

Before Augustine George Masih & Meenakshi I. Mehta, JJ.

TANU—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 2910 of 2021

February 12, 2021

Writ petition under Art. 226 — Punjab State Election Commission Act, 1994 —S.35— Art. 243ZG of the Constitution— Election to members of Municipal Corporation, Municipal Council and Nagar Panchayat— Power of judicial review —When to be exercised— On facts, petitioners filed nomination papers, against which objections were filed — Replies filed to the objections denying the allegations – But the Election Returning Officer rejected their candidature on the last date of filing nomination papers without furnishing copies of the rejection orders— Challenge to — Held, relying upon law laid down by the Five Judge Bench of the Court in Prithviraj case and also a Division Bench of the court in Balraj Singh case that power of the High Court under Article 226 of the Constitution is available where exercise of such power subserves the progress of election, facilitates its completion and is exercised to further the election process — An election can only be challenged through an election petition— Petition dismissed.

Held that it is no more in dispute, rather acknowledged in large number of judgments that there is no absolute bar with regard to the exercise of jurisdiction, which flows from Article 226 of the Constitution on the High Court for entertaining a writ petition in election matters. The power of judicial review has always been put to exercise by the Writ Court being an essential feature of the Constitution, which can neither be tinkered with nor eroded. However, Clause (b) of Article 243ZG lays down that no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for under any law made by the legislature of the State but this would not either curtail or oust the jurisdiction of the High Court under Articles 226/227 of the Constitution.

(Para 11)

Further held that a Division Bench of this Court in *Balraj Singh*

Versus State of Punjab and others 2008 (4) R.C.R. (Civil) 198, even after the Court noticed *prima facie* that the nomination papers of the candidates were probably wrongly rejected, refused to exercise its extraordinary jurisdiction in the light of the law laid by the Hon'ble Supreme Court in Mohinder Singh Gill's case (*supra*) and this Court in Prithviraj's case (*supra*) holding that the power of High Court under Article 226 is available, where exercise of such power sub serves the progress of election, facilitates its completion and is exercised to further the election process. An election can only be challenged through an election petition.

(Para 12)

Further held that In the light of what has been held above by us, the grounds pressed by learned Senior Counsel for the petitioners for assailing the order of rejection passed by the Election Returning Officer on merits are kept open as in our considered view, for coming to a definitive opinion, evidence would have to be led by the parties, for which they have a forum available i.e. Election Tribunal.

(Para 13)

Chetan Mittal, Senior Advocate
with Kunal Mulwani
and Mayank Aggarwal, Advocates
for the petitioners.

S.P.S.Tinna, Additional Advocate General, Punjab
for the State-respondents No.1 to 6.

Anil Mehta, Advocate
for private respondents (in CWP Nos.2910, 2912, 2916, 2918,
2919 and 2920 of 2021).

Anu Chatrath, Senior Advocate
with Nishant Maini,
Rakesh Chopra and
Jashan Chopra, Advocates
for respondent No.5 (in CWP No.2918 of 2021).

Pradhuman Garg, Advocate
for the caveator (in CWP No.2916 of 2021).

AUGUSTINE GEORGE MASIH, J.

(1) By this order, we propose to decide CWP Nos.2910,

2912, 2913, 2915, 2916, 2918 to 2921 of 2021 as in these cases nomination papers submitted by the petitioners for election to different wards of Municipal Council, Gobindgarh, have been rejected.

(2) In pursuance to the notification dated 30.01.2021 (Annexure P-1) issued by the State Election Commission, Punjab, under Section 35 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as '1994 Act'), programme specifying the dates for electing members of the Municipal Corporation, Municipal Council and Nagar Panchayat was issued. According to the said notification, the first date of nomination was 30.01.2021 and the last date for making nomination was 03.02.2021. 04.02.2021 was fixed for scrutiny of nominations. Candidates could withdraw their nominations on 05.02.2021. Date on which the poll would take place, if necessary, was fixed as 14.02.2021 followed by counting of votes to take place on 17.02.2021. Date by which the election had to be completed was 20.02.2021.

