
Master of Surgery. However, the proposition laid down in those cases cannot be relied upon for interpreting the provisions of the 1979 Rules. The abbreviated form of M.h. (Paediatric Surgery) in the publication of the Medical Council of India cannot be treated as sufficient for holding that M.Ch. is a post-doctoral qualification because it only signifies the degree of M.S. (Paediatric Surgery).

(24) For the reasons mentioned above, we hold that the selection of respondent No. 6 for appointment as Senior Lecturer (Paediatric Surgery) is liable to be declared as illegal because he did not possess one of the essential qualifications.

(25) In view of the above conclusion, we do not consider it necessary to deal with the petitioner's plea that selection of respondent No. 6 is vitiated due to bias.

(26) Before parting with the case, we deem it proper to mention that in the written statement filed on behalf of respondents No. 1 and 4 and Objection has been raised to the *locus standi* of the petitioner to challenge the selection of respondent No. 6 on the ground that he had participated in the selection, but no argument on this point was advanced at the time of hearing. Otherwise also, this objection was liable to be rejected because on the date of interview, the petitioner had submitted written representation Annexure P. 7 dated 23rd September, 1993 to the Chairman of the Commission to protest against the consideration of the candidature of respondent No. 6.

(27) In the result, the writ petition is allowed. Selection of respondent No. 6 for appointment as Senior Lecturer (Paediatric Surgery) is declared illegal and quashed.

S. C. K.

Before A.B.S. Gill and V.S. Aggarwal, JJ

SUDESH KUMAR AGGARWAL—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 13542 OF 1998

27th February, 2001

Punjab Municipal (President and Vice-President) Election Rules, 1994—Rls. 3 and 4—Punjab State Election Commission Act, 1994—S. 74—Constitution of India, 1950—Arts. 226 and 243 ZG—

Election to Municipal Council— Respondent 5 declared as elected President by margin of one vote— Rl. 4(1) provides that ballot is to be marked by 'yes' or 'no' by the voter— Voters mentioning both 'yes' and 'no' against the candidates— Non-compliance of the 1994 Rules— Alternate remedy of election petition— S. 74 of the 1994 Act does not affect the extra-ordinary writ jurisdiction of the High Court under Art. 226— Writ allowed, election of respondent quashed while holding the petitioner elected as President.

Held, that a reading of rule 4(1) of the Punjab Municipal (President and Vice-President) Election Rules, 1994 makes unambiguously clear that the voter has to write either 'yes' or 'no' and is not required to write both which would not be secret voting in accordance with the rule. The rule requires the voting by ballot and the manner in which the ballot is to be marked. Respondent No. 5 was wrongly declared as having been elected by counting the invalid votes and the petitioner who obtained more valid votes was required to have been declared elected.

(Paras 14 and 26)

Further held, that the controversy between the parties pertained only to the interpretation of Rule 4(4) of the 1994 Rules. Even otherwise, the bar of jurisdiction under Section 74 of the Election Commission Act which provides that "no election shall be called in question except by an election petition" does not affect the extraordinary writ jurisdiction of the High Court under Article 226 of the Constitution. Even the constitutional bar created under Article 243-ZG does not oust the jurisdiction of the High Court in the matters relating to the Municipal Elections. No doubt, the exercise of jurisdiction under Art. 226 of the Constitution has to be in appropriate cases. Even otherwise, a person who is elected on the basis of invalid votes cannot be allowed to continue in the elected office if the Court, on such a consideration that in his case it was not a fair election, entertains the writ petition.

(Paras 22 and 25)

S.P. Jain, Sr. Advocate with Sunil Chadha, Sr. Advocate and
Dheeraj Bali, Advocate *for the Petitioner*

N.D.S. Mann, DAG, Punjab.

P.S. Patwalia, Advocate

M.S. Bedi, Advocate, *for the respondents*

JUDGMENT

Amar Bir Singh Gill, J

(1) The petitioner impugns the election of Ashok Kumar, respondent No. 5, as President of Municipal Council, Kapurthala being illegal and seeks issuance of a writ in the nature of mandamus directing respondents No. 1 and 2 to declare him duly elected President of the Municipal Council.

