

(26) The Division Bench judgment in the case of **Avjinder Singh Sibia** (*supra*), on which reliance has been placed by the learned State counsel would not apply to the facts of the present case because that was a case of primary legislation, as Punjab Ordinance No. 2 of 2007 was issued whereby all Market Committees in the State of Punjab were superseded. The Ordinance was subsequently replaced by the Punjab Act No. 5 of 2007 by substituting Section 12 with a new inserted Section 12-A of the Punjab Agricultural Produce Markets Act, 1961. Therefore, it is distinguishable.

(27) As a sequel to the above discussion, the questions (B) and (C) are answered against the petitioners by holding that the power which emanates from Section 103 of the Trust Act as exercised by the respondents by issuing the impugned notification is legislative in nature. There is no scope for applying the principles of natural justice to such a notification. The power cannot be regarded to have been exercised under Section 72-A of the Act.

(28) For the foregoing reasons, we find no merit in these writ petitions and the same are accordingly dismissed.

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**R.N.R.**

*Before Jasbir Singh & Nirmal Yadav, JJ.*

**SHIMLA RANI AND OTHERS,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 15877 of 2005

17th September, 2007

*Constitution of India, 1950—Arts. 243R(2)(b), 243G, 243S, 243ZG(b)—Punjab State Election Commission Act, 1994—Ss. 74, 76 and 87—Maintainability—Election to President and Vice President of a Nagar Panchayat/Municipality—Dispute with regard to post of President and Vice President of a Nagar Panchayat/Municipality— Whether writ petition is maintainable—Held, yes.*

*Held*, that Article 243ZG of the Constitution of India also left it open to the State Legislature to frame rules with regard to filing of an election petition, before a competent authority and the manner in presenting that petition. In the case of election of the office bearers of the Nagar Panchayats/Municipalities such a procedure was not provided, which stands in contra distinction to the provisions made in the Punjab Municipal Election Rules, 1994, wherein remedy of an election petition has been provided to lay challenge to the election of a member of the Nagar Panchayat/Municipality. In 1994 Election Rules, to elect office bearers, voting is by show of hands. Procedure was very simple, may be due to that the legislature may have thought that there may not be any dispute so far as elections of the President and Vice President are concerned. Situation like the one in the present case, may not have been visualized at the time when above said rules were framed, otherwise, there was no necessity, to frame separate rules, with regard to election of members of the municipalities and its office bearers. The writ petition is the only remedy available in case of any election dispute with regard to the post of President and Vice President of a Nagar Panchayat/Municipality.

(Paras 28 & 29)

*Further held*, that a reading of the contents of the proceedings recorded by the Presiding Officer, Annexure R-2/2 indicates that all the 13 members were present. Names of petitioner No. 3 and respondent No. 4 were proposed for the post of President. The Presiding Officer noted that seven members have favoured respondent No. 4 and six were in favour of petitioner No. 3 and accordingly, declared respondent No. 4 as elected President of the Nagar Panchayat. The voting was by show of hands. We feel that to maintain fairness (though it is not provided in the rules) it was incumbent for the Presiding Officer to name the members who have voted in favour of the elected and the defeated candidate, to get their signatures on the proceedings

(Para 35)

S.P. Jain, Senior Advocate with R.B.S. Chahal, Dheeraj Jain and  
Manpreet Singh Longia, Advocates, *for the petitioners.*  
Rupinder S. Khosla, Additional Advocate General, Punjab *for*  
*respondent No. 1.*

Ashok Aggarwal, Senior Advocate with J.S. Sidhu, Advocate  
for respondent No. 4

Akshay Bhan and Vineet Soni, Advocates.

***JASBIR SINGH, J.***

(1) Petitioners, who are seven in number, are members of Nagar Panchayat Khanauri. They along with respondent No. 4 and five other, were elected as such on 18th September, 2005.

