

(10) Counsel for the respondent has relied on the case of *Tamil Nadu Electricity Board and another v. N. Raju Reddiar and another* (3). It has been held by the Supreme Court in that case that once the application for review is dismissed, no application for clarification should be filed, much less with change of advocate on record.

(11) Here in this case admittedly, the arguments were heard and judgment reserved as mentioned above by my learned predecessor. However, the judgment was not pronounced. When the matter came up before me, as mentioned earlier, after hearing the parties and considering the authorities cited by them, I admitted the matter. Admission of the matter is certainly a new event and if it can show that there is a *prima facie* case in favour of the appellant, it can also be seen that though arguments were heard in the appeal on 2nd June, 1999, the matter could not be decided. When the matter was admitted on 6th April, 2000, the parties were present in person because the lawyers were on strike and on considering the arguments, the authorities cited and after going through the record the matter was admitted. This being the position, the principle in the case of *Arjun Singh v. Mohindra Kumar and others* (Supra) will apply and the application for stay cannot be thrown away on the ground of *resjudicata*. Moreover, now the matter is admitted and requires detailed consideration., it will be in the interest of justice to grant the stay as prayed for.

(12) As a result, the stay which was granted on 8th May, 2000 is made absolute till the decision of this appeal.

(13) This appeal is ordered to be listed for final hearing within one year from today.

J.S.T.

Before H.S. Bedi and A.S. Garg, JJ.

JAGJIT SINGH AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 5053 of 2000

The 6th June, 2000

Punjab Panchayati Raj Act, 1994—S. 99—Punjab Panchayati Raj (Amendment) Act, 2000—S. 99(1)(a) and (b)—Constitution of India, 1950—Arts. 243(C)(2) and 243(C)(3)—Punjab Act of 15 of 1998—

Election of the members of the Panchayat Samities—Sub Clauses (a) and (b) of S. 99(1) of the 1994 Act deleted by Punjab Act of 15 of 1998, which provided that representatives of the Panchayat Samities would be elected from amongst the Sarpanches and directly in the ratio of 60:40—Govt. re-introducing sub-clauses (a) and (b) of S. 99 (1) by Amendment Act, 2000, which provides the ratio of the representatives of the Sarpanches and of directly elected members 70:30—Art. 243(C)(2) provides that all the seats to the Panchayat Samiti to be filled by direct election with such exceptions as provided in Art. 243(C)(3)—Whether the amendment violative of Art. 243 (C)(2) of the Constitution—Held, yes—Sub Clause (a) and (b) of S.99(1) introduced by the Amendment Act, 2000 struck down being unconstitutional.

Held, that a bare look at the terminology of Article 243(C)(2) would reveal that a mandate has been laid that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies carved out in the manner laid down in the said provision as also in the relevant provisions of the Punjab Panchayati Raj Act. Sub Article (3) of Article 243(C) of the Constitution provides that the Chairpersons of the lower Panchayati Raj Institutions may also be represented to the higher levels by election held amongst themselves to the said bodies.

(Para 12)

Further held, that the ratio of indirectly vis-a-vis directly elected ones fixed by the Punjab Panchayati Raj (Amendment) Act, 2000 has in fact nullified the Constitutional mandate given in Article 243 (C)(2) of the Constitution and a mandatory provision has been set at naught by a directory and enabling provision. This could never have been the intention of Parliament when it gave a limited authority to the State Legislature under Article 243(C)(3). We are supported in our opinion by the report of the Joint Committee which suggested the incorporation of Part IX in the Constitution as also by the objects and reasons given in promulgating Act 15 of 1998, by which S. 99 of the Act was amended to provide for only direct election to the Panchayat Samities. It is significant that this amendment was made by the same legislature which has made the present change as well. At what time, it had been found that the ratio of 40% of the Samiti members to be directly elected and the remaining 60% by indirect elections from the representatives of the Sarpanches was contrary to the constitutional mandate of Article 243(C) of the Constitution and it had been noticed that although the State Legislature was authorised (under Article 243(C). (3) to provide for indirect representation yet the spirit of Constitution required that members of the Panchayat Samities should be directly elected. We find

absolutely no reason whatsoever as to why the State Legislature has taken a volte-face and returned to a situation where only 30% members are to be elected directly and 70% through indirect election.