(2) The election to Municipal Council, Kapurthala was held on 12th January, 1998. The petitioner was elected from one of its wards. The notification of the Government notifying the result of the election was issued on 14th January, 1998. The first meeting of the constituted Municipal Council as required under rule 3 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (for short to be referred as "1994 Rules"), was convened for 11th April, 1998,—*vide* notice dated 7th April, 1998 issued by respondent No. 2-Sub Divisional Magistrate, Kapurthala. Rule 3 of the 1994 Rules requires the convening of the first meeting for administering oath to the elected Councillors and for election to the offices of President and Vice-President in that meeting. The meeting held on 11th April, 1998 was postponed for 12th April, 1998, according to the petitioner, at the instance of respondent No. 6, who is the sitting Minister of the State Government and is an *ex-officio* Member of the Council. The petitioner as well as respondent No. 5 filed their nomination papers for the post of President. According to the petitioner, respondent No. 6 was openly and actively supporting respondent No. 5. Since out of 23 Councillors of Municipal Council, Kapurthala, 12 Councillors had sponsored his name for the post of President, therefore, in order to avoid the defeat of respondent No. 5 the election meeting was adjourned *sine die* without giving any cogent and justified reasons. The petitioner and his supporters i.e. 12 Councillors approached this Court in CWP No. 5606 of 1998 seeking directions from this Court in the nature of mandamus commanding the respondent-authorities to hold the election to the offices of the President and Vice-President of Municipal Council, Kapurthala under the supervision of independent agency and under strict security and also to provide protection to the lives and properties of the petitioners. The petition came up for hearing on 23rd April, 1998, and this Court issued notice of motion for 11th May, 1998, and the case was adjourned for 20th August, 1998. However, during the pendency of the said writ petition, respondent No. 2 issued an agenda on 8th June, 1998 for holding the elections to the offices of President and Vice President of

Municipal Council, Kapurthala on 10th June, 1998. Since the petitioners in the said writ petition were apprehensive of illegalities as they were threatened to vote in favour of the ruling party candidate i.e. respondent No. 5 therefore, they moved Civil Misc. Application No. 13047 of 1998 on 8th June, 1998 for the appointment of an independent observer at the election meeting. A copy of the application is annexed as Annexure P-1. The said application came up for hearing on 10th June, 1998 at 11 a.m. i.e. the day on which the election meeting was fixed by respondent No. 2 and this Court while issuing notice of the application to the respondents directed the State Council to make sure that some senior officer was deputed to see that the election was held on 10th June, 1998 in a fair and impartial manner. The State Council immediately contacted Deputy Commissioner, Kapurthala on telephone and conveyed her the directions of this Court well before the scheduled time of election meeting. However, no such senior officer was deputed and on the said date i.e. 10th June, 1998, the elections to the offices of President and Vice President were conducted, however, much against the rules and without observing any secrecy at the instance of respondents No. 2, 5 and 6. It is further alleged that since the loyalty of certain Municipal Councillors was doubted, they were asked to poll their votes by writing 'yes' as well as 'no' on the ballot papers so as to make it sure that they had polled their votes in favour of respondent No. 5. It was done at the instance of respondent No. 6 who remained present in the meeting hall throughout. He polled his vote after 11 votes were polled in favour of respondent No. 5 and his action demonstrated that no secrecy, whatsoever, was maintained in the election on that day to the office of President. It is further alleged that six absolutely invalid votes of respondent No. 5 were counted as valid votes whereas one vote of the petitioner was declared invalid as a result of which respondent No. 5 was illegally declared elected by a margin of one vote only. The petitioner claims that his allegations stand corroborated and established from the fact that on the aforesaid six votes, Municipal Councillors have mentioned 'yes' as well as 'no' whereas as per the mandatory requirement of rule 4(1) of 1994 Rules, voting for the offices of President and Vice President shall be by ballot by writing 'yes' or 'no' on the ballot paper and not 'yes' and 'no'. One vote in favour of the petitioner was also illegally declared invalid since the Councillor who had casted that vote had tick-marked the same instead of writing 'yes' in front of the name of the petitioner. Respondent No. 5 was illegally declared elected on 10th June, 1998 itself and on 12th June, 1998, the petitioner filed yet another Civil Misc. Application No. 13298 of 1998 in the pending writ petition No. 5606 of 1998. A copy of the said application is annexed as Annexure P-2. On 12th June, 1998, this Court issued notice of the application for 9th July, 1998.