(2) Respondent No. 2 the District Development and Panchayat Officer, issued a notice on 26th September, 2005 (Annexure P/8), calling meeting of the newly elected members of Nagar Panchayat Khanauri on 30th September, 2005 at 11.00 A.M. in the office of Nagar Panchayat, to administer oath to them and also to elect President and Vice President. In the above said meeting, oath was administered, to the members, thereafter, nominations were called for the post of the President, petitioner No. 3 along with respondent No. 4 were the candidates. As per rules, in case of contest, voting is by show of hands. All the 13 members were present. It is case of the petitioners, that one Naresh Kumar abstained from voting and only five members cast their votes in favour of respondent Nos. 4 and 7 in favour of petitioner No. 3 Respondent No. 2 did not record the proceedings in a fair manner, but under political pressure, declared respondent No. 4 as President of Nagar Panchayat Khanauri. On asking of respondent No. 2, the petitioners were not allowed to leave the office till he finished other formalities. Thereafter, he left the office in a huff. Respondent No. 4 openly declared that he has the entire administration in his pocket as he was being favoured by the then Chief Minister of the State of Punjab. The petitioners then rushed to this Court and filed the present writ petition on 1st October, 2005, wherein they prayed for issuance of writ of prohibition, restraining respondent No. 1 from notifying election of respondent No. 4 as President of Nagar Panchayat Khanauri, in pursuance of election alleged to have been conducted on 30th September, 2005, the same being illegal. It was further prayed that petitioner No. 3 be declared as elected President of Nagar Panchayat Khanauri. In the alternative, it was prayed that the directions be issued to hold election afresh, in the presence of an observer to be appointed by this Court.

(3) This writ petition came up for hearing before this Court on 2nd October, 2005. By noting following contention of counsel for the petitioners, notice of motion was issued to the respondents, who were further directed not to notify election of respondent No. 4 as President of Nagar Panchayat Khanauri :—

*“The petitioners have attached the affidavits Annexures P/9 to P/15, in which they have deposed that they voted in favour of petitioner No. 3, but under political pressure respondent No. 3 has declared respondent No. 4 as having been elected as President of Nagar Panchayat Khanauri, District Sangrur. A notification to this effect is likely to be issued by the State of Punjab shortly. He further submits that against the aforesaid declaration, the petitioners have no other remedy under the Punjab Municipal Act.”*

(4) On completion of service and after getting response of the respondents, to the averments made in the writ petition, it was dismissed on 28th November, 2005, by passing the following order :—

*“Having heard the learned counsel for the parties at length, we are of the considered opinion that the writ petition involves disputed questions of fact which cannot be adjudicated whilst exercising writ jurisdiction under Articles 226/227 of the Constitution of India. The petitioners are at liberty to seek appropriate remedy in accordance with law.*

*Dismissed.”*

(5) The petitioners went to the Hon’ble Supreme Court and their appeal bearing No. 3153 of 2006 was disposed of *vide* order dated 25th July, 2006. Relevant portion of the order reads thus :—

*“In view of the above, we set aside the impugned order and remit the writ petition to the High Court for its fresh decision.*

*Mr. Uday U. Lalit, learned senior counsel appearing for respondent No. 4, sought to contend that the*

*appropriate remedy is an Election Petition. We direct thall all pleas, factual and legal, would be open to the parties to be agitated before the High Court and there cannot be any manner of doubt that the pleas would be decided in accordance with the law and the constitutional provisions.”*

(6) It is how, this writ petition has come up for hearing before us.

