

(1993) 03 DEL CK 0062

In the Delhi High Court

Case No : Civil Writ Petition No's. 1976, 2018, 2044, 2378, 3111, 3132 and 3133 of 1991

I.K. Gujral

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 27-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Representation of the People Act, 1951 — Section 58A(2)

Citation : (1993) 50 DLT 458

Hon'ble Judges : P.N. Nag, J; Mahinder Narain, J

Bench : Division Bench

Advocate : Shanti Bhushan, Rajiv Nayar, V.S. Rekha, Rajan Kazwala, G. Ramaswamy, S.K. Tiwari, W.C. Chopra, S. Murlidhar, Madan Lokur, Vikramjit Sen, Lalit Mohan, Rakesh Luthra, R.P. Bansal, N.N. Agarwal, S. Poddar and S.P. Pandey, for the Appellant;

Judgement

P.N. Nag, J.

(1) The principal and the preliminary question that arises for consideration in these writ petitions is whether the High Court has the jurisdiction to try and entertain the petition under Article 226 of the Constitution in view of the blanket ban under Article 329(b) of the Constitution.

(2) This writ petition and other connected writ petitions raise the same principal question of law above-mentioned and as such can be disposed of by a common judgment. As a matter of fact, in all the writ petitions the Election Commission in exercise of the powers under Article 324 of the Constitution and Sections 58, 58A, 135A and 153 of the Representation of Peoples Act, 1951 (hereinafter called the 1951 Act") has passed an order dated 21.5.1991, which is the subject-matter of challenge in these writ petitions, whereby he has countermanded the election.

(3) In order to determine the question above-mentioned, it will be sufficient to

narrate brief facts as stated in Cw 2044/91- I.K. Gujral v.Election Commission.

(4) In pursuance of the notification issued on 19.4.1991 u/s 14(2) of the Representation of Peoples Act, 1951 (hereinafter called the Act), called upon all Parliamentary Constituency (except Parliamentary Constituencies in the State of J & K) to elect members in accordance with the provisions of the said Act and of the Rules and order made there under which included, among others, 35-Patna Parliamentary Constituency in the State of Bihar. Simultaneously, the Election Commission issued a programme notification as required u/s 30 of the 1951 Act fixing the time table for the general election, namely, 26.4.1991 as the last date for making nominations, 27.4.1991 as the date for scrutiny of nominations, 29.4.1991 as the last date for withdrawal of candidatures, and 20.5.1991 as the date of poll in the said 35-Patna Parliamentary Constituency and 31.5.1991 as the date before which the election shall be completed.

(5) The petitioner filed his nomination papers as a candidate of Janta Dal from 35-Patna Parliamentary Constituency. The nomination papers of the petitioner were scrutinised and accepted by the Returning Officer. According to the petitioner, the election to the said Constituency was held on 20/05/1991 peacefully and out of a total electorate of about 13 lakhs, about 50% voters exercised their franchise. However, to utter surprise of the petitioner, he received an order dated 21.5.1991 where by the Election Commission in exercise of the powers under Article 324 of the Constitution and Sections 58, 58A, 135A and 153 of the 1951 Act had countermand the election of 35-Patna, Bihar (annexure A) on the ground that the Commission had received information based on the reports of the State Government, the Chief Electoral Officer of the State, the Returning Officer, the Observers and other relevant sources of information that on the date of polling, i.e., 20.5.1991 there had been large scale incidents of electoral malpractice involving booth capturing by seizure of polling stations, making polling authorities surrender the ballot papers, making forcible possession of polling stations and prevention of free access to the voters for the purpose of voting, threatening electors and preventing them from going to the polling station to cast their vote and that consequently the polls in the aforesaid constituency have not been free or fair. It may be appropriate to quote this order of the Election Commission as under:

