

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP No. 26255 of 2022(O&M)
Date of Decision: April, 11,2023.

Surender Kumar

.....Petitioner

Versus

The State Election Commission, Haryana and others

..... Respondents

AND

2. CWP No. 27525 of 2022(O&M)

Afsana

.....Petitioner

Versus

State of Haryana and others

..... Respondents

AND

3. CWP No. 27530 of 2022(O&M)

Azad Khan

.....Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Lekh Raj Sharma, Advocate
for the petitioner (in CWP No. 26255 of 2022).

Mr.Randhir Singh Hooda, Advocate
for the petitioner (in CWP No. 27525 of 2022).

Mr. Randhir Singh, Advocate
for the petitioner (in CWP No. 27530 of 2022).

Ms. Shruti Jain, DAG., Haryana.

Mr. Mohd. Arshad, Advocate
for respondent no.5 (in CWP No. 27525 of 2022)

Mr. Talim Hussain, Advocate
for respondent no.5 (in CWP No. 27530 of 2022).

LISA GILL, J.

The abovesaid writ petitions are being taken up together for hearing at request and with consent of learned counsel for the parties as the question involved in all these writ petitions, is the same i.e., “whether interference under Article 226 of the Constitution of India for setting aside election to the post of Sarpanch (conducted in terms of the Haryana Panchayati Raj Act, 1994 and Haryana Panchayati Raj Election Rules, 1994) on the ground of alleged fake votes, is called for?”.

Brief facts in each of the writ petitions as necessary for adjudication, are as under:-

CWP No. 26255 of 2022.

This writ petition has been filed by the petitioner, who contested for the post of Sarpanch of village Karsindhu, Tehsil Saffidon, District Jind, and lost the same to respondent no.8.

It is stated that election schedule for various posts including the

post of Sarpanch was notified on 07.10.2022, Annexure P-1. Post of Sarpanch of Village Karsindhu, was declared reserved for Scheduled Caste Candidates. Schedule as notified on 07.10.2022, Annexure P-1, is reproduced as under:-

Sr. No.	Programme	Date
1.	Date on which notice shall be published by the Deputy Commissioner-cum-District Election Officers (Panchayats) in Form 2 or 3 as the case may be, for inviting nominations under rule 24 of the Haryana Panchayati Raj Election Rules, 1994.	08.10.2022 (Saturday)
2.	Dates on which Nomination papers shall be presented under Rule 24 (2) (i)	14.10.2022 (Friday) to 19.10.2022 (Wednesday) (except 16.10.2022(Sunday)) (10.00 AM to 3.00 PM)
3.	Dates on which the list of Nomination papers received shall be pasted under rule 24 (2) (i)	14.10.2022 (Friday) to 19.10.2022 (Wednesday)
4.	Date by which Affidavit/declaration shall be furnished by the candidates in Form 4-A, to the concerned Returning Officer. (rule 27)	14.10.2022 (Friday) to 19.10.2022 (Wednesday)
5.	Date on which the nomination papers shall be scrutinized under rule 24 (2)(ii)	20.10.2022 (Thursday) 10.00 AM onwards
6.	Last date for withdrawal of candidature by a candidate under rule 24 (2) (iv)	21.10.2022 (Friday) (upto 3.00 PM)
7.	Date on which symbols shall be allotted to the contesting candidates	21.10.2022 (Friday) (after 3.00 PM)
8.	Date on which list of the contesting candidates shall be pasted under rule 24 (2) (v)	21.10.2022 (Friday)
9.	Dates on which the poll, if any, shall be held under rule 24 (2) (vi)	<u>Members of Zila Parishads and Panchayat Samitis</u>

		30.10.2022 (Sunday) <u>Sarpanches and Panches of Gram Panchayats</u> 02.11.2022 Wednesday)
10.	Timing of the Poll	Between 7.00 AM to 6.00 PM
11.	Re-Poll, if any required	
	For Zila Parishads and Panchayats Samitis	02.11.2022 (with Gram Panchayats)
	For all Gram Panchayats(Panches and Sarpanches)	04.11.2022
12.	Counting of votes	For Zila Parishads and Panchayat Samitis at the palce specified by the concerned Deputy Commissioner-cum-District Election Officer (P) on the date which will be notified by the State Election Commission, Haryana, with the election schedule of remaining Districts and for Sarpanches and Panches on polling booths, immediately after completion of poll on all the polling booths of each Gram Panchayat
13.	Declaration of result	Immediately after the completion of counting