(Para 13)

Further held, that Article 243(C)(2) has made a provision for direct election of all members with such exceptions as given in Article 243(C)(3). We find that this enabling and directory provision cannot be allowed to obliterate the mandate of Article 243(C)(2). Therefore, Clauses (a) and (b) of Section 99(1) as introduced by the Amendment Act are unconstitutional being opposed to the express provisions of Article 243(C)(2). They are accordingly struck down.

(Para 15)

Harbhagwan Singh, Sr. Advocate with Arun Walia and Liaqat Ali, Advocate, *for the petitioners.*

A.G. Masih, AAG, Punjab, *for the respondents.*

JUDGMENT

Harjit Singh Bedi, J.

(1) By this petition, a challenge has been made to the constitutionality of Sub-Clauses (a) and (b) of Sub Section (1) of Section 99 of the Punjab Panchayati Raj Act, 1994 inserted by the Punjab Panchayati Raj (amendment) Act, 2000, with respect to elections to the Panchayat Samities.

(2) As this issue raised is purely legal, the bare facts out of which this matter arises requires to be noticed.

(3) In order to strengthen the Panchayati Raj Institutions in the States Part IX was inserted in the Constitution of India by the 73rd amendment with effect from June 1, 1993. The State of Punjab thereafter promulgated the Punjab Panchayati Raj Act, 1994 (hereinafter called the 'Act') in furtherance of its objectives. It provided for a three tier system at the grass-roots level in the State of Punjab with the Gram Panchayat being constituted for the village level, the Panchayat Samiti at the Block level and the Zila Parishad at the District level. A provision for direct election to these Institutions was also provided for from territorial constituencies to be determined in the manner stipulated under the Act. Section 99 of the Act provided that every Panchayat Samiti would consist of 15 to 25 directly elected members from the territorial constituencies in the Panchayat Samiti area and Sub Clause (b) of Sub Section (1) of Section 99 laid down that

representatives of the Sarpanches indirectly elected from amongst themselves and directly elected members of the Panchayat Samities were to be elected in the ratio of 60 : 40. This Sub-clause was deleted by Punjab Act of 15 of 1998 on the ground that it was in direct conflict with the provisions of Article 243(C) (2) of the Constitution of India, which provided that all seats to the Panchayat Samiti were to be filled by direct election. The State of Punjab, however, promulgated the Punjab Panchayati Raj (amendment) Ordinance, 1999, copy appended as Annexure P-2 on December 31, 1999, in which Clause (a) and (b) of Sub Section (1) of Section 99 was substituted and it was once again provided that members of Panchayat Samities were to be elected from both sources—that is from amongst the Sarpanches and by direct election with the ratio being fixed at 70 : 30.

(4) This Ordinance was replaced by the Punjab Panchayati Raj (Amendment) Act, 2000 (hereinafter called the 'Amendment Act'), copy appended as Annexure P-3. Sub-clause (a) and (b) of Section 99(1) introduced by the amendment have been challenged by the petitioners on the plea that its provisions were violative of the mandate of Article 243(C)(2) of the Constitution of India, which visualised that all seats in a Panchayat, which would include a Panchayat Samiti, were to be filled by persons chosen by direct election though sub-Article (3) thereof did provide for the election of a small number of members by indirect election. It has been pleaded in the writ petition that by reducing the ratio of the directly elected members to 30 while retaining 70 for the representatives of the Sarpanches indirectly elected, the provisions of Article 243(c) had been circumvented and as this was a colourable exercise of power, the aforesaid provisions were liable to be struck down on that basis.

(5) On notice of motion, a reply has been filed by the respondents in which it has been pointed out that it had been found by the State Government that on account of an irrational distribution of seats introduced by the Amendment of 1998, the link between the higher and lower levels of Panchayati Raj Institutions had been blocked and it had accordingly been decided to restore the institutional linkage between these sister institutions by filling in 70% of the seats from amongst elected Sarpanches and 30% by direct election.

(6) Mr. Harbhagwan Singh, the learned Senior Counsel appearing for the petitioners, has raised only two arguments in the course of the hearing. He has firstly urged that the very terminology of Article 243(C)(2) required that all elections were to be direct with a small exception laid down in Sub-Article (3) thereof but by the changes made by the Amendment Act, the effect of this provision had been

totally nullified and the ratio of 70 : 30 fixed, had by implication, obliterated the provisions of Article 243 (C)(2).