"ELECTION COMMISSION OF INDIA ORDER Whereas, the Election Commission in its Notification No. 464/91(1) dated 19/04/1991, issued u/s 30 of the Representation of the Peoples Act, 1951 (43 of 1951) had (i) fixed the 20/05/1991, as the date on which poll shall be taken in the Parliamentary Constituency of 35 Patna of Bihar and (ii) specified the 31/05/1991, as the date before which the election shall be completed in the above constituency: and Whereas, the Election Commission has received information based on the reports of the State Government, the Chief Electoral Officer of the State, the Returning Officer, the Observers and other relevant sources of information that on the date of polling, i.e., 20.5.1991 there had been large scale

incidents of electoral malpractice involving booth capturing by seizure of polling stations, making polling authorities surrender the ballot papers, making forcible possession of polling stations and prevention of free access to for the purpose of voting, threatening electors and preventing them from going to the polling station to cast their vote and that consequently the polls in the aforesaid constituency have not been free or fair; and Whereas, the Commission on the basis of the aforesaid information and after taking into consideration all the material circumstances, is satisfied that due to the aforesaid factors the result of the constituency has been seriously affected; Now, Therefore, the Commission, in exercise of the powers conferred by Article 324 of the Constitution of India, Sections 58, 58A, 135A and 153 of the Representation of Peoples Act, 1951, and all other powers enabling it in this behalf, hereby countermand the aforesaid election. The Election Commission also directs that a copy of this order shall be forwarded to the Returning Officer, the Chief Electoral Officer, all the contesting candidates, and all others concerned. The Commission also directs that a copy of this order shall be forwarded to the Returning Officer, the Chief Electoral Officer, all the contesting candidates, and all others concerned. The Commission also directs that the above order may be published in the Official Gazette for general information. Sd/- T.N. Seshan Chief Election Commissioner of India, New Delhi"

Dated 21.5.91 On 22/05/1991, against the communication of the order dated 21/05/1991 passed by the Election Commission, the petitioner represented before the Election Commission stating therein that the polling in Patna was peaceful and free. Reports of independent observers testify to this fact. According to his information neither the report of Returning Officer or of the election observers was available when the Election Commission took this experts decision and, Therefore, the petitioner prayed for the revocation of that order dated 21.5.1991. The Election Commission, vide Notice dated 29/05/1991, while considering the representations from some of the contesting candidates urging the Commission to re-consider and review its aforesaid order of 21/05/1991, decided to hear all the contesting candidates in the matter and the date of hearing was fixed on 3.6.1991 at 1100 hours in the Commission's Secretariat at New Delhi. The petitioner submitted written submissions for the review of the order of the Election Commission dated 21.5.1991 countermanding the election on 3.6.1991, stating therein that the petitioner, the Janata Dal or any of its supporters had no part either directly or indirectly in any irregularity or malpractice allegedly taken place at any polling station in the said Constituency. Again, on 4.6.1991 another set of written submissions was filed by the petitioner in which the earlier submissions were re-affirmed and reiterated. It was pointed out on behalf of the petitioner that he had no objection if the Election Commission on the basis of the reports of its own independent Observers or its Election authorities may order a re-poll in those polling stations where the polling process was allegedly vitiated. As mentioned above, the hearing in the matter was given by the Election Commission on 3/06/1991. According to

