

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.6682 of 2016
Date of decision:27.1.2017

Dr.Avtar Singh Khara

...Petitioner

Versus

Chandigarh Golf Club through its Hony. Secretary and others

...Respondents

CR No.6796 of 2016

Chandigarh Golf Club through its Hony. Secretary

...Petitioner

Versus

Dr.Avtar Singh Khara and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Kanwaljit Singh, Sr. Advocate with
Mr.Paramjeet Singh, Advocate for the petitioner-
Dr.Avtar Singh Khara in CR No.6682 of 2016
and for respondent in CR No.6796 of 2016.

Mr.Anand Chhibbar, Sr. Advocate with
Mr.Vaibhav Sahni Advocate for the petitioner in
CR No 6796 of 2016 and for respondents No.1, 3 and 4 in
CR No.6682 of 2016.

Mr.Prateek Sodhi, Advocate for
Mr.Aashish Chopra, Advocate for respondent No.2 in
CR No.6682 of 2016.

RAMESHWAR SINGH MALIK, J. (Oral)

Twin questions of law that arise for consideration of this Court,

in these two identical civil revision petitions under Article 227 of the

Constitution of India, are:

(i) Whether any illegality allegedly committed during conduct of election for the post of President of Chandigarh Golf Club, was sought to be perpetuated by the Management of Chandigarh Golf Club under the guise of impugned judgment dated 21.9.2016?

(ii) Whether after the death of returned candidate Late Shri Ishwar Partap Singh Mann, petitioner could have been declared elected as President of Chandigarh Golf Club, without there being any challenge to the result of election of the President and in the alternative, the mid-term election only for the post of President can be ordered by this Court, while exercising its discretion and moulding the relief, without there being any specific provisions of law to this effect in the Rules & Regulations of the Chandigarh Golf Club?

These two identical civil revision petitions, filed under Article 227 of the Constitution of India, at the hands of plaintiff as well as defendants, are directed against the same impugned judgment dated 21.9.2016 passed by the learned Additional District Judge, Chandigarh, bearing CR No.6682 of 2016 and CR No.6796 of 2016, which are being disposed of vide this common order, as both these revision petitions are arising out of same set of facts and raise identical questions of law. However, for the facility of reference, facts are being culled out from CR No.6682 of 2016.

Succinctly put, facts of the case necessary for disposal of these two revision petitions are that Chandigarh Golf Club-respondent No.1 is a

Society registered with the Registrar of Firms and Societies under the Registration Act, 1860, having its registered office at Chandigarh. The Management and Affairs of Chandigarh Golf Club vests in the Managing Committee consisting of 11 elected members, in addition to the President and three members nominated by the competent authority of Union Territory, Chandigarh. Election of the Members of the Managing Committee is to be held at the time of Annual General Meeting of the Society. Term of election is one year.

The outgoing Management Committee, through its President, issued the Schedule of Election for the post of President and Members of the Managing Committee, for the year 2016-2017, as pleaded by the petitioner-plaintiff in para 6 of his plaint, at page 27 of the paper-book and the same reads as under:-

- “A. Election of the Managing Committee of Chandigarh Golf Club were to be held on 24.04.2016.
- B. The Annual General Bode Meeting 24.04.2016.
- C. Filing of Nomination 3.4.2016.
- D. Scrutiny of Nomination 6.4.2016.
- E. Withdrawl and display of final list 8.4.2016.

Petitioner, respondent No.2 and one Shri Ravibir Singh filed their nomination papers for the post of President of Chandigarh Golf Club. Petitioner, on the strength of provisions contained in Rule 49 (c) of the Rules & Regulations of the Chandigarh Golf Club (‘the Rules’ for short) filed his objections against the nomination of respondent No.2-Ishwar Partap Singh Mann and Ravibir Singh vide his representation dated

5.4.2016 (Annexure P-3). Objections filed by the petitioner were rejected by the Returning Officer vide his communication dated 6.4.2016 (Annexure P-4), on the basis of deliberations held amongst the members of the Standing Committee. It was held that since Shri Ishwar Partap Singh Mann was not the President but Member of the Managing Committee for two consecutive terms, he was eligible to contest the election for the post of President.