(7) Before we could hear agruments on merits, a preliminary objection was raised by Shri Ashok Aggarwal, Senior Advocate, appearing for respondent No. 4 that in an election dispute, the writ petition is not competent, as a specific remedy, to file an election petition, is available to the petitioners as per provisions of the Punjab State Election Commission Act, 1994. To strengthen his argument, he has referred to the provisions of Article 243R(2)(b), 243G, 243S, 243ZG(b) of the Constitution of India. He argued that if one reads above said provisions along with the provisions of Sections 74, 76 and 87 of the 1994 Act, it becomes apparent that against election, to the post of President of a Nagar Panchayat, only an election petition is competent. To support his claim, he has placed reliance upon unreported judgment of the Hon'ble Supreme Court in **Ashok Kumar versus Sudesh Kumar Aggarwal**. Civil Appeal No. 7054 of 2001, decided on 23rd October, 2002 and has prayed that the writ petition be dismissed.

(8) Shri S.P. Jain, Senior Advocate refuted the arguments raised by counsel for respondent No. 4. By making reference to Articles 243R, 243ZA of the Constitution of India, he argued that Part IXA of the Constitution, which was added *vide* 74th amendment in the Constitution, with effect from 1st June, 1993, talks only with regard to election of members of the Nagar Panchayat/Municipalities. No mention has been made with regard to election of the office bearers of the above said institutions. He further argued that even the provisions of Article 243ZG(b) deals with only elections to the Nagar Panchayat/Municipality and not its office bearers. This provision further provides that election petition shall be presented to such authority and in such manner as may be provided by or under any law made by the State Legislature. He

argued that after 74th amendment, various amendments were made in the provisions of Punjab Municipal Act, 1911 (in short, the 1911 Act), to bring the law in consonance with Part IXA of the Constitution. The Punjab Municipal Election Rules, 1952 were repealed and new rules, known as the Punjab Municipal Election Rules, 1994, were made applicable with effect from 4th October, 1994. However, separate rules were prepared for election to the post of President and Vice President in a Nagar Panchayat/Municipality, known as the Punjab Municipal (President and Vice-President) Election Rules, 1994 (in short, the 1994 Election Rules). By making reference to above said provisions, he argued that in Part IXA, there is no mention of election of the office bearers of the Nagar Panchayats/Municipalities. Further that in the Municipal Election Rules, 1994, a specific provision has been made to file an election petition. However, in the rules, meant to regulate conduct of election of the office bearers, separate rules were prepared and in those rules, there is no provision to file an election petition, in case there is any election dispute. To strengthen his argument, he has also made reference to the provisions of the Punjab Panchayat Election Rules, 1994, wherein composite provision has been made to lay challenge to the election of members to the Panchayats (which includes Panchayat Samiti and Zila Parishad) Punjab and also its office bearers.

(9) State counsel has also supported the arguments raised by Shri S.P. Jain to the extent that in case of any dispute, with regard to election of office bearers of Nagar Panchayats/Municipalities, remedy of election petition is not available and a writ before this Court, can be filed in case of dispute.

(10) To the contrary, Shri Akshay Bhan, Advocate for respondent No. 3, has supported the argument that remedy of writ petition is not available in this case.

(11) Before we proceed further to give any finding on the controversy raised, it is necessary to look into the relevant provisions of the Constitution of India, the Punjab Municipal Act and Rules framed thereunder and also some provisions of the Punjab Panchayati Raj Act and the Rules framed thereunder. With a view to give more powers to the institutions of self governance at the grass root levels, *vide* 74th

amendment in the Constitution of India, Part IXA was added with effect from 1st June, 1993. With a view to harmonise functioning of institutions of self governance like Nagar Panchayats and Gram Panchayats etc., with the provisions of the Constitution, the State of Punjab incorporated the Punjab State Election Commission Act, 1994 (in short, the Election Commission Act), effected amendment in the 1911 Act, framed new rules for conduct of elections, framed Punjab Municipal Election Rules, 1994 and separate Rules for election of the Vice President and President known as the Punjab Municipal (President and Vice-President) Election Rules, 1994 and in the same manner, promulgated the Punjab Panchayati Raj Act, 1994 and also Punjab Panchayat Election Rules, 1994.