Petitioner submitted his nomination papers for the post of Sarpanch within the stipulated time and it is stated that his nomination papers were scrutinized on 20.10.2022 with no defect being found therein. He was declared the contesting candidate on 21.10.2022 along with respondents no. 7 to 13. Polling was stated to be held on 02.11.2022 with there being eight wards in their entire village Karsindhu. Total votes are stated to be 1064, however only one polling booth no. 58 was in place. It is

submitted that during the course of voting, petitioners' agent identified two or three fake voters and reported the same to the Returning Officer, who also called concerned Sub Divisional Magistrate at the spot and one such fake voter was handed over to the police. It is submitted that petitioner requested that election result be not declared and sought re-polling along with legal action to be taken against the fake voters. It is stated that fake voter who was apprehended is a near relative of the ex-Sarpanch-respondent no.14, who wields considerable influence over police officials. Respondent no. 14 is stated to be facing many criminal cases of embezzlement and he wanted the petitioner to be defeated and person of his choice to be declared elected in order to save his skin from inquiries and government recoveries. It is further stated that result at village Karsindhu was not declared. Ballot boxes were taken to Saffidon, however, petitioner allegedly came to know at a later stage that the concerned Deputy Superintendent of Police, facilitated the release of the fake voter/s from police custody and no case was registered in this regard. It is stated that petitioner was declared defeated by one vote on 02.11.2022 in the absence of applicant without holding any enquiry in the complaint/ allegations leveled by the petitioner regarding fake voters. Copy of the declared result, it is alleged was not supplied to the petitioner.

Aggrieved therefrom, present writ petition has been filed for setting aside of the election, whereby respondent no.8 has been declared to be the elected Sarpanch of village Karsindhu, Tehsil Saffidon, District Jind.

Learned counsel for the petitioner when faced with the question of maintainability of this writ petition vehemently argued that casting of fake votes, first and foremost does not fall under the description of corrupt practice as defined under Section 176(5) of the Haryana Panchayati Raj Act, 1994 (for short 'the 1994 Act') and furthermore it is the bounden duty of the

officials concerned to ensure conduct of free and fair elections. It is submitted that necessary action should have been taken immediately by the officer concerned. Learned counsel has referred to Rule 22 of the Haryana Panchayati Raj Election Rules 1994 (for short 'the 1994 Rules') to submit that it is the general duty of the Presiding Officer at a polling station to maintain order and ensure holding of a fair poll. It is submitted that in this situation, petitioner should not be compelled to take recourse to the remedy of filing an election petition.

Learned counsel for the petitioner strenuously urged that present is a case where respondent no.8 has been declared to be the winning candidate only with a margin of one vote and the fake voter in this case was apprehended at the spot and handed over to the authorities, but for reasons best known to the concerned officers, he was allowed to go scot-free without any action being taken. It is asserted that video was also prepared on the spot, but none of these facts were taken in consideration by the authorities, who in-fact should have immediately declared a re-poll. It was argued that once objection was raised regarding the fake vote, petitioner should not be made to undergo rigours of an election petition merely due to inaction of the authorities. It was thus contended that though remedy of filing an election petition challenging election of respondent no.8 to the post of Sarpanch, is available to the petitioner under Section 176 of the 1994 Act, same is not an efficacious remedy in the given circumstances. Therefore, the present writ petition, it is prayed should be entertained and allowed.

CWP No. 27525 of 2022.

Petitioner in this case contested the election for the post of Sarpanch of village Neemka, Tehsil, Punhana, District, Mewat (Nuh), but was unsuccessful having lost the same to respondent no.5.

Prayer in this writ petition is for directing the concerned respondents to cancel bogus vote/s which were polled and for setting aside the election to the post of Sarpanch of village Neemka, Tehsil, Punhana, District Mewat (Nuh) held on 02.11.2022. It was further prayed that strict action should be taken against the officials, who were party to the illegal facilitation of polling of fake and bogus votes.