(3) In pursuance to this notification, petitioners filed their nomination papers, which were duly examined by the Election Returning Officer in accordance with Section 38 of the 1994 Act. It is asserted that no discrepancy or error was disclosed or brought to the notice of the petitioners and accordingly after verification, acknowledgement receipts were issued to them. Objections were filed against their nomination by the *pro forma* respondents impleaded to the writ petitions, which were conveyed to the petitioners. Petitioners filed their replies to the said objections denying the said allegations by specifically stating that the objections were totally vague, frivolous and false and not supported by any document.

(4) The Election Returning Officer rejected the candidature of the petitioners, which the petitioners got to know on 04.02.2021 late in the evening. No list of rejected candidates was displayed on the notice board, rather the list which was displayed on the notice board at around 10:00 PM was that of the candidates, whose nominations had been accepted. Petitioners visited the office of the Election Returning Officer on the next date but they were not supplied the order of rejection of their nomination as Section 41 of the 1994 Act clearly requires the Election Returning Officer to record in writing a brief statement of his reasons for such rejection. Faced with this situation, petitioners rushed to his Court by filing these writ petitions alleging violation of the provisions of the statute as well as non-compliance thereof.

(5) Counsel for the State, when the case came up for hearing,

made available the rejection order of the nomination papers of the petitioners. A short reply by way of affidavit of the Executive Officer, Municipal Council, Gobindgarh, has been filed in each of the cases, wherein a preliminary objection has been taken with regard to non-maintainability of the present writ petitions in the light of the bar contained in Article 243ZG of the Constitution of India, where under Clause (b), it has specifically been mentioned that no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the legislature of the State. On this basis, it is asserted that the petitioners should avail of their remedy under Section 74 of the 1994 Act, which also states that no election shall be called in question except by an election petition presented in accordance with the provisions of Chapter XI, which deals with the election petitions. Reference has also been made to the grounds for declaring election to be void as mentioned in Section 89 of the 1994 Act. Specific reference has been made to sub-section 1 Clause (c) where one of the grounds for declaring the election void is improper rejection of the nomination, which ground is being pressed into service by the petitioners. It is, therefore, pleaded that the remedy available to the petitioners is of filing an election petition.

(6) For the sake of convenience and to complete the sequence of facts, there being some petitioners who belong to the same family and the objections raised against their nomination are common and there are similar orders passed by the Election Returning Officer, Municipal Council, Mandi Gobindgarh, rejecting their nomination(s), the writ petitions are being taken up in sets.

(a) *CWP No.2910 of 2021* titled as ***Tanu versus State of Punjab and others*** and *CWP No.2915 of 2021* titled as ***Tejinder Singh versus State of Punjab and others*** have been preferred by wife and husband respectively. The objection against their nomination is that they along with their other family members are carving out residential colony opposite the Rahel Rolling Mill without any approval of Government Department, thus, causing loss to the Municipal Council, Mandi Gobindgarh.

On receipt of the replies filed by them, where they have denied the allegations, the Election Returning Officer has called for the report from the Naib Tehsildar, Mandi Gobindgarh, as well as the Executive Officer. The Naib Tehsildar has stated that a colony is being carved out by them and has also attached *fard* qua the same. On the said report,

comments of the Executive Officer, Mandi Gobindgarh, were sought, who in his report confirmed that the objections raised against the nomination of the petitioners were correct. The Returning Officer, on the basis of the report of Executive Officer, came to a conclusion that the colony is being carved out without paying any fee/tax/change of land use charges nor any application under PAPRA Act has been submitted to the Municipal Council thereby causing financial loss to the exchequer.

(b) In the second set of cases, two writs have been preferred by Gur Ashish Singh i.e. CWP Nos.2912 and 2919 of 2021 as he had submitted his nomination papers for election to two wards i.e. Ward No.14 and 18 respectively. Apart from this, CWP No.2918 of 2021 has been preferred by Smt. Kamaljit Kaur, who is mother of Gur Ashish Singh and CWP No.2921 of 2021 has been preferred by Sukhwinder Singh, who is father of Gur Ashish Singh and were candidates of Ward Nos.14 and 18 respectively. Copy of the objections was duly supplied to all the petitioners but no reply was received from Gur Ashish Singh. However, replies to the objections have been filed by Sukhwinder Singh as well as Kamaljit Kaur denying all the allegations therein. The objections were that these petitioners, in connivance with each other, have carved out illegal godown in their agricultural land, which is not as per Government instructions and *fard* is attached with the objections.