(12) Part IXA of the Constitution deals with the municipalities, their composition, constitution of wards, duration of the municipalities, disqualification etc. for membership and also election and election disputes. Article 243R reads thus :—

**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 as 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.*

(13) Article 243ZA deals with the elections to the municipalities, which reads thus :—

**243ZA. Elections to the Municipalities.—**

- (1) *The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.*
- (2) *Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.*

(14) Article 243ZG imposes a bar on the Courts to interfere in the election matters, which reads thus:—

**243ZG. Bar to interference by courts in electoral matters.—**

*Notwithstanding anything in this Constitution.—*

- (a) *The validity of any law relating to the delimitation of constituencies in the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court.*
- (b) *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 by or under any law made by the Legislature of a State.]*



(15) Article 243S envisages constitution and composition of wards and committees within the territorial area of municipalities.

(16) Section 20 of the 1911 Act deals with the election of President and Vice President of a Nagar Panchayat/Municipality. The provisions read thus :-

**“20. Election of President and Vice-President.—***(1) Every Municipality shall, from time to time, elect one of its members to be its President, and the member so elected shall, on being notified by the State Government, shall become President of the Municipality.*

*(2) Every Municipality may also, from time to time, elect one or two of its members to be Vice-President or Vice-Presidents and when two Vice-Presidents are elected on the same date, the Municipality shall declare which of them shall be deemed to be the senior.*

*(3) Notwithstanding anything contained in this section, an ex-officio member shall not be eligible for election as President or Vice-President of the Municipality.”*

(17) As per admitted position before us, definition of word ‘election’ has not been given in Part IXA of the Constitution and also in the provisions of the Election Commission Act. The word ‘election’ has been defined in Section 3(4)(c) of 1911 Act, which reads thus :-

*“Election” means and includes the entire election process commencing on and from the date of notification calling for such election of members and ending with the date of declaration and notification of results thereof”*

(18) The above said word ‘election’ has also been defined in Section 2(d) of the Punjab Municipal Election Rules, 1994, which reads thus :-

*“Election” means the election of a member of a Municipality from an area delimited as a constituency for the purposes of election to that Municipality”*

(19) Separate definition of this word has been given, so far as 1994 Election Rules with regard to office bearers of the Nagar Panchayat/ Municipality are concerned. Section 2(b) reads thus :—

*“Election” means Election of a President and Vice-President of a Municipality.”*

(20) Rule 4 of the 1994 Election Rules provides that voting for the offices of President and Vice-President or Vice-Presidents, as the case may be, shall be by show of hands and further that person presiding over the meeting convened under Rule 3 shall keep a brief record in writing of the proceedings. Rule 5 provides procedure of conduct of election.

(21) The word ‘election’ has also been defined in the Punjab Panchayat Election Rules, 1994 as under :—

*“Election” means election of a Panch, Sarpanch of a Gram Panchayat, member of Panchayat Samiti, Zila Parishad whether by direct election or out of the representative of Sarpanches of Chairman or Vice-Chairman of the Panchayat Samiti or Zila Parishad, as the case may be”*

(22) The relevant provisions of the State Election Commission Act, 1994, which needs consideration reads thus :—

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

*“Section 76 Presentation of petition — (1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.*

*(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition."*

(23) Now we will analyse above said provisions, to know, as to whether remedy of election petition is available to the petitioners with regard to an election dispute in connection with election to the post of President of a Nagar Panchayat/Municipality. In Part IXA of the Constitution, Article 243R(2)(b) envisages that the State Legislature may by law provide the manner of election of Chairperson of a Municipality. Article 243ZA envisages that superintendence, direction and control of the preparation of electoral rolls for and conduct of all elections to the municipalities shall vest in the State Election Commission as referred to in Article 243K of the Constitution.

(24) Article 243ZG prohibits the Courts from interfering in electoral matters. Clause (b) envisages that no election to the municipalities shall be called in question except by an election petition presented to such authority and in such manner as is provided by or under any law made by legislature of a State.

