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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(C.G.)

W.P. No.3627.../2003

PETITIONER

1. The Election Commission Of India (as constituted under part xv of the Constitution of India) Nirvachan Sadan Ashok Road, New Delhi

P.R. No. 3146/03
Presented by Shri Sandeep Pandey
dated 06/11/03

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through the Chief Secretary, D.K.S. Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. Dr. B.S. Anant S/O Shri G.R. Anant Aged about 47 years Collector and District Magistrate Jashpur (Chhattisgarh)
3. The Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985, Madhya Pradesh Principal Bench at Jabalpur (M.P.)

शपथ आयुक्त
एम.के. शुक्ला
6/11/03
जशपुर (छ.ग.)
तहसील क्षेत्र

Received Copy of Writ Petition
for AG Sd/-
6/11/2003

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRITS OF CERTIORARI AND MANDAMUS AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:

A.F.R

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 3627 OF 2003

Election Commission of India

-Versus-

State of Chhattisgarh and others

AND

WRIT PETITION NO. 3628 OF 2003

Election Commission of India

-Versus-

State of Chhattisgarh and others

Petitioner by	Shri Kanak Tiwari with Shri Sandeep Dubey, Advocates
Respondent No.1/ State by	Dr. N.K. Shukla, Addl. Advocate General.
Respondent No. 2 by	Shri Prashant Mishra, Advocate.
Union of India by	Shri Vinay Harit, Sr. Central Govt. Standing Counsel.

ORDER

As per Fakhruddin,J.

Both these petitions involve similar questions, as such they have been heard together and being disposed of by common order.

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2. The superintendence, directions and control of elections, preparation of Electoral rolls and conduct of all Elections for Parliament and State Legislature of every State vests under Article 324 (1) of Constitution of India in Election Commission of India. It is provided that under Article 324(6) of the Constitution of India that the President or the Governor shall when requested by the Election Commission make available to it such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Article 324 (1) of the Constitution.

3. It is submitted by the petitioner that by notification issued by the Commission, the State of Chhattisgarh made available the staff including District Collectors/District Magistrate of the District and they have been notified as District Election Officer/District Returning Officer. It is contended that these officers/in the context of election related work are deemed to be on deputation to the Election Commission and subject to its disciplinary control. This has been made explicit according to petition under Section 13CC of the Representation of the People Act 1950 and Section 28 A of the Representation of the People Act 1951.

4. It is submitted that the question of disciplinary jurisdiction of the Election Commission of India over officers

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under employment of Union of India and Governments of the States, Union Territories was the subject matter of Writ Petition (Civil) No. 606 of 1993 filed by the Election Commission of India before Hon'ble the Supreme Court under Article 32 of the Constitution of India. During pendency of the writ petition with a view to resolving certain differences that had arisen between the Election Commission of India and Union of India discussions were held between the said parties as well as nine other State Governments which were parties to the writ petition. Consequent thereto, certain agreed terms of settlement were arrived at between the Election Commission of India and the Union of India as under:-

> "The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to-
>
> a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;
>
> b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct'
>
> c) Making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission; within a period of 6 months from the date of the Election Commission's recommendation.
>
> d) The Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control."

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5. It is submitted that the above terms of settlement were taken note of by Hon'ble the Supreme Court and W.P. No. 606/1993 was disposed of in terms of settlement vide order dated 21-9-2000. A copy of which has been field as Annexure P-1. Annexure P-1 is relevant and quoted below:-

"

ORDER

I.A. No. 5 of 2000 in W.P. (C) No. 606 of 1993

As between the Election Commission of India and the Union of India (the petitioner and the first respondent to the writ petition, it is agreed that the writ petition be disposed of in terms of the Terms of Settlement recorded in paragraph (3) of the interim application.

Learned counsel for the election Commission and the Union of India states that the States of Tripura, Maharashtra, Tami Nadu, Andhra Pradesh and Mizoram have accepted these terms in toto. Insofar as other States are concerned, there is some reservation either in respect of one or the other term or altogether.

The writ petition is disposed of in terms of aforesaid Terms of Settlements. As against States other than respondents 4, 6 and 7, the writ petition is allowed to be withdrawn and the issue is left open to be agitated in the appropriated proceedings, if raised.

S.L.P. (C) No. 12481 of 1993:

Learned counsel for the Election Commission of India (petitioner states that the special leave petition has become infructuous. It is disposed of as such.

S.L.P. (C) No. 12721 of 1993

Learned counsel states that the issue involved in the original writ petition has been settled. On the application of learned counsel for the petitioner, the special petition is dismissed as withdrawn.

T.P. (C) No.772 of 1993:

The transfer petition relating to the afore-mentioned writ petition, therefore, does not survive and is dismissed as withdrawn.

T.P. (C) No. 774-75 of 1993:

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Learned counsel for the Election Commission of India (petitioner) states that these transfer petitions have become infructuous. They are disposed of as such.

T.C.No. 39 of 1998;
The petitioner in-person is not present despite notice. In any event, the issue is now settled by the Terms of Settlement between the Election Commission of India and the Union of India in Writ petition (c) No. 606 of 1993. The transferred case is, therefore dismissed."

6. It is further submitted that consequent to Annexure P-1, the Ministry of Personnel, Public Grievances and Pension issued Office Memoranda dated 7-11-2000 (Annexure P-2) and on 8-11-2000 Union of India addressed to all States Governments and Union Territories conveying to them the terms of settlement and requested that the State Governments may follow the terms of settlement in the case of officials deputed for Election duties by the State Government. Copy of which has been filed as Annexure P-3.