(7) Mr. A.G. Masih, the learned State Counsel, has however, pointed out that Article 243(C) itself (in Sub Article (3) visualised indirect election from amongst the chairpersons of the Panchayats, and as such the Amendment Act amply stood the test of constitutionality.

(8) We have considered the arguments raised by the learned counsel for the parties.

(9) The report of the Joint Committee on the Constitution (Seventy Second Amendment) Bill, 1992, had noted that the issues relating to direct or indirect elections in the Panchayati Raj Institutions was of vital importance as directly elected members had an inherent strength of having been elected by the people and indirect elections had often led to manipulative practices. The Committee had accordingly recommended that in order to strengthen democracy, all seats in the Panchayats at all levels should be filled by direct election with a proviso that it may be left to the Legislature of the State to make a provision relating to the representations of Chairpersons of Panchayats in the Panchayats at the next higher level, i.e. Chairperson of the Panchayats at village level may be represented at the intermediate level and the Chairperson of the Panchayats at the intermediate level may be represented at the District level. This recommendation of the Committee was accepted and Article 243(C) was incorporated in the Constitution and the Act was promulgated in furtherance of the objects laid down in the said Article. In Section 99 of the Act it was provided that representatives of the Panchayat Samiti would be elected from amongst the Sarpanches of the Gram Panchayat in the Panchayat Samiti area and also directly in the ratio of 60 : 40. This provision was, as already mentioned above, omitted by the Punjab Act 15 of 1998 and the reasons for doing so were given as :

“STATEMENT OF OBJECTS AND REASONS

The Punjab Panchayati Raj Act, 1994, presently provides for 40% of the Samiti members to be elected directly while the remaining 60% are indirectly chosen from amongst Sarpanches in the samiti area. Article 243(2) of the Constitution enjoins that all seats in Panchayats shall be filled by persons chosen by direct election from territorial constituencies. Although the State Legislature may under Article 243(3) provide for indirect representation, it is evident that the spirit of the Constitution requires that members of the Panchayat Samities should, by and large, be directly elected. Accordingly the Act is proposed

to be amended to provide for direct election for members of the Panchayat Samities.”

(10) By the impugned notification the omitted provisions have been reintroduced with even greater emphasis on indirect election as the ratio of the representatives of the Sarpanches and of directly elected members has now been fixed at 70 : 30.

(11) As would be evident the fate of the matter would hinge on the interpretation of Article 243(C) read with Section 99 of the Act. These provisions are reproduced below :

243C : Composition of Panchayats

(1) Subject to the provisions of this part the legislature of a State may, by law, make provisions with respect to the composition of Panchayats :

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) *All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.*

(3) *The legislature of a State may, by law, provide for the representation—*

(a) *of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;*

(b) *of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;”*

Section 99 before amendment of 1998

Composition of Panchayat Samities. (1) Every Panchayat Samiti shall consist of :

(a) Six to ten directly members from territorial constituencies in the Panchayat Samiti area as may be determined under Section 100 of the Act and notified by the State

Government so far as practicable, having regard to the uniformity of population of each constituency;

- (b) representative of the Sarpanches directly elected by them from amongst the Sarpanches of the Gram Panchayats in the Panchayat Samiti area;

Provided that ratio of the representatives of the Sarpanches and that of the directly elected members shall be sixty: forty;

- (c) Member of the Legislative Assembly of the State of Punjab major portion of whose constituency falls in the Panchayat Samiti area;
- (d) Members of the Legislative Council of the State of Punjab, if any, who are registered as electors within the Panchayat Samiti area;
- (2) The members of the Panchayat Samiti whether or not chosen by direct election from territorial constituencies in the Panchayat Samiti shall have the right to vote in the meetings of the Panchayat Samiti.

Section 99 after the Amendment Act

In the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as the principal Act), in Section 99, in sub-section (1), for clause (a), the following clauses shall be substituted, namely :—

- (a) Three to five directly elected members from territorial constituencies in the Panchayat Samiti area as may be determined under section 100 of this Act and notified by the State Government so far as practicable, having regard to uniformity of population of each constituency;
- (b) representatives of the Sarpanches of the Gram Panchayats in the Panchayat Samiti area elected by them from amongst themselves :

Provided that the ratio of the representatives of the Sarpanches and that of the directly elected members shall be seventy thirty.