The Election Returning Officer sought for the report of the Executive Officer of the Municipal Council, Mandi Gobindgarh, who vide communication dated 04.02.2021, stated that Sukhwinder Kaur and Gur Ashish Singh have not applied for regularization under any policy of the Punjab Government. A clarification was sought from the Executive Officer to the effect that as per registration record, *chahi* land owned by these candidates has been sold in chunks, which clearly shows that it is part of a scheme. Whereafter, as per clarification, it is mentioned that as per data available with the Naib Tehsildar, Mandi Gobindgarh office, it is clear that new plotting is going on on the site in question and no application has been received under any law/scheme, neither any fee has been deposited. Kamaljit Kaur in her reply also, acknowledged the fact that her husband Sukhwinder Singh has sold some agricultural land for which no approval was required. Personal hearing was given to the petitioners. The Executive Officer submitted that a colony/godown was being carved out by all the three on Amloh Road without any permission

under PAPRA etc. thus causing loss to the Municipal Corporation and the Government. Mention has also been made that Sukhwinder Singh had been convicted by the CBI Court on 06.12.2010 under Sections 3, 7 of the EC Act, 1955 read with Section 5 (iii) of Furnace Oil (Fixation of Ceiling Prices and Distribution), Act, however, the sentence stands suspended by the Punjab and Haryana High Court vide order dated 22.05.2013. The reason, therefore, for rejection has been communicated to the petitioners of their nomination papers.

(c) The third set of cases is *CWP No.2913 of 2021* titled as ***Rakesh Kumar Versus State of Punjab***, *CWP No.2916 of 2021* titled as ***Seema Sofat Versus State of Punjab and others***, and *CWP No.2920 of 2021* titled as ***Rajinder Kumar Versus State of Punjab and others***. Rakesh Kumar and Seema Sofat are husband and wife while Rajinder Kumar is father of Rakesh Kumar. The reason for rejection of their nomination, as conveyed in the orders which have been placed on record, is that an objection was received stating that Rakesh Kumar and Rajinder Kumar have carved out an illegal colony in *shamlat* land in Village Ladpur, which is not as per the Government instructions as the same is without any permission. Allegations have further been made that Rajinder Kumar being Ex-Municipal Councilor, having misused his position, has constructed office at Airy Mill Road, which is in violation of the rules. Two plots in Chaura Bazar and one showroom Singla Karyana Store, one office and one Hotel Time Square near Mandi Gobindgarh Public School have also been constructed in violation of the rules. They being in illegal possession, their nomination deserves rejection. These objections were raised against the candidates to which reply has been submitted by the petitioners.

Report was sought from the Municipal Council, Mandi Gobindgarh. The Executive Officer in his report has stated that Village Ladpur is outside Municipal Council limits. However, the construction of commercial showroom in Chaura Bazar, Singla Karyana Store and one hotel building are against building bye-laws. Hotel Time Square on G.T. Road has been constructed without getting the site plan approved. Further clarification was sought from the Executive Officer as to whether this violation stood compounded and any penalty/tax has been paid or not? In reply, it is stated that neither any plans have been got approved or passed nor any compounding fee has been paid. As regards, Hotel Time Square, it has been stated that the same has been passed as commercial building but the construction is not as per the approved plan and no compounding fee has been paid

for the same. After hearing the petitioners personally, the Election Returning Officer has come to a conclusion that unauthorized construction/encroachment on road and violation of bye-laws have been there on the part of the petitioners. No payment has been made as compounding fee/tax as per the reports available. Thus, rejecting their nomination papers.

(6) Learned senior counsel for the petitioners submits that the nomination papers have been rejected by the Election Returning Officer under undue influence and pressure without application of mind in a mechanical manner at the asking of the candidates of the ruling party. Referring to the various judgments which have been passed by this Court and some other Courts, he asserts that there is no blanket bar with regard to the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Reference in this regard has been made to the judgment passed by Hon'ble Supreme Court in the case of *Election Commission of India through Secretary versus Ashok Kumar and others*¹, *S. Alwinderpal Singh Pakhoke versus Union of India and others*², *Benedict Denis Kinny versus Tulip Brian Miranda*³.