7. It is contended that the Election Commission had issued directives regarding banning the transfer of officers connected with the General Election/Bye Election and some of them are filed as Annexure P-4. It is contended that the petitioner has also issued Code of Conduct for universal application in the States where the Assembly elections are to take place in the Month of November and December, 2003. A

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Compendium of Directions/instructions is filed as Annexure P-5.

8. It is submitted that the directions/instructions came to the knowledge of respondent No. 2 on or about 10th October 2003. It is stated that the petitioner enjoys residuary powers for which no specific law has been made or any statutory rules issued and uses such jurisdiction with regard to such residuary powers as and when deemed fit in the larger interest of free and fair elections and therefore the provision is made that "in the special circumstances, transfers could be effected after permission of the Election Commission."

9. It is said that these powers are for a very limited period i.e. during the course of election proceedings. It is contended that respondent No. 3 Central Administrative Tribunal has been constituted. The jurisdiction, powers and authority of the Central Administrative Tribunal is given in Section 14 of the 1985 Act. It is submitted that Section 3(q) defines service matters. The contention is that action of petitioner is that of merely shifting and does not fall within the mischief of the definition of service matters. It is submitted that the petitioner passed the order dated October 28, 2003 and issued directions to the State against Collectors of Jashpur and Bastar for posting to Mantralaya. The State therefore

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passed order on 29th October 2003 posting them to Mantralaya. It is stated that the Commission passed the order on receipt of the complaints. The Commission sought explanations of the District Election Officer and District Collectors of Jashpur and Bastar regarding violation of the Code of Conduct by them and after considering the explanations offered by them, the Election Commission directed that these officers be relieved of their duties as District Election Officers and District Collectors with immediate effect and given such postings that do not entail election related responsibilities. It is also submitted that a panel of names of IAS officers was called for by return fax for the consideration of the Commission for appointment as District Collectors and District Election Officer of Jashpur and Bastar districts.

10. Counsel for the petitioner submits that the respondent No. 2 in each case holding the post of District Election Officer by virtue of Collector/District Magistrate presented the petitions before the Central Administrative Tribunal aggrieved by the order passed by the State. The reliefs claimed in those petitions are identical and are quoted below: -

> "(i) to quash the impugned order dated (Annexure A-9) passed by the respondent No. 1.
> (ii) to call the relevant records.
> (iii) This Hon'ble Tribunal may kindly be further pleased to pass any such other orders as this

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Hon'ble Tribunal may deem fit under the circumstances of the case."

11. The interim relief claimed in para 9 of the petition before the Central Administrative Tribunal is quoted below:-

"Pending final decision, the operation and effect of the impugned order dated Annexure A-9, passed by the respondent No. 1, may please be stayed and the petitioner be allowed to continue at the present place of posting."

12. The matter came up for hearing before the Central Administrative Tribunal, which after hearing the counsel appearing for respective Collectors passed the orders on 31-10-2003. This order dated 31-10-2003 passed in O.A. No. 755/2003 in case of Collector Jagdalpur by the Tribunal reads as under:-

"31.10.2003

Shri P.R. Bhave, learned Senior Advocate with Shri S.D. Gupta, learned counsel for the applicant.

Heard the learned counsel for the applicant.

The applicant who is a Collector and District Magistrate at Jagdalpur (Chhattisgarh) has filed this Original Application and has sought a direction to quash the order dated 29-10-2003 (Annexure A-7) by which he has been transferred to Secretariat Chhattisgarh State, Raipur. He has further sought a direction that pending final decision of this OA, the operation and effect of the impugned order dated 29-10-2003 be stayed.

It has been alleged by the applicant that the impugned order passed by the respondent is arbitrary, punitive in nature and not in compliance of the principles of *audi altarum partam*. According to the applicant he has been transferred on the ground that he has violated the directions of the Election Commission and allowed the distribution of five school bags even after the order of the Election Commission to stop the same. The applicant has stated that there is no lapse on the part of

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him and the directions issued by the Election Commission were promptly complied by him. He further submitted that the opportunity to furnish explanation given by the Election Commission was an empty formality, since the Election Commission has not considered the applicant's explanation before passing the impugned order.

We are well aware of the legal position laid down by the Hon'ble Supreme Court that the Court/Tribunal should not interfere in the matter of transfers unless they are violative of statutory rules or have been issued with malafide intention or are punitive in nature. In this case, the applicant has alleged that the transfer made by the respondents is arbitrary and punitive in nature and is in violation of principles of natural justice and Article 14 of the Constitution of India.

Issue notice to the respondents to show cause as to why this case be not admitted.

Shri K.N. Pethia, Additional Standing Counsel for UOI present in the Court takes notice on behalf of respondent No. 3. The learned counsel for the applicant is directed to serve notices to respondents 1 & 2 by speed post. Let reply be filed within a period of four weeks and rejoinder, if any, within a period of two weeks thereafter.

As regards interim relief, a short reply be filed by the respondents within a period of 10 days. In the meantime status quo as existed today shall be maintained.

List it for further orders on 13-11-2003 at INDORE. C.C. be granted."

More or less similar is the order passed in O.A. No. 754/2003 in case of Collector Jashpur. The bone of contention is the interim order in both case to the effect that *"As regards interim, a short reply be filed by the respondents within a period of 10 days.In the meantime the status quo as existed today shall be maintained."*

13. It is submitted that the petitioner/Election Commission filed reply before the learned Central Administrative Tribunal.