The petitioner claims the relief *inter-alia* on the ground that despite the directions of this Court, no senior officer was deputed in the election and the election was held in total disregard of the rules violating secrecy of ballots at the behest of respondents No. 2, 5 and 6. Six Councillors belonged to B.J.P. party whose loyalty was doubted and to ensure that they cast their votes in favour of respondent No. 5, they were asked to mark the ballot papers in the manner that their identity was disclosed. Six Councillors had marked the ballot papers by writing 'yes' and 'no' whereas they were to write 'yes' or 'no'. Such invalid votes polled in favour of respondent No. 5 were counted as valid.

(3) In the written statement filed by respondent No. 5, preliminary objections have been taken. It is stated that in the election held on 12th June, 1998, all the 24 Councillors (including the M.L.A. the *ex-officio* Member) were present. It was commenced at 11 a.m. The Convener had explained to all the Councillors the manner in which they were required to cast their votes and any vote if tick-marked was to be declared as invalid and rejected. Out of the total votes polled, 12 were in favour of respondent No. 5 and 11 in favour of the petitioner and as such respondent No. 5 was declared as elected President. Ever since the election, all the ballot papers were lying in a sealed cover with the authorities. Voting being required by ballot, the Convener had also announced that the Councillors were required to cast their votes by writing 'yes' or 'no' on the ballot. Since there were only two members competing, there was absolutely nothing wrong if on a vote, a person has written 'yes' against one and 'no' against other and, thus, such vote can not be rejected being invalid as per rule 4(1) of the 1994 Rules and writing 'yes' and 'no' also clarified the intention of the voter. It is further stated that the petitioner has an alternate remedy of filing an election petition under Section 74 of the Punjab State Election Commission Act. On merits, the election of respondent No. 5 as President is claimed to be conducted fairly and as per the rules Respondent No. 5 has also denied if respondent No. 2 adjourned the election meeting for any extraneous reasons. It is also claimed that in the earlier writ petition, respondent No. 5 was not impleaded and as such, he was not aware of the proceedings before this Court. No such information was received by the Returning Officer at the time of election from this Court.

(4) In the separate written statement filed by the Sub-Divisional Magistrate-respondent No. 2, preliminary objection has been taken that the writ petition does not lie and the election petition is the remedy against the election of respondent No. 5. The election, according to this respondent, was held in accordance with the rules and strict secrecy was maintained and he had informed the Councillors the manner of

casting their votes in accordance with the rules. It is further claimed that the votes wherein 'yes' was written against the name of elected candidate were not contrary to the provisions of the Rules and could have been counted as valid votes. The Rules provide that 'yes' or 'no' has to be written on the ballot paper and it nowhere mentions that if 'no' is written against the other candidate, the vote would become illegal. Rather this would make the intention of voter clear without violating the rules. he denied that no secrecy was maintained. He did not receive any communication of the orders of this Court and the election held on 10th June, 1998, was free and fair election.

(5) This writ petition came up for motion hearing on 2nd September, 1998. However, the same was not entertained with the observations that "since disputed questions of facts are involved, we do not find any merit to interfere in our extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India." Against this order, the petitioner filed a Civil Appeal No. 642 of 1999 and following order was passed by the Hon'ble Bench of the Supreme Court :-

"Leave granted.

The order on the special leave petition stated that matter might be disposed of at the S.L.P. stage by an order restoring the writ petition to the file of the High Court to be heard and disposed of on merits.

The High Court, in the order under challenge took the view that there were disputed questions of fact involved in the writ petition and, therefore, declined to entertain it. Having heard learned counsel, we are of the view that the writ petition does require to be heard and disposed of on merits, but we make it clear that it shall be open to the successful candidate to urge that there is an alternative remedy available although it must be pointed out that the State has taken the view, agreeing with the appellant, that there is none. We do not say any more lest it should prejudice the case on either side.

The civil appeal is allowed. The impugned order is set aside. The writ petition (C.W.P. No. 13542 of 1998) is restored to the file of the High Court to be heard and disposed of on merits expeditiously.

No order as to costs."

(6) The counsel for the parties have been heard.