It was submitted that as per record more than 100 votes of dead persons were allowed to be cast at various booths, with votes of people who were not even living in the village being cast. Moreover, number of persons, it was stated voted more than once. It was contended that number of genuine voters seeking to cast their vote, were unable to do so as somebody had already cast their vote by impersonation. Bungling in casting of votes, it was contended was committed by respondent no.5 with the same being facilitated by the concerned officers. Arguments as addressed in the earlier petition were addressed in this case as well with the addition that in the present case, petitioner, also seeks strict action against the conniving officers who facilitated casting of bogus votes. It was thus prayed that said writ petition be allowed and polling process/election held on 02.11.2022, whereby respondent no.5 has been declared elected, be set aside with strict action being taken against the concerned officials.

CWP No. 27530 of 2022.

Petitioner in this case contested election to the post of Sarpanch of village Indana, Tehsil Punhana, District Mewat (Nuh) in which respondent no.5 was declared elected.

Prayer in this writ petition is identical as the one in CWP No. 27525 of 2022.

It was contended that respondent no.5 in this writ petition was

declared elected by a margin of 21 votes only on account of fake and bogus votes cast in his favour. Identical arguments as in CWP No. 27525 of 2022 are raised by learned counsel for the petitioner in this case as well.

Learned counsel for the respondent-State and private respondents have strenuously urged that present writ petitions are not maintainable and the only remedy available with the petitioners was to file an election petition. Learned counsel for the respondent-State submitted that elections were conducted peacefully and in accordance with the provisions of law. Allegation as raised by the petitioners regarding casting of bogus votes has been denied while submitting that elections were conducted peacefully. Furthermore, petitioners in all the writ petitions, it is contended never submitted any application raising objections as has been done before this Court. No application along with deposit as per Rule 48 of the 1994 Rules, which provides for challenging identity of the person claiming to be a particular voter, was ever submitted by the petitioners. Learned counsel for the State specifically in reference to averments in CWP No. 26255 of 2022 submits that neither the petitioner therein or his polling agent, present at the polling booth raised any objection when the voter namely Sahil cast his vote nor was requisite fee as per Rule 48 of the 1994 Rules deposited. Said submission has been made on the basis of written instructions from Vijay Kumar, Presiding Officer/Returning Officer, village Karsindhu (Booth No. 58). It is thus prayed that all these writ petitions be dismissed.

We have heard learned counsel for the parties at length and have gone through the files with their able assistance.

At the outset, before adjudicating upon the respective submissions, we considered it appropriate to refer to the relevant applicable provisions. Elections in question relate to Gram Panchayat, therefore,

provisions in Part IX of the Constitution of India, which deal with Panchayats are relevant. Article 243B, 243C, 243K and 243O are reproduced as hereunder:-

Article-243B. Constitution of Panchayats.- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

Article-243C. Composition of Panchayats.-

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation—

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

(a) a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243K. Elections to the Panchayats.

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243O. Bar to interference by courts in electoral matters.

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

Part XV of the Constitution of India deals with the elections and

Article 329 creates a specific bar against interference by Courts in electoral matters. Article 329 of the Constitution of India reads as under:-

**“329. BAR TO INTERFERENCE BY COURTS IN
ELECTORAL MATTERS.**

Notwithstanding anything in this Constitution-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

Consequent to incorporation of Part IX in the Constitution of India (73rd Amendment of Act 1992), which came in force w.e.f., 24.04.1993, Haryana Panchayati Raj Act, 1994, was promulgated and enforced w.e.f., 22.04.1994. Chapter 20 of the Panchayati Raj Act, deals with the provisions relating to elections. Section 170 of the Act, bars jurisdiction of all civil Courts and reads as under:-

“170. No Civil Court shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether any person is or is not entitled to have his name included in a list of voters; or
- (b) to question the legality of any action taken or decision given by or under the authority of the State Election Commission in connection with the preparation, maintenance or revision of any such list.”

Section 176 of the Act provides for presentation of an election petition to the Civil Court having ordinary jurisdiction in the area within which election has been or should have been held and the same is reads as under:-

176. Determination of validity of election enquiry by judge

and procedure. –

(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question. Determination of validity of election enquiry by judge and procedure.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

- (a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;
- (b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

1[(aa) If on holding such enquiry the Civil Court finds that-

- (i) on the date of his election a returned candidate was not qualified to be elected;
 - (ii) any nomination has been improperly rejected; or
 - (iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;
- (b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

- (5) A person shall be deemed to have committed a corrupt practice-
- (a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or
 - (b) who, with a view to induce any person to stand or not

to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.”