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It also filed its letter dated 28-10-2003 Annexure (R-1/1), addressed to the Chief Secretary, State of C.G. Annexure R.1/1 dated 28-10-2003 is relevant and quoted below:-

> "Dear Sir,
>
> The Commission had received following complaints regarding violation of Model Code of Conduct in Jashpur and Bastar Districts.
>
> 1. The school bags with the photographs of Shri Ajit Jogi, Chief Minister of Chhattisgarh are continuing to be distributed.
> 2. Some spectacles under a Government programme were distributed by the wife of Shri Ajit Jogi, the Chief Minister of Chhattisgarh in official functions organized in Jashpur and Bastar District.
> 3. The District Collector of Jashpur travelled with Shri Ajit Jogi, Chief Minister of Chhattisgarh on a private helicopter requisitioned for election work by the Chief Minister.
>
> The Commission had sought explanations of the District Election Officers and District Collectors of Jashpur and Bastar regarding these violations. After considering the explanations offered by them, the Commission finds their conduct unbecoming of civil servants who exercise statutory powers as District Election Officers and Returning Officers during the election period. The Commission has directed that these officers may be relieved of their duties as District Election Officers and District Collectors with immediate effect and given such positions that do not entail election related responsibilities. A panel of names of IAS officers may kindly be sent by return fax for the consideration of the Commission for appointment as District Collector and District Election Officers of Jashpur and Bastar Districts.
>
> Yours sincerely
>
> (Anand Kumar)"

14. The petitioner/Election Commission also filed an application for vacating stay and also filed an application for pre-ponement of the date of hearing as the nomination was to start from 7-11-2003. The case came up for hearing before

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the learned Central Administrative Tribunal on 5-11-2003 and the learned Tribunal passed similar orders in both the petitions which read as under:-

"5.11.2003

Shri S.D. Gupta, learned counsel for the applicant.

Shri K.K.Trivedi, learned counsel for respondent No. 1.

Shri K.N. Pethia, learned counsel for respondent No. 3.

None for respondent No. 2.

This case was earlier fixed for orders on 13.11.2003 at Indore. The respondent no. 1 has filed M.A. No. 1487/2003 for pre-ponement. Accordingly, the case is taken up today.

The order of status-quo was passed by this Tribunal on 31.10.2003 and in terms of the provisions of proviso to Section 24(b) of the Administrative Tribunals Act, 1985, the case was directed to be listed for hearing on 13.10.03. As there was no Bench available at Jabalpur, the case was listed for hearing at Indore on 13.11.2003.

One of the grounds taken by the respondent No. 1 for pre-poning the date of hearing is the inconvenience to be faced for hearing at Indore.

The respondent No. 1 has also filed an application for vacation of stay (MA No. 1497/2003) and also a short reply to the OA. The Registry has pointed out that a copy of the same has not been served to the opposite parties. The learned counsel for the applicant submits that a copy of the same has been received by him only yesterday and he wants some short adjournment to reply to the aforesaid MA for vacation of stay. He further submits that unless an opportunity of hearing is given to the applicant to submit his case against the MA for vacation of stay, he cannot argue the case properly.

At this stage both the learned counsel for applicant as well as respondent No. 1 agreed that the case may be finally fixed for hearing at Jabalpur on 21.11.2003.

Accordingly, list this case for final hearing at Jabalpur on 21.11.2003. In the meantime the respondents No. 2 & 3 are directed to file their replies.

MA 1487/2003 is accordingly disposed of and the MA1497/2003 will be taken up for hearing at the time of final hearing.

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Interim order to continue.

C.c. be granted to the learned counsel for parties as per rules."

15. The present petitions have been filed by the petitioner/Election Commission against the order of respondent No. 3 dated 31-10-2003 as well as order dated 5.11.2003.

16. These matters came up for hearing on 7-11-2003 and after hearing the counsel for the petitioner/Election Commission, notices were issued to respondent No. 2 in each petitions, the Addl. Advocate General took notice on behalf of the State/respondent No. 1 and as the Union of India was also a party before the Tribunal, notice was also given to the Sr. Standing Counsel for the Union of India, Shri Vinay Harit. On 10-11-2003, it was submitted that returns on behalf of respondents No. 1 and 2 have been filed. It was stated by Shri Vinay Harit that he adopts the argument of the counsel for the petitioner. Counsel agreed that the matter be heard finally and accordingly heard.

17. Dr. Shukla, Addl. Advocate General appearing for the respondent No. 1/State submitted that the State of CG on the receipt of order dated 28-10-2003 issued by the Election Commission, issued order dated 29-10-2003 regarding posting of the Collector, Jashpur and Collector Bastar and as

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such complied with the direction of Election Commission. It is submitted that Collector Jashpur and Collector Bastar filed the petitions before the Central Administrative Tribunal and it is the Central Administrative Tribunal, which has passed the order. It is reiterated that State on its return has stated legal submissions before this Court although on its part it has complied the order. In para vi of return, it is stated that the order is consent order and as such it cannot be challenged as the same has been passed by the Tribunal which has jurisdiction. The other contention is that the orders are interim orders and as such not amenable to writ jurisdiction of this Court under Article 227 of the Constitution of India. It is also submitted that Section 24 enables the Tribunal to pass interim orders and that having been passed cannot be challenged. It is further submitted that the Election Commission has already surrendered to the jurisdiction of Central Administrative Tribunal by submitting reply to the main application as well as application for vacating stay. It is also contended that the Tribunals have been constituted under Article 323-A of the Constitution and cannot be subjected to judicial review. It has been contended that the Commission has recorded a categorical finding that the respondent No. 2 conducted in a manner which is unbecoming of a civil servant and the Election Commission conducted an enquiry on the complaint made to it by seeking