Feeling aggrieved against the above-said alleged wrongful acceptance of nomination of Shri Ishwar Partap Singh Mann, by the Returning Officer and Standing Committee-defendants/respondents No.3 and 4, petitioner filed his suit for declaration and permanent injunction by way of plaint (Annexure P-1) dated 11.4.2016. He also moved an application, Annexure P-5, under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure ('CPC' for short), for ad-interim injunction, during the pendency of the suit.

Written statement was filed on behalf of defendants-respondents No.1, 3 and 4 vide Annexure P-6. Defendant-respondent No.2 filed his separate written statement, along with reply to the application for ad-interim injunction. The learned trial Court, after going through the pleadings of the parties and considering the arguments raised by the learned counsel for the parties, dismissed the application of the petitioner declining ad-interim injunction, vide order dated 22.4.2016 (Annexure P-7). Petitioner filed his misc. Civil Appeal No. 94 dated 23.5.2016 vide Annexure P-8 and the same came to be disposed of by the learned Additional District Judge, Chandigarh, vide his impugned judgment dated

21.9.2016 (Annexure P-9).

Although, the learned appellate court set aside the order dated 22.4.2016 passed by the learned trial Court, yet since in the interregnum election had already taken place, prayer made by the plaintiff-petitioner for ad-interim injunction was found to have become infructuous. Second prayer made by the petitioner for removal of defendant-respondent No.2 from the post of President and for appointment of Administrator was also declined by the learned appellate court, holding that it would amount to passing a decree at the preliminary stage. However, learned appellate court, in para 14 and 17 of its impugned judgment, held that under Rule 49(c) of the Rules, defendant-respondent No.2 could not have contested the election for the post of President. Both the parties felt aggrieved against the impugned judgment dated 21.9.2016 passed by the learned Additional District Judge. Hence these two identical revision petitions.

In fact, there was a third revision petition as well bearing CR No.6801 of 2016 (Ishwar Partap Singh Mann Vs. Avtar Singh Khara and others). However, since Shri Ishwar Partap Singh Mann, President of Chandigarh Golf Club, passed away in the month of December 2016, this revision petition filed by him had been disposed of, as having been rendered infructuous, vide a separate order passed today, on the statement made by the learned counsel for the parties.

Petitioner-Dr.Avtar Singh Khara in CR No.6682 of 2016 and for respondent in CR No.6796 of 2016, under the changed circumstances of the case, seeks either declaring him elected as unopposed President of the Chandigarh Golf Club. In the alternative, he seeks appointment of an

Administrator to manage the affairs of the Club and a direction to the Chandigarh Golf Club for conducting forthwith election for the post of President.

Chandigarh Golf Club-petitioner in CR No.6796 of 2016 and respondent No.1 in CR No.6682 of 2016, is feeling aggrieved to the limited extent that the learned Additional District Judge, Chandigarh, has illegally interpreted the rules and particularly Rule 49(c) of the Rules, which may cause serious prejudice to the Members of the Chandigarh Golf Club in the times to come.

Learned senior counsel for the petitioner-Dr.Avtar Singh Khara, while placing reliance on different rules and particularly Rule 49 (c) of the Rules, vehemently contended that once the learned Additional District Judge has rightly held in para 17 of the impugned judgment that order passed by the learned trial Court was perverse and defendant-respondent No.2 could not have been allowed to contest the election, the learned appellate court ought to have removed defendant No.2 from the office of President by appointing an Administrator, instead of permitting the serious illegalities to be perpetuated. He further submits that once the learned appellate court has rightly declared defendant No.2 to be ineligible, to contest the election for the post of President of the respondent-Club, the learned court below ought to have moulded the relief, either declaring the petitioner elected as unopposed President of respondent-Club or to appoint an Administrator, directing the respondent-Club for conducting immediate fresh election.

He next contended that defendant-respondent No.2 was

absolutely ineligible to contest the election to the post of President of the respondent-Club, as per the provisions of law contained in Rule 49 (c) of the Rules, which was also rightly interpreted by the learned Additional District Judge, while passing the impugned judgment. In support of his contentions, learned senior counsel for the petitioner places reliance on two judgments of the Hon'ble Supreme Court in **Ranu Hazarika and others Vs. State of Assam and others, 2011 (4) SCC 798** and **M.I.Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others, 1999 (6) SCC 464**. He prays for allowing the revision petition bearing CR No.6682 of 2016, by suitably modifying the impugned judgment, passed by the learned appellate court and for dismissal of the revision petition filed by the Chandigarh Golf Club.