Learned counsel for the petitioners in these cases vehemently argued that jurisdiction of this Court under Article 226 of the Constitution of India should be invoked while submitting that life of the elected Panchayat is five years and in case petitioners are relegated to their remedy of filing an election petition, it would be an exercise in futility and a candidate selected on the basis of fake or bogus votes would be allowed to continue in an unjustified and illegal manner. Therefore, in such a situation, filing of an election petition is in-fact not an appropriate or efficacious remedy. It was contended that allegations as are raised in these writ petitions do not fall within the ambit of Section 176 (5) of the Act. It was further submitted that in terms of judgment of the Hon’ble Supreme Court in **Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi, 1978 (1) SCC 405**, it is not that jurisdiction of this Court under Article 226 of the Constitution of India, is ousted in all situations. Present is a case, it is contended which calls for interference by this Court, at this stage itself.

However, we do not find any merit in the arguments raised by learned counsel for the petitioners. This is so for the reason that it has been held in a number of decisions by the Hon’ble Supreme Court as well as Full Bench of this Court; besides a number of decisions rendered by Division Bench of this Court that in such like matters, Court should stay its hands at this stage. In the case of **N.M. Ponnuswami Vs. Returning Officer,**

Namakkal Constituency and others, 1952 AIR 64, Six Judge Bench of the Hon'ble Supreme Court has held as under:-

"9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. XXXXXXXX.

16. The conclusions which I have arrived at may be summed up briefly as follows :-

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special

tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.”

Thereafter, Hon’ble Supreme Court in **Mohinder Singh Gill’s** case (**Supra**) held as under:-

“92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is meet that we, synopsise the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings:

1 (a) Art. 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

2.(a) The Constitution, contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law, relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Art. 324 is a reservoir of power to, act for the avowed purpose of, not divorced from pushing forward a free and fair election with

expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own- wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in full flexible practicability. Whether it has been compiled with is left open for the Tribunal's adjudication.

3. The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and procedure as predicated in Art. 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidates if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfillment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the "existing law."

(emphasis added)

It is further observed as under:-

“94. We conclude stating that the bar of Art. 329(b) is as wide as the door of s. 100 read with s. 98. The writ petition is dismissible but every relief (given factual proof) now prayed for in the pending election petition is within reach. On this view of the law ubi jus ibi remedium is vindicated, election injustice is avoided, and the constituency is allowed to speak effectively. In the light of and conditioned by the law we have laid down, we dismiss the appeal. Where the dispute which spirals to this

Court is calculated to get a clarification of the legal calculus in an area of national moment, the parties are the occasion but the people are the beneficiaries, and so costs must not be visited on a particular person. Each party will bear his own costs.”

In **Mohinder Singh Gill’s** case (Supra), writ petitioner pleaded that he had won the elections by a margin of nearly 2000 votes when the respondent therein intervened and created mayhem by using muscle power with postal ballot papers being destroyed. Due to this reason, result was not declared. Chief Election Commissioner, was approached by the petitioner to declare the result of the election, who however passed an order cancelling the poll and directed re-poll of the whole constituency. No interference was caused in the said matter. The Hon’ble Supreme Court in case of **Election Commission of India through Secretary Vs. Ashok Kumar and others, 2000 AIR (Supreme Court) 2979**, held as under:-

“28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution. The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The

non obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case (supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :-

1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to

"calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

In case of **Laxmibai Vs. Collector, Nanded and others, 2020**

AIR (Supreme Court)3393, the position in this regard was yet again

reiterated while holding that “Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the result of the elections, but relegate parties to the remedy contemplated by the statute.”

Reference by learned counsel for the petitioners to the judgment of this Court in **Lal Chand Vs. State of Haryana, 1998 (3) RCR (Civil) 255**, is clearly misplaced in view of the subsequent judgment of the Larger Bench in Hira Singh’s case, whereby the findings in **Lal Chand’s** case (**Supra**) have been held to be an incorrect enunciation of the law. In the present case, learned counsel for the petitioners are unable to point out as to how judicial intervention at this stage is called for and would be an exercise for merely correcting or smoothing out the progress of election proceedings.