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explanations from the respondent No. 2 and further that the election Commission considered the material which was placed before it including the complaint and explanation of respondent No. 2. It is also contended that the Election Commission (petitioner) reached to the conclusion after due consideration that respondent no.2 is guilty of misconduct to such an extent that his conduct is "unbecoming of a Civil Servant". It is further contended that the above findings of the Election Commission which is a Constitutional Body of the highest rank would adversely affect the future prospects of respondent no.2 and it would be a weapon in the hands of the other competitors for the future promotion against respondent no.2. It is also submitted that the material which is in possession of respondent/State shows that the respondent No. 2 is not guilty of violating of any code of conduct laid down by the Election Commission. Lastly it is reiterated that the jurisdiction is vested with the Central Administrative Tribunal.

18. The respondent No. 2 in each of the petitions have filed the return contending that the order passed by the State on 29-10-2003 is illegal and contrary to law. It is also submitted that Collector Bastar has not received any communication and explanation was not called for and he has not submitted any explanation. It is contended that the Tribunal has rightly

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passed the interim order and the order is consent order. It is further submitted that the respondent No. 2 have not violated any code of conduct. They have complied with the directions, they cannot be without remedy and they have exercised their right by invoking jurisdiction of Central Administrative Tribunal and further the Tribunal has acted in accordance with law. It is submitted that the respondent/Collectors are being victimized.

19. Section 14 of the Administrative Tribunals Act deals with jurisdiction, powers and authority of the Administrative Tribunals. Section 14 reads as under:-

> "14. **Jurisdiction, powers and authority of the Central Administrative Tribunal.**-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-
>
> (a) recruitment, and matters concerning recruitment, to any all-India Service or to any civil service of the union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) All service matters concerning-
>
> (i) a member of any All-India Service; or
>
> (ii) a person[not being a member of an All India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
>
> (iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,
>
> and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the

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control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment."

20. Section 24 of the Administrative Tribunals Act confers jurisdiction and conditions as to making of interim orders. Section 24 of the Administrative Tribunals Act is also relevant and quoted below:-

"24. **Conditions as to making of interim orders.**- Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless-

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or porposed to be made; and

(b) opportunity is given to such party to be heard in the matter:

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

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21. It is borne out from the record that the Election Commission as per Annexure P-11 on October 28, 2003, which has been quoted above, issued a direction that these officers i.e. respondent No. 2 in each petition, may be relieved of their duties as District Election Officers and District Collectors with immediate effect and given such postings that do not entail election related responsibilities. It was further directed that a panel of names of IAS officers may be sent by return fax for the consideration of the Commission for appointment as District Collector and District Election Officers of Jashpur and Bastar Districts.

22. The State of Chhattisgarh on 29-10-2003 passed an order in respect of L.N. Suryawanshi and Shri B.S. Anant as per Annexure P-9. Annexure P-9 is quoted below:-

> "1 श्री एल,एन,सूर्यवंशी, भा0प्र0से0 (1992) कलेक्टर , जिला- बस्तर को तत्काल प्रभाव से अस्थाई रूप से आगामी आदेश तक संयुक्त सचिव, छत्तीसगढ शासन, मंत्रालय, रायपुर पदस्थ किया जाता है।
>
> 2 श्री बी0एस0अनन्त, भा0प्र0से0(1993) कलेक्टर,, जिला –जशपुर को तत्काल प्रभाव से अस्थाई रूप से आगामी आदेश तक संयुक्त सचिव, छत्तीसगढ शासन, मंत्रालय,रायपुर पदस्थ किया जाता है।
>
> छत्तीसगढ के राज्यपाल के नाम से तथा
>
> आदेशानुसार
>
> ए0के0मिश्र
>
> मुख्य सचिव "

23. Article 324 of Constitution deals with superintendence, direction and control of elections to be vested in an Election

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Commission. Article 324 (1) and 324 (6) of the Constitution of India are relevant and quoted below:-

> "324. **Superintendence, direction and control of elections to be vested in an Election Commission.-** (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as Election Commission).
> (2) .....
> (3) .....
> (4) .....
> (5) .....
> (6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commissioner or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

24. The Representation of the People Act 1950 and Representation of the People Act 1951 have also been referred to by the counsel for the parties. Section 13 CC of the Representation of People Act 1950 is relevant quoted below:-

> "13CC.**Chief Electoral Officers, District Election Officers, etc. deemed to be on deputation to Election Commission.-** The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission."