the petitioner, the petitioner was not supplied the copies of the reports submitted to the Commission by various Officers and in fact was refused copies of the same by the Election Commission. However, the review application of the petitioner was rejected on 12.6.1991 whereby the original order of countermanding the election held on 20.5.1991 was upheld. The petitioner has assailed this order of countermanding and rejection of the review application on various grounds, inter alia, that the election Commission has passed the order mala fide and without any legal justification. According to the petitioner, the Election Commission has no power to countermand the whole election process and start afresh as in Sections 52 of the 1951 Act, which contemplates countermanding of election in case of a death of a candidate, a specific provision has been made therein to start the election afresh whereas there is no such provision in Section 58 and 58A(2)(b). Even if the Election Commission has power to countermand u/s 58A(2)(b), this power should be exercised only in the rarest circumstances and only after all other means to correcting the mischief have been failed and/or exhausted. The election to the said Constituency have been countermanded without any evidence or material and the impugned orders dated 21/05/1991 and 12/06/1991 are not supported by any document or reports of Returning Officer any of the designated officers under the said Act. Such orders have been made on the basis of wild, reckless and unsubstantiated allegations of rival candidates alleging large-scale incident. The decision has been taken without complying with the principles of natural justice and hearing the petitioner. Even the hearing granted subsequently was a mere formality as nothing was disclosed and the review application was summarily disposed of. In any case the power has been exercised arbitrarily, without any reports from the returning officer, which is a condition precedent for passing of the impugned orders. In case, even if it is found that there has been malpractice in some polling booths, the polling should have been ordered in those polling booths and the situation did not warrant the countermanding of the whole election process. Further, the Election Commission has no power to countermand the election having regard to the provisions of Article 324 of the Constitution of India and other provisions of the Representation of Peoples Act, 1951, as he has to conduct and complete the elections, once the electoral process is started after the issue of notification by the President u/s 14(2) of the Act. The petitioner also has challenged the validity of Section 58 of the 1951 Act on the ground that the provisions of countermand the election are unconstitutional, arbitrary and violative of Article 14 of the Constitution.

(6) While challenging the impugned orders of Election Commission and seeking a writ of certiorari for quashing of these orders, the petitioner has further prayed in the writ petition that respondent No. 1 should be directed to reconsider the matter and order re-poll only in such polling stations as are said to have been affected by electoral malpractice as indicated in the reports of the Electoral Officers of the Constituency or the Central Observers.

(7) In the counter affidavit filed on behalf of respondent No. 1-Election Commission, a preliminary objection regarding the maintainability of the writ

petition under Article 226 of the Constitution has been raised in view of the specific bar to interference by the Court in electoral matters as per Article 329(b) of the Constitution. Further, in view of Section 170 of the 1951 Act, no writ petition could lie under Article 226 of the Constitution challenging the order of the Election Commission of India. The only remedy is by way of an Election Petition on the original side of the High Court under whose jurisdiction the constituency in question is situated. On merits, respondent No. 1-Election Commission has stated that during the campaign period, that is, after the last date for withdrawal of candidatures and before the date of poll, the Commission had been receiving disturbing reports about the law and order situation in some constituencies in the State of Bihar, which included the said 35-Patna Parliamentary Constituency, which was affecting adversely the orderly and peaceful campaigning and was causing apprehensions whether the poll would be free and fair. It was also complained that on the day of poll, a very large number of complaints were received by the Commission through its widely publicised information and complaint cell and personal Section of the Chief Election Commission and other senior officers from various parties, candidates and official sources about clashes between police and criminals, bomb explosions, exchange of fire and booth capturing, snatching of ballot papers, intimidation and causing injuries to polling officers which resulted in the disturbances of peaceful polling at a large number of polling stations in Patna Parliamentary Constituency. It was also complained that truck loads of goondas were moving freely threatening people and capturing booths one after the other. Various telephonic calls and complaints from numerous people, including one of the candidates Yaswant Sinha were also received. On the basis of the reports received from the Returning Officer, Chief Electoral Officer and the complaints by various persons to the Election Commission, impugned order was passed by the election Commission countermanding the election of 35-Patna Parliamentary Constituency, which is fully justified not only on the facts but also was essential for the purity of electoral process. It has further been stated that the impugned order, there, is neither arbitrary nor unreasonable. It is further stated that Sections 52 and 58A of the 1951 Act deal with two entirely different contingencies in the electoral process and that is why Parliament in its collective wisdom has used different phraseology and provided for different consequences in the event of happenings taking places mentioned in the said two Sections. u/s 52 the Returning Officer countermands the "poll" in the event of death of one of the contesting candidates and, Therefore, the old election proceedings continue but an opportunity is given to new candidates to join election fray. But in the case of booth capturing taking place at a large number of polling stations which is likely to affect the result of election in the constituency, the whole atmosphere gets vitiated and the purity of election process gets polluted and, Therefore, the Parliament in its collective wisdom considered it appropriate that the whole electoral process should be cancelled and accordingly provided in Section 58A for the countermanding of the election. Again, the Election Commission-respondent No. 1 has submitted that it was satisfied having regard to the reports of the Returning Officer, the Chief