(12) A bare look at the terminology of Article 243(C)(2) would reveal that a mandate has been laid that all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies carved out in the manner laid down in the said provision as also in the relevant provisions of the Act. The learned State counsel has, however, laid emphasis on Sub-Article (3) of Article 243(C) of the Constitution, which provides that the Chairpersons of the lower Panchayati Raj Institutions may also be represented to the higher levels by election held amongst themselves, to the said bodies.

(13) We are of the opinion that the ratio of indirectly *vis-a-vis* directly elected ones fixed by the Amendment Act has in fact nullified the Constitutional mandate given in Article 243(C)(2) of the Constitution and a mandatory provision has been set at naught by a directory and enabling provision. This could never have been the intention of Parliament when it gave a limited authority to the State Legislature under Article 243(C)(3). We are supported in our opinion by the report of the Joint Committee which suggested the incorporation of Part IX in the Constitution, as also by the objects and reasons given in promulgating Act 15 of 1998, by which Section 99 of the Act was amended to provide for only direct election to the Panchayat Samities. It is significant that this amendment was made by the same legislature which has made the present change as well. At that time, it had been found that the ratio of 40% of the Samiti members to be directly elected and the remaining 60% by indirect elections from the representatives of the Sarpanches was contrary to the Constitutional mandate of Article 243(C) of the Constitution and it had been noticed that although the State Legislature was authorised under Article 243(C)(3) to provide for indirect representation yet the spirit of Constitution required that members of the Panchayat Samities should be directly elected. We find absolutely no reasons whatsoever as to why the State Legislature has taken a volte-face and returned to a situation where only 30% members are to be elected directly and 70% through indirect election.

(14) Mr. Harbhagwan Singh's reliance, therefore, on *Dwarka Dass Shrinivas v. The Sholapur Spinning and Weaving Co. Ltd. and others* (1), appears to be of some merit. In this case, an Ordinance was issued for taking over of the management of the Sholapur Spinning and Weaving Company Ltd. The Ordinance was challenged on the

(1) AIR 1954 SC 119

ground that its provisions had in fact enabled the Central Government to take over the management of the mill to the total exclusion of the share holders. It was accordingly contended that the said Ordinance was bad in law. The Hon'ble Supreme Court observed that in order to decide as to whether a particular legislation was unconstitutional, it was open to the Court to look behind the names, forms and appearances to discover the true character and nature of the legislation and that the substance of the legislation was to be examined in determining the real intent behind the legislation. Mr. Harbhagwan Singh appears to be on firm ground when he urges that the real intent behind the impugned legislation was to do away with the Constitutional provisions given in Article 243(C)(2) of the Constitution, which provided that all election to the Panchayat Samities were to be held directly, by taking recourse to Article 243(C)(3) by limiting the indirectly elected members *vis-a-vis* to directly ones to a ratio of 70 : 30.

(15) Reliance has also been placed by Mr. Harbhagwan Singh on *P. Vajravelu Mdaliar v. The Special Deputy Collector for Land Acquisition, West Madras and another* (2). In this case, the State Government of Madras had made an amendment in the Land Acquisition Act providing for the payment of compensation on account of acquisition of property, which was wholly illusory. The Hon'ble Supreme Court observed that such a provision would amount to a fraud on the powers conferred on the legislature to legislate and as the compensation to be awarded was to be fixed on fair principles and not arbitrarily, the amendment was contrary to the provisions of Article 31(2) of the Constitution. It was also observed that if the Legislature transgressed its legislative powers in a covert or indirect manner and adopted a device to outstep the limits of its power, interference by the Courts was called for. We are of the opinion that it is open to us to look under the facade and to examine the true intent of the amendment. We are in agreement with the argument of the learned counsel, that Article 243(C)(2) has made a provision for direct election of all members with such exceptions as given in Article 243(C)(3). We find that this enabling and directory provision cannot be allowed to obliterate the mandate of Article 243(C)(2). We are, therefore, of the opinion that Clauses (a) and (b) of Section 99(i) as introduced by the Amendment Act are unconstitutional being opposed to the express provisions of Article 243(C)(2). They are accordingly struck down.

(16) There will be no order as to costs.

R.N.R.