25. Section 15 of the Representation of the People Act relates to notification for general election to a State Legislative Assembly and Section 28-A of the Representation of the

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People Act relates to Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission. Sections 15 and 28-A are also relevant and quoted below:-

> **"Notification for general election to a State Legislative Assembly.**-(1) A General election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.
> (2) For the said purpose, the Governor or Administrator, as the case may be, shall by one or more notifications published in the official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:
> Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1) of Article 172 or under the provisions of Section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.
>
> **28.A.Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.**- The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

26. Shri Prashant Mishra appearing for respondent No. 2 relied on *AIR 1994 SC 1144 (Shriram Refrigeration Industries Ltd and anr. –v- Commercial Tax Officer and ors.)* and

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contended that writ against pending appeal before the appellate authority on similar issue by same party cannot be entertained. So far this authority is concerned, it is distinguishable as the jurisdiction being exercised under Article 227 of the Constitution in view of *L. Chandra Kumar* (supra). He further relied on *1996 SC 98 (para 26 (U.P. sales Tax Service Association –v- Taxation Bar Association, Agra and ors.).* He submitted that High Court has no power to prohibit the authority exercising statutory power from discharging statutory functions. Shri Mishra also relied on para 6 of judgment in *(2001)8 SCC 97 (Estralla Rubber –v- Dass Estate (P) Ltd.* He further relied on para 6 of judgment in *(2001)8 SCC 477 (Sugarbai M. Siddiq and Ors. –v- Ramesh S. Hankare (dead) by lrs.)* He submitted that it was held in that case that in an application under Article 227 of the Constitution of India, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process. Shri Mishra relied on *2002(1) SCC 319 (Ouseph Mathai & Ors. –v- M. Abdul Khadir)* . He also relied on *1977 sc 2155 (All Party Hill Leaders' Conference Shilong –v- Captain W.A. Sangama and ors.)* . He also relied on para 5 of decision in *1955 SC 1(Gopal Das Mohta –v- Union of India and anr.).* Then he relied

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on para *1987(Supp) SCC 136 (M/s. Hind Lamps Ltd. –v- Commissioner of Income Tax, U.P.).* Suffice it to say that, in view of *L. Chandra Kumar* (Supra), this Court has jurisdiction under article 227 of the Constitution.

27. Dr. N.K. Shukla, learned Addl. Advocate General addressed on the question of jurisdiction of the Tribunal. He relied on *L. Chandra Kumar's* case (supra). He further relied on decision in *AIR 1952 SC 16 (Commr. Of Police, Bombay –v- Gordhandas Bhanji)* and in *AIR 1986 SC 111 (Kanhiya Lal Omar –v- R.K. Trivedi).* Learned Addl. Advocate General further submitted that the Commission does not have any immunity. It is contended that Article 324 does not enable the Election Commission to override any of the legislations or statutory rules having force of legislation in any of the States. The Election Commission can at the most recommend particular line of action to be adopted by the authorities on the subjects on which it does not possess authority or jurisdiction. He referred to decision in. He further relied on *AIR 1992 Bombay 3 (Maharashtra Wine Merchants Association and ors -v- the State of Maharashtra and anr.).* Regarding stand of the State Government, learned Addl. Advocate General submitted that the State Government has passed the order on 29-10-2003

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28. Counsel for the respondent No. 2 contended that it is the Administrative Tribunal, which has the jurisdiction. Counsel referred to Kendriya Vidyalaya Sangathan and another –v- Subhash Sharma etc. (AIR 2002 SC 1295). It is contended that the Administrative Tribunals Act applied to all categories of Central Govt. servants. In this case, 1997 AIR SCW 1345 (Chandra Kumar –v- Union of India and others)has also been considered.

29 Counsel for the petitioner vehemently contended that under Section 24 of the Administrative Tribunals Act, no interim order whether by way of injunction or stay or any order ought to have been made without hearing the Election Commission of India and giving to the Commission anopportunity in the matter specially in view of the notification for election having been issued on 3rd October 2003 and 7-10-2003. It is submitted that notice having not been given to them, they have been greatly prejudiced. It is further submitted that requirements under Section 24 of the Act ought not to have been dispensed with and in any case when they appeared and applied for vacation and pre-ponement, the Commission ought to have been heard on the implications of the interim order and the same ought to have been vacated. The argument of counsel for the respondent-Collectors on the other hand is that the Election Commission has not provided

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opportunity and it was merely an empty formality and an eye-wash. Though in the order Annexure R/1, it is stated that explanations were called for, reply received and considered. In this connection it is pertinent to refer the decision of Hon'ble Court in case of Canara Bank –v- Debasis Das (AIR 2003 SC 2041), specially paragraphs 14 to 21 and they are quoted below:-

> "14. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.
>
> 15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymade in 1215, the first statutory recognition of this principle found its way into the "Magna Carta." The classic exposition of Sir Edward

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Coke of natural justice requires to "vocate interrogate and adjudicate." In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principle was thus stated :

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says, God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat."

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton. LJ) in Ray v. Local Government Board (1914) 1 KB 160 at p. 199 : (83 LJKB 86) described the phrase as sadly lacking in precision. In General Council of Medical Education and Registration of U.K. V. Sanckman (1943 AC 627) : (1948) 2 All ER 337). Lord Wright observed that it was not desirable to attempt 'to force it into any procusteam bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179 : 80 LJKB 796), where Lord Loreburn, LC observed as follows :

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. IN such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying

upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial.....The Board is in the nature of the arbitral Tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view." To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works {1985 (10) AC 229 : 54 LJMC 81}, where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to the done.'

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied

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an what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its vide umbrella comes everything that affects a citizen in his civil life.