Argument raised on behalf of the petitioners that question of casting of bogus votes cannot be a ground for setting aside an election in an election petition is clearly misplaced and untenable, hence rejected. Section 176 (4) (aa) (iii) of the 1994 Act, clearly provides that:-

“(aa) If on holding such enquiry the Civil Court finds that:-

xxxxxxx

(iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.”

At this stage, it is also relevant to note that disputed questions of fact are involved in the writ petitions with the State denying all allegations of election not being conducted in a fair and free manner. The same can clearly not be subject matter of adjudication in present proceedings. We do not find any ground whatsoever to interfere in these matters at this stage and exercise jurisdiction under Article 226 of the Constitution of India for setting aside the elections to the post of Sarpanch, whereby respective respondents have been declared elected.

Learned counsel for the petitioners in the alternate submitted that petitioners be permitted to file election petition in terms of the provisions of the Act and period of 30 days for filing of the election petition be extended as present writ petitions had been filed within the stipulated period of 30 days. Yet again we find no merit in the plea raised. Division Bench of this Court in **Rajesh Kumar Vs. State of Haryana and others, 2019 (2) RCR (Civil) 652**, while rejecting a similar prayer held as under:-

“9. It is a well settled legal position particularly in the case of election matters that the elections are governed by the statute and not by common law considerations. An election petitioner is bound to follow the provisions of the statute. In that view of the matter, we are of the view that the remedy of filing of election petition before the appropriate Tribunal was available to the petitioner who has instead opted to file the present writ petition.

10. Learned counsel for the petitioner further submits that he had earlier filed two petitions in this Court after the result of elections was declared and this Court had issued certain directions to the Election Commissioner, State Election Commissioner and Deputy Election Commissioner. We are afraid such directions could be given after the declaration of the result of elections in the light of the bar under Article 243-0(b).

11. Learned counsel for the petitioner next contended that this Court should allow the petitioner to file election petition now because the present writ petition was filed bona fide and that too within one month of the declaration of the result of elections. We do not agree with the submission made by the learned counsel for the petitioner since at the outset we do not find that there are any bona fides in filing the writ petition directly. The petitioner is deemed to know the aforesaid bar. He cannot say that he did not know the law. Secondly, we find that the legal rights have now been crystallized in favour of the elected person which cannot be disturbed in the manner suggested by the learned counsel for the petitioner. We are, therefore, not impressed with the submission made by learned counsel for the petitioner.”

We are fully conscious of the decision of Hon’ble Supreme Court in **West Bengal State Election Commission and others Vs. Communist Party of India (Marxist) and others 2018 (18) SCC 141**, wherein it was observed that ‘once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudge the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been

apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. We are emphatically of the view that any challenge to the election must take place in a manner which is known to law.’

Period for filing of election petition/s was extended by the Hon’ble Supreme Court in respect to uncontested seats while observing as under:-

“Under Section 79(1) a period of 30 days is prescribed for instituting an election petition, where a dispute arises as to the validity of an election. The period of 30 days commences after the date of the declaration of the results of the election. The pendency of these proceedings may have dissuaded aggrieved individuals from seeking recourse to the remedy of an election petition, particularly after the interim order of this Court restraining the State Election Commission from notifying the results of the constituencies where there was no contest. While we are of the view that the validity of the elections must be tested in election petitions under Section 79(1), the question as to whether there was a large scale obstruction from filing nominations is a serious matter which needs to be resolved. This is particularly because even the Election Commission, as we have seen, had proceeded to take notice of the grim situation while extending the date for the filing of nominations. Having regard to the seriousness of the allegations and bearing in mind the fact that these proceedings were pending, we are of the view that it would be necessary to exercise the power under Article 142 of the Constitution to extend the period of 30 days for the filing of election petitions in respect of the uncontested seats.”

Apart from the fact that it was duly noted in the said decision that interim order had been passed by the Hon’ble Supreme Court restraining the State Election Commission from notifying the results of the constituencies where there was no contest, extension in the period for filing

election petition was afforded in exercise of power under Article 142 of the Constitution of India.

Accordingly we decline the said prayer for filing of an election petition.

No other argument has been raised.

Writ petitions are accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 11, 2023.
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.