Referring to Sections 38 and 41 of the 1994 Act, he asserts that on the presentation of the nomination paper, the Returning Officer satisfies himself with regard to the correctness of the details given therein. As regards the jurisdiction and powers of the Returning Officer, he refers to proviso to sub-section 4 of Section 38 of the 1994 Act to contend that the Returning Officer has the jurisdiction to permit correction, misnomer or inaccurate description or clerical or technical or printing error. He can even order overlooking of such errors and omissions. Mention is also made to Section 41 (4) of the 1994 Act which states that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. In support of his contention, he relied upon judgments of Hon'ble Supreme Court passed in *Rakesh Kumar versus Sunil Kumar*⁴, *Uttamrao Shivdas Jankar versus Ranjitsinh Vijaysinh Mohite-Patil*⁵, *Ramesh Rout versus Rabindra Nath Rout*⁶. He on this

¹ 2000 (8) SCC 216

² 2004 (4) R.C.R. (Civil) 199

³ 2020 SCC Online SC 802

⁴ 1999 (2) SCC 489

⁵ 2009 AIR (SC) 2975

⁶ 2012 (1) SCC 762

basis contends that the rejection of the nomination papers of the petitioners being of such a nature as above, this Court should exercise its extraordinary jurisdiction so that injustice is not caused to the petitioners and the spirit of election and democracy prevails.

Further submission which has been made by the learned Senior Counsel for the petitioners is that the petitioners have approached the State Election Commission, Punjab, highlighting their grievances and the illegal rejection of their nomination papers but no action has been taken by the said Election Commission. He asserts that the Hon'ble Supreme Court in *Mohinder Singh Gill and another* versus *The Chief Election Commissioner, New Delhi and others*⁷ held that jurisdiction, power and authority has been conferred upon the State Election Commission to ensure that free and fair elections are held. He, therefore, contends that the State Election Commission having abdicated its powers and responsibilities would entitle this Court to exercise its extraordinary jurisdiction.

Pointing out the error in the rejection order passed by the Election Returning Officer, learned Senior Counsel refers to Section 11 of 1994 Act, which deals with the disqualification of members. Sub-section (q) of Section 11 provides that if a candidate has not paid the arrears of tax imposed by the municipality or is in unauthorized occupation of property belonging to any local authority then and only then can the nomination be rejected. This he states in the light of the fact that the orders relate to properties of the petitioners. In support of this contention, learned Senior Counsel made reference to a judgment of Division Bench of Patna High Court in the case of *The State Election Commission, Bihar Through its Commissioner and another* versus *Manager Prasad and others*⁸ judgment of Hon'ble Supreme Court in *Nisar Ahmad Ibrahim Khan* versus *Deolali Cantonment Board and others*⁹ and the judgment of a Division Bench of Gujarat High Court in *Chinubhai Khodidas Patel* versus *Election Officer- Mehsana Nagarpalika and Special Land & 10*¹⁰. Referring to Section 68 of the Punjab Municipal Act, 1911, which deals with self-assessment of tax on building and land, he asserts that there was no such tax liability upon the petitioners as no notice or requisition has

⁷ AIR 1978 SC 851

⁸ 2014 (85) R.C.R. (Civil) 833

⁹ 1987 SCC 562

¹⁰ 2008 (57) R.C.R. (Civil) 823

been received from the Municipal Council with regard to payment of arrears of any tax or penalty. Reference has also been made to Section 58 (a), which deals with power to scrutinize and amend assessment in certain cases.

He on these basis submits that the rejection of the nomination papers of the petitioners is not sustainable and, therefore, deserves to be set aside and they be declared as eligible candidates and a declaration be issued to the effect that their nomination stands accepted.