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855 (2) Macg. 1.8, Lord Cranworth defined it as 'universal justice.' In James Dunber Smith v. Her Majesty the Queen (1877-78 (3) App Case 614, 623 JC) Sir Robort P. Collier, speaking for the Judicial Committee of Privy Council, used the phrase 'the requirements of substantial justice,' while in Arthur John Specman v. Plumstead District Board of Works (1884-85(1) App Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice.' In Vionet v. Barrett (1885 (55) LJRD 39, 41(, lord Esher, MR defined natural justice as the 'the natural sense of what is right and wrong.' While, however,deciding Hookings v. Smethwick Local Board of Health (1890) (24) QBD 712). Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as 'fundamental justice.' In Ridge v. Baldwin (1963 (1) WB 569, 578), Harman LJ, in the Court of appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagawati,J. in Maneka Gandhi v. Union of India (1978 (2) SCR 621). In Re R. N. (An Infaot) (1967 (2) B 617, 530), Lord Parker, C.J., preferred to describe natural justice as 'a duty to act fairly.' In Fairmount Investments Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described nature justice as 'a fair crack of the whip' while Geoffrey Lane, LJ in Regina v. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766) preferred the homely phrase 'common fairness'.

21. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as

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representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rules is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co. Rep. 114 that is, 'no man shall be a judge in his own cause.' Coke used the form 'aliquis non-debet esse judex in propria causa quia non-potest esse judex at pars' (Co.Litt.1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party.' The form 'nemo potest esse simul actor et judex,' that, is 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem,' that is, here the other side.' At times and particularly in continently countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely, 'qui aliquid statuterit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co. Rep. 48-b 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done.' Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision and fresh proceedings are left upon. All that is done is to vacate to order assailed by virtue of its inherent defect, but the proceedings are not terminated.

Hon'ble Supreme Court, in the abovesaid judgment in the paragraphs stated hereinabove has elaborately elucidated the principles of natural justice interpreted in our judicial setup over the years by a process of judicial interpretation. The facts of each case in hand have to be examined by the Court keeping in mind the principles stated hereinabove.

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30. The jurisdiction, propriety of the interim orders dated 31-10-2003 and 5-11-2003, their validity or otherwise has been assailed. In this connection, it is pertinent to refer paragraphs 37 and 38 of the decision in *Public Services Tribunal Bar Association –v- State of U.P. and another ((2003)4 SCC 104)*. Para 37 and 38 of the judgment are relevant and quoted below:-

> "37. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner.
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> 38. From the above-quoted decisions, it is evident that this Court has consistently been of the view that by way of an interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court."

31. It is contended that interference at the interim stage in a matter like this where respondent No. 2 is District Magistrate/Collector and by virtue of that District Election Officer would be giving the final relief at an interim stage which he would have got in case the order is set aside then an employee can be compensated by moulding the relief appropriately. But in case, the order is found to be justified then holding of the office during limited period of election would amount to usurpation of an office which the person was not entitled to hold. It is reiterated at the Bar by Shri Kanak Tiwari that the order is not punitive but simply to substitute the person without any entry in C.R. and it is totally left to State as regards disciplinary action. In this

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connection, Shri Tiwari referred to para 6 reply in O.A. No. 754/2003 filed by the Commission before the Tribunal wherein it is mentioned that "the allegations are made that such an order of transfer will go as punishment against the applicant. Neither the status of the applicant is changed nor there is any change in his service condition. The fact is not to be recorded in the service record of the applicant and, as such he is not going to be prejudiced in any manner therefore, the allegation that the applicant is being penalized without following the procedure is baseless, hence denied". The statement is recorded.

32 Learned counsel for the parties relied on *(1997)3 SCC 261* (L. Chandra Kumar –v- Union of India and others). Para 86, 90, 91 and 99 of the above judgment are relevant and quoted below:-

> "86. After analyzing the situation existing in the High Courts at length, the LCI made specific recommendations towards the establishment of specialist Tribunal thereby lending force to the approach adopted in *Sampath Kumar Case*[2]. The LCI noted the erstwhile international judicial trend which pointed towards generalist courts yielding their place to specialist Tribunals. Describing the pendency in the High Courts as "catastrophic, crisis-ridden, almost unmanageable, imposing ... an immeasurable burden on the system", the LCI stated that the prevailing view in Indian Jurisprudence that the jurisdiction enjoyed by the High Court is a holy cow required a review. It, therefore, recommended the trimming of the jurisdiction of the High Courts by setting up specialist courts/Tribunals while simultaneously eliminating the jurisdiction of the High Courts.
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> 90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not

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be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings any may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statues, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasized the necessity for ensuring that High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain case*, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the

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Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforestated contentions, we hold that all decision of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these tribunals will however be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals, will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

33. Article 227 of the Constitution of India is relevant here and quoted below:-

"Power of superintendence over all courts by the High Court.- (1) Every High Court shall have

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superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2). Without prejudice to the generality of the foregoing provision, the High Court may-

(a) call for returns from such courts'

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts' and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (30 shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Forces.

34. Learned counsel for petitioner submitted that the conduct of the election is entrusted with the Election Commission and while exercising that function, Article 324(6) of the Constitution of India is there to get the officers and staff and cooperation has to be rendered. It is submitted that the commission having lost the confidence cannot trust on these officers and if they are allowed to continue, it will adversely affect the conducting of election.

35. Counsel for respondent No. 2 submitted that Collector Jashpur has not been given any opportunity. He submitted that the matter may be remanded and the Tribunal may be directed for hearing the case finally. Counsel for both the Collectors submitted that they have been put to victimization.

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36. Counsel for the petitioner submitted that the interests of the respondent No. 2 are well safeguarded. In para 5.10 of the petition the petitioner has made a statement that the petitioner did not in effect transfer the respondent No. 2 from the present place of posting/assignment in the technical sense of the term. The order virtually shifts the respondent no. 2 from the present place of posting during the course of the election process culminating in the declaration of the results of the ensuing assembly elections in so far as the Collector/District Magistrates having been uniformly made District Election Officers and returning Officers for the district, although it has been within the competence of the petitioner to have appointed some other officers also. The statement is recorded.