Per contra, learned senior counsel for the respondent-Chandigarh Golf Club in CR No.6682 of 2016 and for the petitioner in CR No.6796 of 2016, while strongly opposing the arguments raised by the learned senior counsel for the petitioner, submits that the learned first appellate court fell in serious error of law, while interpreting Rule 49 (c) of the Rules in a patently illegal manner. He further submits that since the post of President and Members of the Managing Committee were separate and independent of each other, Late Shri Ishwar Partap Singh Mann was very much eligible to contest for the post of President of Chandigarh Golf Club. In addition to the provisions contained in abovesaid Rule 49(c), learned senior counsel for Chandigarh Golf Club also places reliance on Rule 47 (a) of the Rules, to contend that the post of President is clearly different from that of the post of member of Managing Committee. He further submitted that the learned trial Court was well justified to pass the order, dismissing

the application of the petitioner-plaintiff under Order 39 Rules 1 and 2 declining ad-interim injunction.

Learned senior counsel for the respondent-Club also placed before this Court extract of minutes of meeting of the Managing Committee, held on 7.12.2016, to contend that after untimely death of President Late Shri Ishwar Partap Singh Mann, the Managing Committee has unanimously invoked Rule 52 of the Rules and the Vice-President is working as President because he is entitled to continue as such, till the next election is held in the coming Annual General Meeting. He also refers to the extract of minutes of meeting of the Managing Committee held on 24.1.2017, whereby date of election has been fixed as 16.4.2017. He prays for dismissal of Civil Revision No. 6682 of 2016 and allowing Civil Revision No.6796 of 2016, by setting aside the impugned order passed by the learned first appellate court.

Having heard the learned senior counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, including unfortunate and untimely death of Late Shri Ishwar Partap Singh Mann, President of Chandigarh Golf Club, no relief can be granted to the petitioner Dr.Avtar Singh Khara, at this stage. The impugned judgment rendered by the learned Additional District Judge, Chandigarh cannot be sustained, as it is. To say so, reasons are more than one, which are being recorded hereinafter.

Before proceeding further, it is necessary to refer to Rules 46, 47, 48, 49, 52, 67, 68, 70 and 72 of the Rules & Regulations of the Chandigarh Golf Club and the same read as under:-

46. Standing Committee

“A Standing Committee comprising five senior members of the club shall be nominated at the Annual General Meeting or Extraordinary General Meeting. The members thus nominated shall elect one member from amongst themselves to be the Chairman of the Committee. These members shall not seek election as the President or a member of the Managing Committee. The main functions of Standing Committee shall be as follows:

- (a) To supervise the election of the President and members of the Managing Committee and ensure strict adherence to the existing Rules and Regulations on the subject.
- (b) To ensure that the code of conduct laid down is followed in letter and spirit by all candidates and their supporters.
- (c) To deal with all cases of breach of code of conduct. The verdict given by the Standing Committee shall be final and binding on all candidates.

47. Managing Committee

- (a) The Managing Committee shall, in addition to the President, consist of 11 elected members. Further, three

members shall be nominated by designation by the U.T. Administrator.

(b) The President shall be elected by the members of the club at the Annual General Meeting and shall hold office for a term of one year, exception being in year 2003-2004 as decided in EGM on 02 May 04.

48 All members of the Managing Committee elected at the Annual General Meeting of the Club shall retire at the end of one year term when a new Managing Committee shall be elected. The retiring members of the Managing Committee shall be eligible for re-election as laid down.

49. Office Bearers

(a) The managing Committee at its first meeting shall appoint any member or members from amongst themselves to hold any honorary office such as Vice President, Captain, Secretary, Treasurer & so on.

(b) The Captain shall hold office for one term but shall be eligible for re-election as a member of the Managing Committee for another term subject to a maximum of two consecutive terms. Upon retirement, the Captain shall become a member of the Managing Committee without election for the term following his term of office unless, before the election, he signifies his intention not to serve on the Managing Committee for that term. In such an eventuality election of 12 members instead of 11 as stipulated earlier shall be held for the Managing Committee.

(c) No member who has been a President or a member of the Managing Committee for two consecutive terms shall be eligible for re-election for period of two years terms.

(52) Filing of vacancies of President etc.