(7) On the other hand, counsel for the State as well as counsel for Municipal Council have pressed the issue of non-maintainability of the writ petition in the light of the bar of Article 243ZG of the Constitution of India read with the alternative statutory efficacious remedy in the form of an election petition under Section 76 as provided under The Punjab State Election Commission Act, 1994. Reliance has also been placed upon the Division Bench judgment of Hon'ble Delhi High Court in the case of *Sanju Bala* versus *State Election Commission and Anr.*¹¹, *Ravinder Negi* versus *State Election Commission and Another*¹², *Pinki Kumari* versus *State Election Commission and Anr*¹³, judgment of Patna High Court in *Om Parkash Tiwari & Ors.* versus *The Election Commission*¹⁴ Full Bench judgment of this Court in *Prithvi Raj* versus *State Election Commission, Punjab and others*¹⁵.

In any case, it is asserted by them that all the assertions which have been made by learned Senior Counsel for the petitioners challenging the rejection of the nomination papers by way of the orders passed by the Election Returning Officer which have been placed on record, would, in the light of denial of the allegations and pleadings, require leading of evidence by the parties to establish and come to the truth,. It is asserted that there was material available before the Election Returning Officer which was made the basis for passing of the said order.

With regard to rejection of nomination papers of the petitioners, learned counsel for the State as well as Municipal Council have further argued that such rejection can only be agitated in an election

¹¹ 2017 SCC Online Del 7966

¹² 2017 SCC Online Del 7812

¹³ 2017 SCC Online Del 7800

¹⁴ 2002 (2) PLJR 620

¹⁵ 2007 (2) I.L.R. P&H 206

petition and not by way of writ in the High Court. In support of their contention, they placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Ram Phal Kundu** versus **Kamal Sharma**¹⁶. Allegation with regard to the political interference and influence stands denied by them.

(8) We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case as well as the judgments relied upon by them.

(9) As regards submission of learned senior counsel for the petitioners that the Returning Officer, at the time of presentation of the nomination paper, had satisfied himself with regard to the correctness of the details given therein and, therefore, as per the provisions of proviso to sub-section 4 of Section 38 of the 1994 Act, correction, misnomer or incorrect description or clerical or technical or printing error should have been permitted and could have overlooked such errors or omissions is concerned, the same would not arise in the present case as there is no such mistake or error, which would fall within the domain of the applicability of proviso to sub-section 4 of Section 38 of the 1994 Act. Reliance on the said aspect, therefore, on the part of the petitioners is misplaced, rather therejection order of the nomination of the petitioners is based upon substantive grounds, which would be within the domain of the aspect, which would fall under the provisions of the statute leading to redressal of such grievance by way of availing the remedy of election petition as provided under the statutory provisions. The judgments on which reliance has been placed by learned senior counsel for the petitioners would, therefore, be of no help to the petitioners.

(10) As regards the contention of the learned senior counsel for the petitioners especially with regard to the aspect dealing with the non-deposit of the tax liability is concerned, suffice it to say that the said matter would require leading of the evidence by the parties for coming to a conclusion with regard to the applicability of the provisions relating to disqualification of the petitioner concerned and similar would be the position with regard to the unauthorized occupation of the property belonging to any local authority. All the orders of rejection of the nomination papers of the petitioners, which have been placed on record, indicate availability of material on which reliance has been placed by the Returning Officer and, therefore, *prima*

¹⁶ 2004 (2) SCC 759

facie it cannot be said that the order of rejection is based on conjectures and surmises or without any basis. The judgments on which reliance has been placed by learned senior counsel for the petitioners were matters, where the election petitions have been preferred, parties have led their evidence and thereafter with the material being available with the Courts, the conclusions and findings have been recorded which stage has not yet come in the present cases as the petitioners had not preferred election petition and the disputed questions of facts cannot be decided by this Court exercising its writ jurisdiction and that too at this stage, where there is effective alternative remedy for redressal of the grievances, as have been highlighted in the present writ petition.

(11) It is no more in dispute, rather acknowledged in large number of judgments that there is no absolute bar with regard to the exercise of jurisdiction, which flows from Article 226 of the Constitution on the High Court for entertaining a writ petition in election matters. The power of judicial review has always been put to exercise by the Writ Court being an essential feature of the Constitution, which can neither be tinkered with nor eroded. However, Clause (b) of Article 243ZG lays down that no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for under any law made by the legislature of the State but this would not either curtail or oust the jurisdiction of the High Court under Articles 226/227 of the Constitution.