(7) The election has been assailed mainly on the ground that on account of the pressure exerted by respondent No. 6 who is the sitting Minister of the State Government, no secrecy of ballot was maintained and in order to ensure that the Councillors marked their ballot in favour of respondent No. 5, respondent No. 6 had asked the Councillors to support respondent No. 5 by writing 'yes' and 'no' both on the ballots since he was doubting their support and that the Returning Officer also succumbed to his pressure and counted invalid votes in favour of respondent No. 5 which vitiated the entire election. It is also the allegation of the petitioner that initially the first meeting was not convened in accordance with the mandate of rule 3 of the 1994 Rules. Since the meeting was not convened within the stipulated period and so also the same was postponed *sine die* on 12th April, 1998, without holding the election to the offices of President and Vice-President, it compelled the petitioners to approach this Court for issuance of directions for holding of the election meeting. Rule 3 of the 1994 Rules provides as under:—

3. **Manner of election.**—The Deputy Commissioner or any Gazetted Officer authorised by him in this behalf (hereinafter in this rule referred to as the convener) shall, within a period of fourteen days of the publication of the notification of election of members of a newly constituted Municipality, fix, by giving not less than forty eight hours notice to be served at the ordinary place of residence of all the elected members, a date of convening the first meeting of the elected members of such municipality by stating in the notice that at such meeting the oath of allegiance will be administered to the members present and also stating that the President and the Vice-President or Vice-Presidents as the case may be, will be elected.

(8) Municipal Council, Kapurthala was constituted by notification dated 14th January, 1998. According to rule 3 re-produced above, the first meeting should have been convened within 14 days of the issue of notification. Notice was issued on 7th April, 1998 fixing 11th April, 1998 as the date of first meeting and was adjourned to the next date where-after it was adjourned *sine die*. According to the respondents, no such date was fixed on 11th April, 1998, and it was only fixed on 12th April, 1998. Although the Returning Officer in his written statement has stated that neither any meeting was called for 11th April, 1998, nor it was postponed to 12th April, 1998, however, this plea is falsified by the notices, Annexures P-3 and P-4 which were issued by respondent No. 2 himself on 7th April, 1998 fixing the first

meeting on 11th April, 1998, at 11 a.m. Annexures P-3 and P-4 being the photo copies of the originals also carry the signatures of respondent No. 2. The plea taken in the written statement stands contradicted from the documents Annexures P-3 and P-4. The meeting held on 12th April, 1998 also ended in a fiasco because unruly scene was created in the meeting as per the copy of the proceedings Annexure R-2/1.

(9) The 1994 rules require that the voting in the election of President and Vice-President has to be by ballot. Rule 4(1) reads as under :—

4. **Voting by ballot:**—(1) The voting for the offices of President and Vice-President or Vice-Presidents, as the case may be, shall be by ballot by writing 'yes' or 'no' on the ballot paper. Special ballot papers shall be used for such voting each bearing an Official mark to be placed thereon by the Deputy Commissioner."

(10) According to respondent No. 2, on the date of meeting, he had explained the requirement of the above rule and that the Councillors were to write 'yes' or 'no' on the ballot papers besides any ballot if tick-marked was to be rejected. Voting in the election of President and the Vice-President is by ballot which requires and implies secrecy of voting. So also the rule 4(3) of 1994 Rules makes incumbent on the person presiding over the meeting to ensure secrecy of ballot. It reads as under:—

- 4(3)—The person presiding over the meeting convened under rule 3, shall ensure utmost secrecy while recording the wishes of the members as laid down in sub-rule (2) and shall keep a brief record of each such instance, without indicating the manner in which the vote has been cast."

(11) Similarly, Section 83 of the Punjab State Election Commission Act, 1994 provides as under:—

- "83. **Secrecy of voting not to be infringed.**—No witness or other person shall be required to state for whom he has voted as at election."

(12) Learned counsel for the petitioner has mainly contended that as per the rule only 'yes' or 'no' was to be written on the ballots by the voters/Councillors and writing of 'yes' and 'no' on the ballot papers would amount to identify the voter besides it would be against the spirit of the rule and that in the election meeting, 6 Councillors from

the BJP party were made to write 'yes' and 'no' both to satisfy respondent No. 6 that they had supported the official candidate of the ruling party and that respondent No. 2 counted six votes as valid whereas these were required to be rejected in view of the express statement in the rule.