In the case of the office of President falling vacant for any reason, the Vice president shall automatically Act as the President also till the following Annual General Meeting. In the temporary absence of the Vice President, the Captain shall act as the President. Should the offices of the Vice President and the Captain both fall vacant for any reason, the Managing Committee shall have the power to appoint a Vice President or Captain who would hold office until such time as the Vice President and/or the Captain returns, or until the following Annual General Meeting, as the case may be.

(67) General Meetings

An Annual General Meeting of the club shall in addition to any other meeting be held once in each calendar year and the notice calling such meeting shall specify the meeting as such. The Annual General Meeting shall be held at the registered office of the club.

(68) All other meetings of the club shall be called Extraordinary General Meetings.

(70) (a) The ordinary business of an Annual General meeting shall be as follows:-

XXX XXX XXX XXX XXX

XXX XXX XXX XXX

(iv) To elect the new President and the Managing committee.

(72) Notice of a General Meeting

Not less than 30 days notice shall be given to the members specifying the place, day and hour of the meeting, with a statement of the business to be transacted at the meeting either by advertisement or by notice sent by post of otherwise served as hereinafter provides.”

A bare reading of the above-said relevant provisions contained in the Rules & Regulations of the Chandigarh Golf Club, will make it abundantly clear and learned senior counsel for the parties have also fairly conceded in this regard that peculiar fact situation, as obtaining in the case in hand, is not squarely covered under the rules prevalent as on date. Under these circumstances, this Court is of the considered view that existing rules of the respondent-Club require an immediate revisit, carrying out suitable amendments, so as to deal with the fact situation as obtaining in the present case.

It is so said because under Rule 52 of the Rules & Regulations of the Chandigarh Golf Club, the moment office of President falls vacant for any reason, the Vice-President shall automatically act as the President also, till the following Annual General Meeting. In the very nature of things, permitting a Vice-President to act as President also, would be only a stop gap arrangement. However, without commenting anything further in this regard, framing or amending the rules being the exclusive domain of the

respondent/Society-Chandigarh Gold Club, as and when it is felt necessary, to run its affairs smoothly, this Court would leave this issue to the Management of the Chandigarh Gold Club, to take appropriate steps about it, in the manner it likes.

Dealing with the star argument raised by the learned senior counsel for the petitioner Dr.Avtar Singh Khara on first question of law, this Court is of the considered view that the basic fallacy in the case of the petitioner is that he did not amend his plaint, before the learned trial Court, even after conduct of election for the post of President and declaration of result thereof. Result of not amending the plaint is that the validity of result of election of defendant-respondent No.2 is not even under challenge. When confronted in this regard, learned senior counsel for the petitioner had no answer and rightly so, it being a matter of record.

In fact, in the absence of any suitable amendment in the plaint, learned senior counsel for the petitioner could not substantiate his argument, despite making his best efforts. Case of the plaintiff-petitioner, without amending his plaint to lay challenge to the result of election of defendant-respondent No.2, was based only on presumptions. It is so said because even if the nomination papers of respondent No.2 were wrongly accepted, that could have been only a ground for challenging the result of election and in the absence of any such challenge to the result of election, the returned candidate cannot be removed from his elected post by any stretch of imagination.

It was incumbent on the plaintiff-petitioner either to withdraw his earlier civil suit with permission to file fresh to challenge the validity of

election result of defendant-respondent No.2 or he should have suitably amended his plaint. However, he failed to do so for the reasons best known to him, with the result that validity of result of election of returned candidate was not challenged, at the hands of the petitioner. Had the petitioner amended his plaint, challenging the validity of result of election of the returned candidate on any number of grounds, including alleged wrongful acceptance of his nomination paper, returned candidate would have filed his amended written statement, raising more than one preliminary objections.

Defendant No.2 could have insisted before the learned trial court to treat one or more issues as preliminary issues and in that situation, the learned trial court would have been bound to decide such preliminary issues, in accordance with law. It is the settled proposition of election law that returned candidate would be entitled to defeat the election petitioner at any stage of the trial even on technicalities. The reason is that will of the voters in any democratic set up, is to be respected at every cost. No court can tinker with the will of the voters, while trying any election petition. It also goes without saying that every election matter has to be decided, strictly in accordance with the pleadings of the parties and evidence brought on record.

