.12 of 1994 consequent to the insertion of Part IXA in the Constitution would be necessary to appreciate the arguments raised. Firstly, the provisions from Part IX-A of the Constitution as are relevant for the present petition read as under:-

“243R. Composition of Municipalities.- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of –

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause ( 5 ) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a

Municipality.

243T. Reservation of seats.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.”

(6) Prior to the enactment of the Corporation Act, the Punjab Municipal Act, 1911 (for short ‘the Act’) was the only Statute in respect of urban local bodies. The Act as originally enacted contemplated constitution of a Municipality in terms of Section 11 of the Act. The election to the post of President and Vice President of such Municipality was regulated by Section 20 of the Act. The Punjab Municipal Election Rules, 1952 were framed in respect of elections to

the Municipalities including elections to the office bearers of such Municipality in terms of Clauses (d), (e), (f), (g) and (h) of sub-section (1) Section 240. Rule 2(i) of such Rules read as under:-

“2. Definitions.- In these rules unless there is anything repugnant in the subject or the context.

(a) xx      xx      xx

(i) “Election” means the election of a member, President, Vice President of a committee and includes the co-option of a member.”

(7) The Act was amended by Punjab Act No.11 of 1994 to give effect to the Constitutional mandate as inserted by Part IXA of the Constitution. Apart from other amendments, Clauses (d), (e), (f), (g) and (h) of sub-section (1) Section 240 were omitted. The Punjab Municipal Election Rules, 1952 stands repealed consequent to enactment of the Punjab State Election Commission Act, 1994 (for short ‘Election Act’).

(8) On the other hand Section 2(14) of the Punjab Municipal Corporation Act, 1976 (for short “the Corporation Act”) as originally enacted defined election to mean the election of a councillor, Mayor or a Deputy Mayor of a Corporation and for the purposes of election disputes includes the co-option of a councillor. The original Section 2(14) reads as under:-

“2. Definitions.—In this Act, unless the context otherwise requires.

(1) xx      xx      xx

(14) “election” means the election of a councillor, Mayor or a Deputy Mayor of a Corporation and for the purposes of election disputes includes the co-option of a councillor.”

(9) Such definition was also amended vide Punjab Act No.12 of 1994 consequent to insertion of Part IXA of the Constitution. The amended definition of ‘election’ under the Punjab Municipal Corporation Act, 1976 reads as under:-

“2. Definitions.—In this Act, unless the context otherwise requires.-

(1) xx      xx      xx

(14) “election” means and includes the entire election

process commencing on and from the date of notification calling for election of Councillors and ending with the date of declaration and notification of results thereof.”

(10) The elections to the office bearers of the Municipal Corporations are governed by The Punjab Municipal Corporations Mayor, Senior Deputy Mayor and Deputy Mayor Election Rules, 1991 (for short ‘the Rules’) as notified on 09.09.1991 framed in exercise of the powers conferred on the State Government in terms of sub-Section (1) of Section 38 of the Corporation Act. Such Rules were framed prior to enactment of Punjab Act No.12 of 1994 substituting the meaning of election as contained in Section 2(14) of the Corporation Act.

(11) A reading of Article 243R of the Constitution shows that all seats in Municipality are required to be filled by persons chosen by direct elections from the territorial constituencies in the Municipal area, except as provided in clause (2), whereas, there is flexibility to determine the manner of election of the Chairperson of a Municipality, which is to be as prescribed by the State Legislature.

(12) Article 243T of the Constitution provides reservation of seats in every Municipality, to be as nearly as may be the same proportion to the total number of seats to be filled by direct elections. The seats are required to be reserved for women, Scheduled Castes and Scheduled Tribes. However, in respect of the offices of the Chairpersons in the Municipality, liberty has been given to the State Legislatures to prescribe reservation for Scheduled Castes, Scheduled Tribes and Women as Chairperson of the municipality, but none has been prescribed by the State Legislature.

(13) A further perusal of the Article 243ZA and 243ZG shows that such provisions are *pari materia* with the provisions contained in Article 324 and 329 of the Constitution in respect of elections to the Parliament and to the Legislatures of the States. Article 329 of the Constitution contemplates that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition and in such manner as may be provided for by or under any law made by the appropriate Legislature, whereas the conduct of elections is entrusted to the Election Commission as constituted in terms of Article 324 of the Constitution. The Representation of People Act 1951 provides that the elections of the Parliament and/or the State Legislatures can be questioned only by way of election petition.