(25) Conjoint reading of above said three provisions, clearly demonstrates that it was left to the State legislature to frame necessary rules with regard to the manner of election of the Chairperson of the municipalities. Articles 243ZA and 243ZG talk of election to the municipalities and not its office bearers. It appears that it was left open to the State legislature to frame necessary rules in case there exists any dispute with regard to election of the office bearers of the Nagar Panchayats/ Municipalities. In tune with the provisions of Part IXA of the Constitution amendments were effected in 1911 Act, the Punjab Municipal Election Rules, 1952 were repealed and new rules known as the Punjab Municipal Election Rules, 1994 were incorporated. In those rules, Section 2(d) defines word 'election'. It pertains to members of the municipalities and not to its office bearers. Separate rules were carved out so far as election to the post of President and Vice President of the Nagar Panchayat/Municipalities is concerned. In those rules,

different meaning has been given to the word 'election'. Similarly, the State of Punjab formulated consolidated rules for election to the post of members of the Gram Panchayats, its Sarpanches, Members and office bearers of Panchayat Samitis and Zila Parishads. No distinction was made so far as members of these bodies and office bearers are concerned. Section 74 of the Election Commission Act, 1994 lays down that no election shall be called in question except by an election petition. Section 76 of the above-said Act depicts procedure to file an election petition. When we read the provisions of Constitution, 1911 Act, the Punjab Municipal Election Rules and 1994 Election Rules and also the Punjab Panchayati Raj Act and the Election Rules framed thereunder together, it becomes apparent that the bar created under Section 74, pertains only to the election of the members of the Nagar Panchayat/Municipality and not to its office bearers. The legislature has drawn a distinction while drafting the separate rules for the election of President and Vice President and it never envisages filing of an election petition in case any dispute arises with regard to election of above said posts.

(26) Above said distinction becomes apparent when we read Part V of the Punjab Municipal Election Rules, 1994. This part deals with the filing of the election petition and the procedure to be adopted thereunder. No such provision has been incorporated in the 1994 Election Rules meant for the office bearers of the Nagar Panchayats/municipalities. Once, the legislature has chosen not to provide remedy of election petition in case of dispute with regard to the election of office bearers, the only remedy available is by way of writ petition under Article 226/227 of the Constitution of India.

(27) The State counsel has also admitted before us that the writ petition is competent in case of any dispute with regard to election of the office bearers of the Nagar Panchayats and the Municipalities. The reliance of Shri Aggarwal, on the ratio of the judgment of the Hon'ble Supreme Court in *Ashok Kumar's case (supra)*, is of no help to him. When that judgment was passed, distinction in the provisions of the Punjab Municipal Election Rules, 1994 and the Punjab Election Rules 1994 (for office bearers) was not brought to the notice of the Hon'ble Court. Discussions made in earlier part of the judgment, clearly shows

that the provisions of Section 74 of the 1994 Act, are not attracted in case of election of the office bearers of Nagar Panchayats/Municipalities.

(28) Articles 243ZG of the Constitution of India also left it open to the State Legislature to frame rules with regard to filing of an election petition, before a competent authority and the manner in presenting that petition. In the case of election of the office bearers of the Nagar Panchayats/Municipalities such a procedure was not provided, which stands in contra distinction to the provisions made in the Punjab Municipal Election Rules, 1994, wherein remedy of an election petition has been provided to lay challenge to the election of a member of the Nagar Panchayat/Municipality. In 1994 Election Rules, to elect office bearers, voting is by show of hands. Procedure was very simple, may be due to that the legislature may have thought there may not be any dispute so far as elections of the President and Vice President are concerned. Situation like the one in the present case, may not have been visualized at the time when above said rules were framed, otherwise, there was no necessity, to frame separate rules, with regard to election of members of the municipalities and its office bearers.