37. We are conscious of the fact that the Central Administrative Tribunal is a creature of the Constitution having conferred powers under Article 226 of the Constitution to decide the matters relating to services. It has wide powers including declaring law to be ultra vires except the statute under which it has been constituted. The Administrative Tribunals as established under Article 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended

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constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional courts. Transfer of jurisdiction in specified matters from the High Court to the Administrative Tribunal equates the Tribunal with the High Court insofar as the exercise of judicial authority over the specified matters is concerned. That, however, does not assign the Administrative Tribunals a status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to the High Court. In this connection law on the subject is expounded by Hon'ble Supreme Court in *T. Sudhakar Parsed v. Govt. of A.P. ((2001) 1 SCC 516)* in para 18 and 19. Para 18 and 19 of the judgment are quoted below:-

> "18. Subordination of Tribunals and courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is judicial superintendence and not administrative superintendence, such as one which vests in the High Court under Article 235 of the Constitution over subordinate courts. Vide para 96 of L. *Chandra Kumar case* the Constitution Bench did not agree with the suggestion that the Tribunals be made subject to the supervisory jurisdiction of the High Court within whose territorial jurisdiction they fall, as our constitutional scheme does not require that all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction. Obviously, the supervisory jurisdiction referred to by the Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the Tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.

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19. Jurisdiction should not be confused with status and subordination. Parliament was motivated to create new adjudicatory for-a to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing off the conventional shackles of the strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews- creating hurdles in the fast flow of the stream of justice. The Administrative Tribunals as established under Article 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional courts. Transfer of jurisdiction in specified matters from the High Court to the Administrative Tribunal equates the Tribunal with the High Court insofar as the exercise of judicial authority over the specified matters is concerned. That, however, does not assign the Administrative Tribunals a status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to the High Court. It has to be remembered that what has been conferred on the Administrative tribunal is not only jurisdiction of the High Court but also of the subordinate courts as to specified matters. The High Courts are creatures of the Constitution and their Judges hold constitutional office having been appointed under the Constitution. The Tribunals are creatures of statute and their Members are statutorily appointed and hold statutory office. In State of Orissa v. Bhagaban Sarangi it was held that the Administrative Tribunal is nonetheless a Tribunal and so it is bound by the decision of the High Court of the State and cannot sidetract or bypass it. Certain observations made in the case of T.N. Seshan, Chief Election Commr. Of India v. Union of India may usefully be referred to. It was held that merely because some of the service conditions of the Chief Election Commissioner are akin to those of the Supreme Court Judges, that does not confer the status of a Supreme Court Judge on the CEC. This Court observed:

"Of late it is found that even personnel belonging to other for-a claim equation with High Court and Supreme Court Judges merely because certain jurisdictions earlier exercised by those Courts are transferred to them not realizing the distinction between constitutional and statutory functionaries."

> We are therefore clearly of the opinion that there is no anathema to the Tribunal exercising jurisdiction of the High Court and in that sense being supplemental or additional to the High Court but at the same time not enjoying status equivalent to the High Court and also being subject to judicial review and judicial superintendence of the High court."

38. In an ordinary course we would have remanded the matter to the learned tribunal for deciding the interim application for hearing both the parties but in view of the extraordinary situation regarding the conduct of elections and since we have heard the learned counsel for the parties at length on orders dated 31.10.2003 and 05.11.2003 and on the applications filed by the respective parties before the tribunal and before this Court for grant of ad-interim writ and for vacation of ad-interim writ, its continuance or other wise, we are of the considered opinion that instead of remanding the matter back the matter, it is just and proper in the ends of justice to decide the question of interim relief here itself as it is noted that what has been granted on 31-10-2003 is "status quo as existed today". The expression "status quo as existed today" is a term of ambiguity. The ambiguity in the facts and circumstances when even the notification inviting nominations has been issued on 7-11-2003, it is in the national interest that ambiguity should not be allowed to prevail even for a day. So far as the term 'status quo' is concerned, the Hon'ble Supreme Court in *1987 Supp SCC 394 (Bharat Coaking Coal Ltd. –v- State of Bihar)* had occasion to

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deal with the matter. Pra 5 of the judgment is relevant and quoted beow:-

> "5. The expression 'status quo' is undoubtedly a term of ambiguity and at time gives rise to doubt and difficulty. According to the ordinary connotation, the term 'status quo' implies the existing state of things at any given point of time. The qualifying words 'as in the High Court' clearly limit the scope and effect of the status quo order. In the present case, the High Court determined only one question, namely that slurry was not coal or mineral. It refrained from entering into the question of right or title of the parties on the ground that it involved investigation into disputed questions of facts. Therefore, apart from the abstract question that slurry was not coal or mineral, the impugned judgment does not adjudicate upon the rights of the parties. Viewed from that angle, it is obvious that status quo as in the high Court cannot mean anything else except status quo as existing when the matter was pending in the High Court before the judgment was delivered. Both the parties understood the scope and effect of the status quo order as meaning the state of things existing while the writ petition was still pending i.e. till the delivery of the judgment by the high Court. Respondent 4 moved the High Court in Cri. M.P. No. 4841/86(8) without impleading the appellant herein and obtained the impugned order from the High Court dated January 3, 1987 which we have vacated. The proper course for respondent 4 to have adopted was to have approached this Court to seek clarification, if he had any doubt as to the meaning and effect of the status quo order. We highly deprecate the conduct of respondent 4 for having approached the High Court and obtained the impugned order by suppressing the fact that this Court had passed the status quo order. Even so, strictly speaking, no case for contempt is made out on the plain terms of the status quo order. The parties were relegated back to the position that obtained while the writ petition was pending. They were therefore, subject to the order passed by the High Court dated January 15, 1985. No other conclusion is possible looking to the terms of the status quo order."