So far as the case in hand is concerned, there are no pleadings laying any challenge to the result of election of respondent No.2. In this view of the matter, it was not appropriate stage for the learned Additional District Judge, Chandigarh, to interpret Rule 49 (c) at the time of considering the miscellaneous appeal of the plaintiff for ad-interim

injunction. The question of interpretation of the rules, if any, would have fallen for consideration of the court, only after the parties would have produced their respective documentary as well as oral evidence on record, particularly when the defendants were seriously disputing the plea raised by the plaintiff-petitioner, about the alleged ineligibility of defendant-respondent No.2 for contesting the election to the post of President.

While dealing with the application of any plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC, the learned trial Court is to consider whether the plaintiff-applicant is satisfying three basic ingredients namely; a strong prima facie case, causing of an irreparable loss if interim injunction is not granted and balance of convenience for granting or not granting ad interim injunction. Similarly, if such application moved by the plaintiff is dismissed by the learned trial Court and he approaches the first appellate court by way of civil misc. appeal, the learned first appellate court would also be guided by the above-said three basic principles for granting or refusing ad-interim injunction.

In the present case, the learned first appellate court has exceeded its jurisdiction, while commenting upon the scope and ambit of Rule 49(c), without granting an opportunity to the contesting defendant to put up his best case before the court by leading his defence evidence. Should there be any confusion in this regard, it is clarified that any observations made by the learned Additional District Judge, Chandigarh, regarding interpretation of the rules, including Rule 49(c) will not prejudice the rights of either of the parties, because those observations were not made by the learned first appellate court, while deciding the case after trial, the

impugned judgment having been passed only at the interim stage, while considering an application for ad interim injunction.

Coming to the judgments relied upon by the learned senior counsel for the petitioner, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. To be fair to the learned senior counsel for the petitioner, paras 82 and 83 of the judgment of the Hon'ble Supreme Court in **M.I.Builders'** case (supra), read as under:-

“High Court in its impugned judgment has not doubted the capacity of M.I. Builders to undertake the project but then that is not the issue. The question is why it was not necessary to invite tenders for the project of such a high cost. Why it was thought that it was only the M. I. Builders in the country who could undertake the job ? Why project report was not obtained to know the cost of the project ? Why could it not be thought that there could be any other person who could undertake the job at a lesser cost and in equally competent manner ? Public interest has certainly been given a go-by. There was some undercurrent flowing to award the contract to M.I. Builders. High Court said "lest we are taken amiss we wish to make it clear that we do not doubt either the bona fides of the authorities or the competence of the respondents M/s. M. I. Builders to enter into the impugned agreement but we are of the view . . ." The competence of M/s. M. I. Builders to undertake the project is not doubted when now it is seen that proper construction has been made but before taking decision to award the contract to it nobody knew its credentials. No attempt made whatsoever to consider if there was any other person more competent for the job or if of equal competence

*could offer better terms. In these circumstances, dictum contained in the case of **Kasturi Lal Lakshmi Reddy v. State of J&K, (1980) 4 SCC 1** becomes inapplicable. No advantage can be drawn by the builder from the decision of this Court in G. B. Mahajan's case, as here the whole process of awarding contract to M. I. Builders has been gone through in an unabashed manner and in flagrant violation of law with the sole purpose of conferring benefit on it. All said and done we fail to understand the certificate given by the High Court above the bona fides of the authorities in awarding the contract to M/s. M.I. Builders. The officers of the Mahapalika, who were impleaded as respondents by name, did not file any replies to contradict the allegations made against them. Rather it appears that it was a fit case where High Court should have directed an inquiry to be made as to how the project came to be awarded to M. I. Builders including the conduct of the lawyers.*

High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar

dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”

Similarly, the observations made by the Hon'ble Supreme Court in para 16 of its judgment in **Ranu Hazarika's** case (supra) have not been found advancing the case of the petitioner in any manner. Para 16 of judgment in **Ranu Hazarika's** case (supra) reads as under:-

“Having bestowed our anxious consideration to the matter, we are of the opinion that the decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005 which have been declared by it to be illegal is clearly indefensible. Having clearly held that "the requirement of adherence to the Statutory Regulations framed by the NCTE cannot be left to be determined at the discretion of the authorities of the State Government and that there was no compelling reason with the State to justify a departure from the Statutory Regulations, any action under illegal rules would be null and void", the High Court could not have permitted the State Government to perpetuate an illegality. To say the least, we are equally amazed by the stand of the State Government. Having failed to sustain the Amendment Rules, 2005 before the High Court, it would be improper for the State to go ahead with the recruitments under the said amended Rules which have been declared null and void, particularly when the decision of the High Court on that issue has not been questioned by it. We are of the view that the impugned observation by the High Court would be clearly inimical to the

rule of law. While it is trite that Courts can exercise judicial discretion in moulding the relief, however, such discretion cannot be exercised to perpetuate and encourage an illegality. See : M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors, (1999) 6 SCC 4674.”