A Five Judge Bench of this Court in Prithviraj's case (*supra*) dealt with a similar issue, where the jurisdiction of the High Court to entertain a petition against the non-acceptance of the nomination paper was an issue, where it has been held as follows:-

“17. Article 243ZG(b) of the Constitution postulates that notwithstanding anything contained in the Constitution, no 'election' to any municipality shall be called in question except by way of an election petition.

a. An election to a Municipality commences with the issuance of a notification by the State Government under Section 13-A(1) of the Municipal Act and concludes with the declaration of the result. The word 'election' as defined in Section 3 (4-c) of the Municipal Act, includes the entire process of election commencing on and from the date of notification calling for such an election and ending with the date of declaration and notification, of the result. Thus, the

term “election,” as defined in Section 3 (4c) of the Municipal Act, takes within its ambit the period commencing from the issuance of a notification calling for an election, to the declaration of the result. The “election” is to be conducted by the Election Commission, duly constituted under the Election Commission Act.

b. Section 73 of the Election Commission Act prescribes the setting up of Election Tribunals, to hear election petitions. Section 74 of the aforementioned enactment postulates that an election shall only be called into question, by way of an election petition. Section 76 thereof, provides that an election petition may be filed on one or more of the grounds specified in sub- section (1) of Section 89 of the Election Commission Act. Section 89 enumerates the grounds for declaring an election void. Section 108 of the Election Commission Act defines corrupt practices and electoral offences that render an election void. The Election Commission Act, thus, prescribes, the setting up of election tribunals, and sets out the grounds, upon which challenge may be laid to an election. It also prescribes the procedure i.e. the mode and manner for filing of election petitions.

c. Article 243 ZG of the Constitution commences with a nonobstante clause..... “Notwithstanding anything in this Constitution.....” Thereafter, clauses (a), 243 ZG postulates that the validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies shall not be called in question. Clause (b) of the aforementioned Article, interpretation whereof is subject matter of the present reference, postulates that no election to any municipality shall be called in question except by an election petition.

d. A conjoint reading of the provisions of Constitution, the Municipal Act and the Election Commission Act leads to a singular conclusion, namely, that once an election has been notified under Section 13-A(2) of the Municipal Act, an “election”, as defined in Section 3(4-c) thereof, can only be called into question, by way of an election petition, filed in accordance with the provisions, and the mode and manner, as set out in the Election Commission Act.

e. The words used in sub-clause (b) of Article 243(ZG),

and section 74 of the Election Commission Act, do not, by specific intent or necessary inference, place any embargo on or in any manner curtail a High Court's jurisdiction under Article 226 of the Constitution. Neither Article 243ZG of the Constitution nor Section 74 of the Election Commission Act makes any referenceto the High Court. However, where the cause placed before a High Court calls into question an "election," the High Court would in the exercise of judicial restraint, desist from exercising jurisdiction, This principle of judicial/ jurisdictional restraint,was propounded,by the Apex Court in Ponnuswami's case (supra) andthen followed and further explained in Mohinder Singh Gill's case (supra), while interpreting the provisions of Article 329(b) of the Constitution. The salutary object that underlines these judgments is the paramount need in a democracy, to ensure an expeditious conclusion of elections. It was therefore held that a High Court, would not entertain, a writ petition calling into question an "election". Another conclusion that flows from these judicial pronouncements, is that challenge to an election, though not barred, judicial review thereof would be postponed to the post election stage. In order to appreciate the ratio of the above judgments it would be necessary to refer to Article 329(b) of the Constitution which reads as follows:-

“329. Bar to interference by courts in electoral matters.-

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(d) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called inquestion except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

f. Article 329(b) of the Constitution postulates that notwithstanding anything in this Constitution, no election to either House of Parliament or to either House of Legislature of a State shall be called in question except by an election petition.”

and in paragraphs 27 to 30, it has been held as follows:-

“27. An “election”, under the Municipal Act, commences with the issuance of a notification, by the State

Government, under Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that “calls into question” an “election”, during the period of the “election”, would not be entertained, under Article 226 of the Constitution of India. Redress to any such grievance, would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act. The aforementioned conclusions, however, shall not be construed to oust the jurisdiction of a High Court, under Article 226 of the Constitution of India. A High Court's power of judicial review is merely postponed, to a time and a stage, after the conclusion of the election and then also to a judicial appraisal of any judgment or order that may be passed by an Election Tribunal, duly constituted, in terms of Section 73 of Election Commission Act.