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39. So far as the question of jurisdiction of this Court under Article 227 of the Constitution of India is concerned, the matter came up before the Hon'ble Apex Court in the matter of *Surya Dev Rai –v- Ram Chander Rai & others reported in JT 2003 (6) SC 465* and in the case of *State, through Special Cell, New Delhi –v- Navjot Sandhu @ Afshan Guru and Ors. reported in JT 2003(4) SC 605*. In the case of *State, through Special Cell, New Delhi* (supra), the Hon'ble Apex Court has held that

> "The law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors."

In the case of Surya Dev Rai (Supra), the Hon'ble Apex Court has held that

> "Under Article 227 of the Constitution of India, the writ of certiorary is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction may substitute such a decision

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> of its own in place of the impugned decision, as the inferior Court or Tribunal should have made. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

40. Therefore, in view of the above law laid down by the Hon'ble Apex Court, the powers under Article 227 of the Constitution are wide and can be used to get the ends of justice. They can be used to interfere even with an interlocutory order and in appropriate cases, the High Court while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior Court or Tribunal should have made. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasion thereby, the High Court may step in to exercise its supervisory jurisdiction. In the light of the above principle, if we look into the facts of the present case, the matter came up before the learned Tribunal on 31st October 2003 when the learned Tribunal passed an exparte order against the State for maintaining status quo. If we look

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into the above order, this order was not passed in conformity with Section 24 of the Administrative Tribunals Act because the proviso to Section 24 speaks that in case the Tribunal wants to dispense with the requirement of clause (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated cease to have effect on the expiry of a period of fourteen days, therefore, before passing the exparte interim order without giving notice to the opposite side, the learned Tribunal ought to have recorded the reasons for making such an order which the learned Tribunal has not. Even when the respondent/Election Commission of India moved an application for pre-ponement and for vacating the order, the matter again came up before the Tribunal on 5-11-2003. On that day, learned counsel for the petitioner mentioned that he needs some time to file reply of the application for vacating stay filed by the respondent/Election Commission of India. Without passing any order on this, the learned Tribunal adjourned the matter for 21st November 2003 stating that both the parties are agreeable to fix the matter on 21st November 2003 for final disposal. In the circumstances, looking to the urgency involved in the matter as the process of

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holding elections is in operation and elections are fixed for 1st December and the question involved was of the shifting of the two Collectors who are District Election Officers, the learned Tribunal ought to have heard the application for vacating stay, if it was not possible on 5th November 2003, then on 6th or 7th November looking to the urgency of the matter. But the learned Tribunal failed to exercise the jurisdiction vested in it. As argued by learned counsel for the petitioner that the Election Commission of India exercising its power under Article 324 of the Constitution of India was within its right to ordering for shifting of the District Election Officers those who were not working upto the satisfaction of the Election Commission of India and nobody can dictate to the Election Commission of India from whom the Election Commission of India has to take work of the District Election Officer. Even both the petitioners were not within their right to dictate the terms that the Election Commission of India has to take work from them as District Election Officers. It is the satisfaction of the Election Commission of India that from whom the Election Commission of India wants to take work of District Election Officer in order to discharge constitutional obligation to conduct free and fair election and to maintain purity of the elections. Therefore, we are of the considered opinion that the learned Tribunal while not passing the order on emergent basis on the application for vacating stay has failed to

exercise jurisdiction by adjourning the matter for such a long time i.e. for 21-11-2003 without fulfilling the requirement of provisions of Section 24 of the Administrative Tribunals Act and such a way this Court has jurisdiction under Article 227 of the constitution of India to interfere with the interlocutory order passed by the Tribunal and if this order is allowed to exist then it will amount to failure of justice or grave injustice.

41. The Hon'ble Supreme Court in *Surya Vev Rai –v- Ram Chander Rai and ors. (JT 2003 (6) SC 465)*, noted situations which may very frequently arise before the High Court and the guidelines have been given in para 37 of the judgement. Para 38 of the judgment is also relevant which is quoted below:-

> "38. .....the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and the rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

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42. Having given our thoughtful consideration to the facts and circumstances of the case mentioned in earlier paragraphs of this order, with great respect, we are of the opinion that it is a case where 'a stitch in time would save nine'. In view of the above foregoing reasons we are of the opinion that the order dated 31-10-2003 directing for maintaining status quo and order dated 5-11-2003 directing for continuing the said interim order passed by the learned Tribunal are not legally sustainable and deserve to be set aside and the same are set aside. The original applications are listed on 21-11-2003 before the Tribunal. The parties may raise the questions before the learned Central Administrative Tribunal. The Tribunal to decide the matter on its own merits in accordance with law.

43. Before parting, we would like to make it clear that the observations and directions made in the order are with reference to the interim order and the merits/demerits of the cases are to be adjudicated by the learned Central Administrative Tribunal in accordance with law.

44. In view of the above directions and observations, the petitions are finally disposed of.

45. A copy of this order be placed in the record of W.P. No. 3628/2003.

Sd/-
Fakhruddin
Judge

Sd/-
L.C. Bhadoo
Judge