(14) Article 243R(2)(b) of the Constitution has left it to the State Legislature to provide by law the manner of election of the Chairperson of a Municipality. The manner of election would include the manner of dispute of elections as well but in the absence of any procedure of disputing the election to the Chairperson of a Municipality, the procedure for direct election cannot be *mutatis mutandis* be applied to indirect election to the Chairpersons.

(15) The Election Act defines a 'returned candidate' to mean a candidate whose name has been published under Section 70 as duly elected {Section 2(s)}. Section 69 deals with declaration of result by the Returning Officer in the absence of any direction by the Election Commission. The result of the elections of Panchayat and Municipalities is notified by the Election Commission in terms of Section 71 of the Election Act. Section 73 of the Election Act provide for setting up of an Election Tribunal. It is Section 74 which contemplates that no election shall be called in question except by an election petition presented in accordance with the provisions of Chapter XII. The relevant Sections from the Election Act reads as under:-

“3. Election to Panchayats and Municipalities.—(1) The State Government shall by notification in the Official Gazette establish a State Election Commission (hereinafter referred to as the Election Commission) for the superintendence, direct and control of the preparation of the electoral roll for, and the conduct of all elections to Panchayats and Municipalities.

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69. Declaration of results.— When the counting of the votes has been completed, the Returning Officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder.

70. Report of the results.—As soon as may be, after the result of an election has been declared under section 69, the Returning Officer shall report the result to the Election Commission.

71. Publication of results.—Where a general election is held for the purpose of constituting a new Panchayat or Municipality, there shall be notified by the Election Commission in the Official Gazette, as soon as may be, after

the result of the elections in all the Panchayats or the Municipalities.....xxx xxx

72. Date of election of candidate.—For the purposes of this Act, the date on which a candidate is declared by the Returning Officer to be elected, shall be the date of election of that candidate.

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74. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

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87. Decision of the Election Tribunal.—At the conclusion of the trial of an election petition, the Election Tribunal may make an order for,—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

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113. Maintenance of secrecy of voting.—(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election, shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purposes authorized by or under any law), communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of subsection (1), shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.”

(16) The State Election Commission under Section 3(1) of the Election Act conducts all elections to Panchayat and Municipality and not to their office bearers. The Panchayat has been defined in the Election Act to mean an institution of self-government constituted



under Article 243B of the Constitution whereas the Municipality means an institution of the self-government constituted under Article 243Q of the Constitution. Such provision of the Constitution deals with an establishment of a juristic entity i.e. Municipality or the Panchayat and not to Chairpersons. Thus, the Election Act deals with direct election to the Municipality or the Panchayat as are required to be conducted by the State Election Commission and not to the indirect elections of the Sarpanch and the office bearers of the Municipalities which are conducted not by the State Election Commission but by the State Government or its Officers.

(17) In terms of The Punjab Municipal Corporations Mayor, Senior Deputy Mayor and Deputy Mayor Election Rules, 1991, meeting for election of Mayor, Senior Deputy Mayor and Deputy Mayor is to be convened by Divisional Commissioner and not the Election Commissioner in terms of the Election Act. The Election Act deals with election to the Councillors either under the Act or the Corporation Act or to the Panches under the Punjab Panchayati Raj Act, 1994, but it does not deal with indirect election to the office bearers of the Municipalities including that of the Municipal Corporations.

(18) Mr. S.P. Jain, learned Senior Counsel, argued that elections to both Houses of Parliament can be called in question by an election petition but not the indirect elections to the office bearers of Parliament such as Speaker or a Deputy Speaker. The Representation of the People Act, 1951 framed in pursuance of Article 329 does not prescribe a dispute resolution mechanism in respect of elections to the post of Speaker or Deputy Speaker elected in terms of Article 93 of the Constitution. It is the same analogy when the State Legislature has not been provided an election petition as a dispute resolution mechanism of the office bearers of the Municipalities. Such dispute can, therefore, be resolved by an appropriate forum including a Writ Court. Learned counsel placed reliance upon a Division Bench judgment of Orissa High Court reported as *Ram Kumar Jain versus Ramakanta Goud and others*<sup>2</sup> to support such contention.