28. The words and expressions that appear in Article 243 ZG(b) of the Constitution must be strictly construed and any interpretation beyond the simple grammatical connotations of the words and expressions appearing therein would be impermissible. The word “election..... and the expression..... “called into question.....”, used in Article 243ZG(b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e. calling in question the election, would have to be made by way of an election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Article 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition.

29. However the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question an election. A petition,

seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Article 243 ZG(b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.

30. The above exposition requires further elucidation. If the grievance put forth, falls within any of the grounds enumerated, for the filing of an election petition under Sections 89 and 108 of the Election Commission Act, Article 243 ZG(b) of the Constitution would come into play, and the grievance urged, would have to be redressed by filing an election petition, after the conclusion of the election. The High Court, would in the exercise of judicial restraint, relegate such a petitioner to his remedy of an election petition. This exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction. Thus, the Full Bench, in Lal Chand's case (supra) did not commit any error of law, while holding that Article 226 of the Constitution, being an integral part of the basic structure of the Constitution, could not be diluted and exercise thereof could not be barred by any provision of the Constitution of India. The judgments of the Hon'ble Supreme Court in Ponnuswami's case and Mohinder Singh Gill's case (supra), were apparently not brought to the notice of the Full Bench. The principle of judicial/jurisdictional restraint enunciated therein was apparently not placed before the Full Bench.”

and concluding in paragraphs 34 and 35, it has been held as follows:-

“34. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an “election” would be justiciable, only by way of an election petition. Interference by Courts in election matters, after the commencement of

the election process, would not be permissible, except to the limited extent noticed herein above.

35. As regards the second question, the Full Bench in Lal Chand's case (supra) has held that the provisions of Article 243 of the Constitution would have to be read down and subject to Article 226. This interpretation in our considered opinion negates the ratio in Mohinder Singh Gills case (supra). In our considered opinion, a harmonious interpretation to these provisions, as assigned by the Hon'ble Supreme Court in Mohinder Singh Gill's case (supra), while interpreting a similar provision, namely, Article 329(b) of the Constitution, and as explained, herein above, would suitably resolve this apparent conundrum of constitutional interpretation. Article 243ZG(b) of the Constitution, cannot be read down or held to be ultra vires of the provisions of Article 226 of the Constitution of India. The provisions of Article 243ZG(b) of the Constitution have to be read in the light of the principles of law, as set down in Mohinder Singh Gill's case (supra), and the judgments referred to in the preceding paragraphs, namely, that the High Court would not entertain a challenge "calling in question" an "election." Challenge to an election, would be postponed, to a time and stage after the conclusion of the "election" and then also by an election petition, a High Court would, in the exercise of judicial restraint, postpone judicial review to a stage after the Election Tribunal adjudicates the election petition. The power of a High Court, under Article 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair pool. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extra ordinary powers of this Court under Article 226 of the Constitution."

(12) A Division Bench of this Court in *Balraj Singh* versus

*State of Punjab and others*¹⁷ even after the Court noticed *prima facie* that the nomination papers of the candidates were probably wrongly rejected, refused to exercise its extraordinary jurisdiction in the light of the law laid by the Hon'ble Supreme Court in Mohinder Singh Gill's case (supra) and this Court in Prithviraj's case (supra) holding that the power of High Court under Article 226 is available, where exercise of such power sub serves the progress of election, facilitates its completion and is exercised to further the election process. An election can only be challenged through an election petition.

(13) In the light of what has been held above by us, the grounds pressed by learned Senior Counsel for the petitioners for assailing the order of rejection passed by the Election Returning Officer on merits are kept open as in our considered view, for coming to a definitive opinion, evidence would have to be led by the parties, for which they have a forum available i.e. Election Tribunal.

(14) We, therefore, hold that these writ petitions are not maintainable and dismiss the same accordingly. The petitioners, if so advised, may avail of the statutory remedy of filing an election petition as provided under the 1994 Act and the Rules framed thereunder.

Tribhuvan Dahiya

¹⁷ 2008 (4) R.C.R. (Civil) 198