(29) In view of facts mentioned above, we feel that the writ petition is the only remedy available in case of any election dispute with regard to the post of President and Vice President of a Nagar Panchayat/Municipality. Accordingly, contention to the contrary, raised by counsel for respondent No. 4, stands rejected.

(30) Now, we will decide controversy in this case so far as merits are concerned.

(31) Counsel for the petitioners has vehemently argued that the proceedings recorded, at the time of alleged election, were farce and a fraud with the Statute. Seven members have supported cause of petitioner No. 3, whereas only five cast their votes in favour of respondent No. 4. One member abstained from voting. Despite that the Presiding Officer, in a very arbitrary manner, declared respondent No. 4 as an elected President of the Nagar Panchayat Khanauri. He further stated that, as respondent No. 4 was openly claiming support of the then Chief Minister, the petitioners reasonably presumed that they would not

get any justice from the Executive authorities and in view of that they rushed to this Court on the date of election itself and filed the writ petition, the next day. He prayed that this writ petition be allowed, election in question, be set aside and petitioner No. 3 be declared as elected President of the Nagar Panchayat Khanauri.

(32) Prayer made has vehemently been opposed by counsel for the respondents. It was stated that the election was validly conducted. Seven members cast their votes in favour of respondent No. 4, including petitioner No. 7 Karamvir Singh and also Naresh Kumar, who alleged to have been abstained from voting. As the majority of the members were with respondent No. 4, he was rightly declared elected President of the Nagar Panchayat Khanauri. It was further alleged that after completion of election, the petitioners, except Karamvir Singh, felt frustrated, won over Karamvir Singh to their side, by alluring him and filed this writ petition with a view to remove respondent No. 4 from the post of President. It was averred by respondent No. 4 that huge amount was paid to Karamvir Singh petitioner No. 7 to change the side. To show that Naresh Kumar has cast his vote, reliance has been placed upon his affidavit dated 24th August, 2006, which was put on record after his writ petition was remanded to this Court by the Hon'ble Supreme Court.

(33) State counsel has also argued that the election was rightly conducted by the Presiding Officer and prayed that this writ petition be dismissed having no substance.

(34) It is apparent from the records that after election of the members of the Nagar Panchayat, as per 1994 Election Rules, the Presiding Officer respondent No. 3, by issuing a notice, fixed meeting on 30th September, 2005, to administer oath to the members and to elect the President and Vice President of the Nagar Panchayat. On that date, the following proceedings were recorded by the Presiding Officer (Annexure R2/2) :—

*“Resolution*

*Item No. Today dated 30th September, 2005, regarding to get oath to the newly elected candidates out of the*

*successful candidates in the election of Nagar Panchayat Khanauri.*

*Today dated 30th September, 2005 Shri Kuldip Singh, District Development and Panchayat Officer as Convener has got the Oath to the newly elected members to the effect that they will keep their consent to the Constitution of India and keep the integrity of India. They will do their duty with sincerely. Item No. 2 : Regarding consideration of election of President and Vice President.*

*For the post of President Shri Ishwar Chand member has proposed the name of Shri Girdhari Lal Garg and seconded by Seema Rani Member. Shri Satvir Singh member has proposed the name of Shri Satgur Singh for the post of President the same has been seconded by Shri Prem Chand Member. Besides it, no other name has been proposed for the post of President. Convener has asked the members who are present to raise their hands in favour of Shri Girdhari Lal for the post of President. Seven members have given their vote in favour of Girdhari Lal. Six members have given their vote in favour of Shri Satgur Singh. In this way because the majority in favour of Shri Girdhari Lal, Shri Girdhari Lal is hereby declared elected for the post President. Election for the post of Vice President no name has been proposed.”*

(35) A reading of the contents of Annexure R2/2 indicates that all the 13 members were present. Names of petitioner No. 3 and respondent No. 4 were proposed for the post of President. The Presiding Officer noted that seven members have favoured respondent No. 4 and six were in favour of petitioner No. 3 and accordingly, declared respondent No. 4 as elected President of the Nagar Panchayat. The voting was by show of hands. We feel that to maintain fairness