(19) The Punjab Municipal Act, 1911 and/or the Punjab Municipal Corporation Act, 1976 as amended in the year 1994 does not provide for any dispute settlement mechanism in any particular manner, though prior to such amendments, an election petition was contemplated in both the Act and the Corporation Act in respect of

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<sup>2</sup> AIR 2010 Orissa 37

elections to their office bearers. Therefore, in the absence of any dispute settlement procedure prescribed by the State Legislature, the remedy of the election petition cannot be read into the Statutes or the Rules framed.

(20) The parties are not remedy less even if the remedy of an election petition is not available as the jurisdiction of the High Court cannot be said to be excluded and thus can be invoked for the redressal of the grievances. The exercise of the jurisdiction without saying can be exercised only in the manner in accordance with law. In fact, the learned State Counsel rightly conceded the proposition that election to the office bearers of the Municipalities cannot be resolved by way of an election petition in terms of Section 74 of the Election Act. Therefore, we find that the decision in *Shimla Rani's* case (supra), is the correct enunciation of law.

(21) We may notice that in *Baljit Singh versus State of Punjab and others*<sup>3</sup>, another Division Bench had considered the elections of Sarpanch of Gram Panchayat under the provisions of The Punjab Panchayati Raj Act, 1994. The Court found that the remedy of election petition is available to the petitioner to challenge elections of a Sarpanch of the Gram Panchayat.

(22) The election as per Rule 2(d) of The Punjab Panchayat Election Rules, 1994 includes the election to the post of Sarpanch of the Gram Panchayat and member of the Panchayat Samiti and Zila Parishad. The Sarpanch is elected by the Panches in terms of Section 13-A of The Punjab Panchayati Raj Act, 1994 as inserted by Punjab Act No.12 of 2008. Rule 45-A of the Punjab Panchayat Election Rules, 1994 contemplates that after the election of directly elected Panches is notified, the Deputy Commissioner or any other officer authorized by him in this behalf shall call a meeting, as laid down under Section 13-A of the Punjab Panchayati Raj Act, 1994, of the Panches to elect the Sarpanch in accordance with the provisions of these Rules. Therefore, election to the Panches are supervised and conducted by the Election Commission in terms of the Election Act whereas the election to the post of Sarpanch is conducted by Deputy Commissioner under the Punjab Panchayat Election Rules, 1994. The remedy of election petition is provided only if election is conducted under the Election Act and not in respect of the Municipal or Panchayat Laws. The distinction between the election conducted by the Election Commission and/or by the State

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<sup>3</sup> 2008(4) R.C.R. (Civil) 709

Government was not brought to the notice of the Court and, therefore, such judgment does not lay down correct law to that extent.

(23) Therefore, after amendment in the Punjab Municipal Act, 1911 and the Punjab Municipal Corporation Act, 1976 vide Punjab Act No.11 of 1994 and Punjab Act No.12 of 1994, the election to the office bearers of the Municipalities including the Corporations does not provide for the remedy of election petition.

(24) In view of the questions of law having been answered, the matter be placed before the Bench as per roster.

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*Angel Sharma*

*Before Rajiv Narain Raina, J.*

**THE PRINCIPAL, GOVERNMENT GIRLS SR. SECONDARY  
SCHOOL, KALANAUR (ROHTAK)—Petitioner**

*versus*

**SAVITRI DEVI AND OTHERS—Respondents**

**CWP No. 17425 of 2012**

October 30, 2015

***Constitution of India, 1950—Art. 14 and 226—Scope of interference in exercise of writ jurisdiction in the award of Labour Court is limited—If no fundamental flaw or error apparent on the face of the record or of jurisdiction is shown in the award of reinstatement with 50% back wages, which is otherwise just and proper exercise of jurisdiction vested in the Labour Court, and findings were arrived at after appreciating evidence and material on record and no infirmity is seen therein, same cannot be interfered in exercise of supervisory jurisdiction under Article 226 of the Constitution.***

*Held that* no fundamental flaw or error apparent on the face of the record or of jurisdiction has been pointed out by Mr. Goyal, learned Assistant Advocate General, Haryana, appearing for the petitioner-School. The Labour Court, Rohtak, has awarded reinstatement with continuity of service and 50% back wages, which is just and proper exercise of jurisdiction vested in the Labour Court. Findings have been arrived at after appreciating evidence and material on record and no infirmity is seen present in those findings emanating from overlooking of reading text or documents on file. The scope of interference under supervisory jurisdiction provided by Article 226 of