(13) Learned counsel for respondent No. 5 contended that although the rule provides that ballot is to be marked by 'yes' or 'no' by the voter, but writing of 'no' would not amount to any vote since it does not convey the positive intention of the voter in favour of any person and in case the voter has written 'yes' in favour of the candidate whom he is supporting and 'no' against the candidate whom he is not supporting, it would still be a valid voting because the voter's intention is clear that he support one candidate and does not support the other candidate and writing 'yes' and 'no' would amount to convey the intention besides that even if six voters had written 'yes' and 'no' there was no identity of voters and it does not affect the secrecy of voting.

(14) A reading of rule 4(1) of the 1994 Rules makes unambiguously clear that the voter has to write 'yes' or 'no' and he is not supposed to write 'yes' and 'no'. It would not in any manner be in accordance with the requirement of the rule. The voter has to write either 'yes' or 'no' and is not required to write both which would not be secret voting in accordance with the rule. The rule requires the voting by ballot and the manner in which the ballot is to be marked. *In B.S. Minhas vs Indian Statistical Institute*. (1) it has been held that if an act is required to be done in the manner prescribed, that can only be in accordance with the procedure prescribed otherwise it will not be accepted to have been done at all.

(15) Applying the principle laid down by the Supreme Court, no other meaning than the one expressed in the rule itself can be given in respect of the manner of voting in the election to the office of President of the Municipal Council.

(16) In order to verify the allegations of the petitioner, the record of the election was summoned and the same has been mutually perused by us. The record is sealed in a parcel which contains four sealed envelopes. First envelope contains 24 nos. used ballot papers. Second envelope contains one un-used ballot paper. Third envelope contains 25 un-used/blank signed ballot papers. Fourth envelope contains the signatures of all the 24 Councillors against their names in token of receipt of the ballots. The used ballots are in two separate folds showing

the votes polled in favour of the candidates. On some of the ballots, it is written 'yes' against the name of the candidate and on some of the ballots it is written '*haan*' (in Punjabi Gurumukhi script, which also means 'yes' when translated). On some of the ballot papers both 'yes' and '*haan*' are mentioned besides 'yes' and 'no' against the candidates. In view of the rule, we have considered the ballot papers containing 'yes' or '*haan*' against the name of the candidates as only valid votes. A copy of the original proceedings, Annexure R-2/1, which is in Punjabi Gurumukhi script, mentions that the Councillors were asked to write '*haan*' ya '*naah*' i.e. 'yes' or 'no'. In the written statement of respondent No. 2, he claims to have asked the Councillors to write 'yes' or 'no'. As such word 'yes' either in English or its meaning in Punjabi as '*haan*' is accepted to be a valid exercise of voting. On this basis, the ballot papers in favour of Ashok Kumar, respondent No. 5 carry five ballots with 'yes' written against his name and three ballot papers with '*haan*' written against his name which make in all eight valid votes in his favour. The rest of the votes are invalid because one vote carries a tick-mark and '*haan*' against his name, two votes carry both '*haan*' and 'yes' and one vote carries both 'yes and 'no'.

(17) The other bunch of the ballots which are in the name of Sudesh Kumar Aggarwal-petitioner show that these contain word 'yes' on eight ballots while word '*haan*' on one ballot which make in all nine valid votes in his favour. The rest of the ballots are invalid because one ballot carries only tick mark against his name, one vote contains '*haan*' and 'yes' both and one vote contains '*haan*' and 'naah' both.

(18) The petitioner-Sudesh Kumar Aggarwal thereby secured nine valid votes in his favour. The Returning Officer wrongly accepted the rest of the ballot papers in favour of both the petitioner and respondent No. 5 which do not contain single word 'yes' or 'no' according to rule and contain either 'yes' and 'no' according to rule and contain either 'yes' and 'no' or 'yes' and '*haan*' and 'yes with 'tick-mark' which can identify the voter to the candidate at the time of counting which impliedly show that the Councillors who had written both 'yes' and '*haan*' have done so in accordance with the prior indicated manner to make out their identify and remove doubt of their support. As such, these votes can not be counted towards the valid votes.