(though it is not provided in the rule), it was incumbent for the Presiding Officer to name the members who have voted in favour of the elected and the defeated candidate, to get their signatures on the proceedings. Contention of the petitioners, that petitioner No. 3 was supported by seven members, appears to be correct. The meeting was fixed to elect President and also the Vice President. Contention of the petitioners that when result was wrongly declared, there was a commotion and due to that nomination was not called for the post of Vice President, appears to be correct. Otherwise, there was no reason to not elect the Vice President on the date fixed. The petitioners are seven in number. Immediately, after declaration of the result, they rushed to this Court, engaged a counsel, their writ petition was prepared and filed in this Court on 1st October, 2005. It is case of respondent No. 4 that after election, petitioner No. 7 was won over by petitioner No. 3 after paying him huge amount. Such like exercise is possible before election and not thereafter. Petitioner No. 3 was not to gain anything, except litigation, by winning over petitioner No. 7 after paying him huge amount of moeny. We feel that the plea taken by respondent No. 4 is not plausible and deserves rejection. All the seven petitioners, who are in majority, got their affidavits attested on 1st October, 2005, stating that they have favoured petitioner No. 3 at the time of election. After notice, respondent No. 4 filed his reply but he failed to bring on record the affidavit of Naresh Kumar, to show that he has not abstained at the time of voting, as alleged by the petitioners. The writ petition was dismissed, the petitioners went to the Hon'ble Supreme Court and when the matter was remanded, only thereafter, affidavit of Naresh Kumar was brought on record, to show that at the time of voting, he has favoured respondent No. 4. We feel that during the intervening period, said Naresh Kumar might have been won over by respondent No. 4. This writ petition was filed not only by petitioner No. 3, the defeated candidate, but by the seven members of the Nagar Panchayat. After dismissal of their writ petition, they went to the Hon'ble Supreme Court. The manner, in which, they are agitating their claim, it appears that their contention that election of the President was rigged, appears to be justified and correct.



(36) Under similar circumstances, their Lordships of the Hon'ble Supreme Court in **Jayrajbhai Jayantibhai Patel versus Anilbhai Jayantibhai Patel and others**, (1) set aside election of office bearers of the Municipal Council, in view of averment that before polling two members, who were supporting the defeated group, were arrested by the police at the instance of the opposite group and were released when election was over. It was held that the detention of the municipal councillors was made with the sole objective of preventing them from voting at the time of election. Position is same in the present case. If everything was going smooth, it was expected from respondent No. 3 to conduct election for the post of Vice President also, which he failed to do, for which, no reasons have been given. In view of that, we feel that election of respondent No. 4 to the post of President of Nagar Panchayat Khanauri was not as per law and is liable to be set aside. Prayer of the petitioners, that petitioner No. 3 be declared elected as President, also does not find favour with us. Under similar circumstances, their Lordships of the Supreme Court in **Jayrajbhai Jayantibhai Patel's case (supra)**, which dealing with a similar contention, did not declare the defeated candidate as elected.

(37) Furthermore, before initiation of arguments, counsel for the petitioners has very fairly stated that they will be satisfied if after setting aside election, fresh election is ordered. In view of that and also on account of a fact that post of the President is an elected post, let he/she be elected in proper manner. We are sure that if all the petitioners remain together, their candidate is bound to be elected as President at the time of election.

(38) In view of facts mentioned above, we allow this writ petition, set aside election of respondent No. 4 to the post of President, Nagar Panchayat, Khanauri and order fresh election for the said post. Directions are given to the Deputy Commissioner, Sangrur to fix a meeting, for fresh election of President after issuing notice in that regard. The Deputy Commissioner is directed to remain present at the time of election. Needful be done within four weeks after receipt of certified copy of this order. No order as to costs.

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**R.N.R.**