It is the settled principle of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. “12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio*

decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter,

before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER

294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham (No.2)* (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR 1962 SC 680)

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

In fact, the star argument raised by the learned senior counsel for the petitioner-Dr.Avtar Singh Khara has been found misplaced and the same cannot be accepted. The reason to say so is that the petitioner was trying to treat himself as an unopposed elected President of the respondent-Chandigarh Gold Club and that too simply on the basis of some unwarranted observations made by the learned Additional District Judge, Chandigarh, in para 17 of the impugned judgment. Petitioner could not have been declared elected unopposed under any circumstances, particularly when the election has already taken place and result thereof was not even under challenge in the suit filed by the petitioner.

Having said that, this Court feels no hesitation to conclude that the answer to the first question posed hereinabove, is and has to be in the negative and the same is answered accordingly. It is held that no such illegality can be presumed to have been committed unless it would have been so proved by the plaintiff-petitioner by leading his cogent evidence. No result of an election can be declared as illegal unless it is challenged by way of specific pleadings and duly proved by an election petitioner, strictly in accordance with law. Admittedly, it is not the fact situation in the case in hand because the result of election of defendant-respondent No.2 was not

challenged by the petitioner-plaintiff, by suitably amending his plaint.

Coming to the second question posed at the outset, this Court is of the considered view that the petitioner can not be declared elected unopposed even after the death of elected candidate. This Court would be exceeding its jurisdiction, while declaring the petitioner as unopposed elected President of the respondent-Chandigarh Golf Club, because it is totally impermissible in law. At the cost of repetition, it is held that had the petitioner amended his plaint, returned candidate would have every right to file his written statement and after completion of the pleadings of the parties, the learned trial Court would have framed appropriate issues including the preliminary issues.

However, the plaintiff-petitioner never amended his plaint and for no good reasons. So far as issuing any direction to the Chandigarh Golf Club for conducting the mid-term election is concerned, no such material has been brought to the notice of this court, at the hands of the petitioner, enabling this Court to issue such directions. In fact, after the death of duly elected President Late Shri Ishwar Partap Singh Mann, the Managing Committee of the respondent-Club has been found well within its jurisdiction to invoke Rule 52, permitting the Vice-President to act as President also, till following the Annual General Meeting.

Further, once the action of the Managing Committee of the respondent-Club has not been found running contrary to any rule, there would be hardly any discretion left with this Court to issue such a direction for conducting a mid-term poll or for appointing an Administrator for the said purpose. Such direction would be contrary to the rules, particularly

abovesaid Rules 52, 70 and 71 of the Rules & Regulations of the Chandigarh Golf Club. It is also pertinent to note here that as per the extract of minutes of meeting held on 24.1.2017, the Managing Committee of the respondent-Club has already fixed the date of election as 16.4.2017. Under these changed circumstances, petitioner has not been found entitled for any discretionary relief, at the hands of this Court. In view of the above, it can be safely concluded that answer to the second question also goes against the petitioner. It is held that the petitioner cannot be declared elected unopposed nor any direction can be issued for mid-term election.

So far as the question of interpretation of above-said Rules of respondent-Club, reproduced hereinabove and particularly Rule 49(c) as well as Rule 52, is concerned, these are not required to be interpreted at the hands of this Court, at this point of time. Keeping in view the above-said facts and circumstances, including the sad and untimely demise of Late Sh.Ishwar Partap Singh Mann, the question of interpretation of Rules is left open for consideration at the appropriate time, as and when occasion arises. Let the law take its own course.

Learned senior counsel for the respondent-Club has assured this Court that the election shall be held on time and strictly in accordance with law. This Court hope and trust that the Managing Committee of the respondent-Club shall discharge its responsibility, as per the above-said rules and regulations.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that petitioner-plaintiff is not entitled for any relief under the above-said changed circumstances of the case.

Resultantly, with the above-said observations made, both these civil revision petitions stand disposed of, however, with no order as to costs.

27.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No