(19) After counting, all the envelopes have been sealed, put in the same parcel and sealed again with the seal of the Court.

(20) The counting of votes, as above, shows Sudesh Kumar Aggarwal-petitioner having secured nine valid votes whereas respondent No. 5 secured only eight valid votes.

(21) This Court is not oblivious of the fact that to challenge the election, the remedy by way of election petition is available under Section 74 of the Punjab Election Commission Act. Besides, objections have been taken by the respondents in their written statements that the petitioner has an alternate remedy of filing the election petition and as such this petition is not maintainable.

(22) The election in question took place during the pendency of the writ petition filed earlier by the petitioner alongwith the other Municipal Councillors who supported him, seeking directions for holding of election meeting after it was postponed indefinitely by respondent No. 2 on 12th April, 1998. Notice of motion was issued in that writ petition but in the meantime respondent No. 2 served the meeting notices on the Councillors for 10th June, 1998. The petitioners in the earlier writ petition including the petitioner in the present petition again rushed to the Court and sought directions for peaceful holding of election and appointment of a senior officer of the District as an observer. It is not disputed that this Court issued directions to the State Counsel who is stated to have informed immediately on the cellular phone the Deputy Commissioner of the District for the appointment of a senior officer as an observer in the election meeting. Admittedly, no such officer was deputed as an observer. Respondent No. 2, in his written statement, has categorically stated that he did not receive any written direction from this Court or from the Deputy Commissioner. After the election, in the light of the allegations made by the petitioner, the present writ petition was filed but as stated earlier it was not entertained. But by order of the Supreme Court dated 5th November, 1999, it has been restored. The order of the Supreme Court shows that respondent-State conceded that petitioner has no alternate remedy. The controversy between the parties pertained to the interpretation of Rule 4(4) of the 1994 Rules whether the rule could be complied only if the ballot is written with 'yes' or 'no' or if the same could also be complied if 'yes' and 'no' is written on the ballot paper. Even otherwise, the bar of jurisdiction under Section 74 of the Election Commission Act which provides that "no election shall be called in question except by an election petition" does not affect the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution.

(23) In *S. Fakruddin and others vs The Govt. of A.P. and others* (2) is has been held as under :—

“Notwithstanding the bar as to jurisdiction of court in regard to Panchayat election that the bar is to the ordinary jurisdiction of the Courts and not to the extraordinary jurisdiction under

(2) AIR 1996 Andhra Pradesh 37 (FB)

Article 226 of the Constitution and Article 136 thereof.”

(24) A full Bench of this Court in *Lal Chand vs State of Haryana and others*, (3) also considered the scope of Article 243-O Clause b and Article 243-ZG Clause ‘b’ of the Constitution which oust the jurisdiction of the Courts in the matters relating to elections to any Municipality or Panchayat and held as under :—

“No election to any Panchayat/Municipality shall be called in question except an election petition presented to such an authority and in such manner as is provided for by or in any law made by the legislature of a State, but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution.”

(25) It is clear that even the constitutional bar created under Articles 243-ZG does not oust the jurisdiction of the High Court in the matters relating to the Municipal elections. No doubt, the exercise of jurisdiction under Article 226 of the Constitution has to be in appropriate cases. Even otherwise, a person who is elected on the basis of invalid votes can not be allowed to continue in the elected office if the Court, on such a consideration that in his case it was not a fair election, entertains the writ petition. (See *K. Venkatachalam vs A. Swamickan and another*, (4) Admittedly, in such cases election petition is not an efficacious remedy.

(26) Under the facts and the reasons given below, it is abundantly clear that respondent No. 5 was wrongly declared as having been elected by counting the invalid votes and the petitioner-Sudesh Kumar Aggarwal who obtained more valid votes was required to have been declared elected.

(27) For the reasons given above, this petition is allowed. The election of respondent No. 5 is quashed and the petitioner-Sudesh Kumar Aggarwal is held to have been elected as President of Municipal Council, Kapurthala in the election held on 20th June, 1998. Respondent No. 1 is hereby directed to notify the election of the petitioner-Sudesh Kumar Aggarwal as such within one month of the receipt of a certified copy of this order.

S.C.K.

(3) (1998-2) Vol. CXIX PLR 640

(4) AIR 1999 SC 1723