Electoral Officer the State Government, the Commission's Observers and other relevant sources of information available to it that the polling in the constituency on 20.5.1991 was wholly vitiated because of booth capturing at a large number of polling stations which was likely to affect the result of the election. The Commission, Therefore, countermanded the election mainly u/s 58A(2)(b) of the 1951 Act. Once an election is countermanded u/s 58A, all proceedings relating to that election shall commence anew as countermanding of election means cancellation of the whole election process. The mischief of heinous offence of booth capturing which vitiates the whole electoral process, has sought to be remedied and rectified by enacting Section 58A(2)(b) of the Act that the law makers considered it appropriate that the whole election process should be nullified under Section 58A(2)(b) in such a situation. Further there is no legal impediment which stands in the way of the Election Commission of passing the impugned order countermanding the election *ex parte*. However, the post-hearing has been given to the petitioner by the Election Commission and. Therefore, there is no question of violation of principles of natural justice. Furthermore, the countermanding of election is fully legally justified in the facts and circumstances of the case to maintain free and fair purity of elections.

(8) Provisions of Section 58(2)(b) for countermanding the election is neither arbitrary nor unconstitutional and violative of Article 14 of the Constitution of India.

(9) Mr. Shanti Bhushan substantially advanced the same contentions as are raised in the pleadings. Mr. Bansal, learned Counsel for the petitioners in C.W. 1976/91, endorsed the arguments of Mr. Shanti Bhushan except that Section 58A(2)(b) of the Act, according to him, was not *ultra virus* to the Constitution but *intra virus*.

(10) Having regard to the scheme and various provisions of the Act and the Rules framed there under and also the provisions of the Constitution the words "countermand the election" used in Section 58A(2)(b) should be read as "countermand the poll" in that constituency and Therefore, according to him, in the polling station or places where there has been booth capturing and the result of the election on that account is likely to be affected, in those polling stations or places only the polling could have been countermanded and not the entire election. According to him, the Election Commission whole election in the Constituency as under Article 324 of the Constitution it has been given powers of 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 and as a matter of fact it has to take steps towards the completion of the election proceedings, once the election process starts. The step taken by the Election Commission by ordering countermanding the elections is not a step towards the progress of the election proceedings rather on the other hand it hampers the progress of the process of election, and, Therefore, such an

order is ultra virus of the Act and of the Constitution. Therefore, the only interpretation that can be put to the words "countermand the election" in Section 58A(2)(b) of the Act is that they should be read as "countermand the poll". In fact Mr. Bansal vehemently time and again emphasised on this argument. Other Counsel in other writ petitions endorsed the arguments of Mr. Bansal and Mr. ShantiBhushan.

(11) Since the virus of the Representation of Peoples Act, 1951 were also challenged in the writ petition of Mr. Gujral. notice was given to the Attorney General. Since Attorney General was representing the Election Commission, respondent No. 1. the case on behalf of Union of India was entrusted to Mr. Madan Lokur, Advocate. No reply, however, has been filed on behalf of the Union of India as according to him, there is nothing in the averment of the petitioner which requires reply.

(12) Attorney General, Mr. O. Ramaswamy, on behalf of respondent No. 1, on the other hand, to begin with, tried to argue the case on merits. But later on, he confined himself to the preliminary objection that this Court has no jurisdiction to try this petition as there is a blanket ban under Article 329 of the Constitution. According to him, The word "Elections" has been used in Part Xv of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature. The use of expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part Xv, including Article 329(b). The term "election" may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll. It is not used in a narrow sense. He insisted that this Preliminary Objection should be decided first by this Court and only thereafter. In case if the preliminary objection raised is ultimately decided against respondent No. 1, the matter should be considered on merits. However, on the other hand. Counsel for the petitioners, contended that the matter should be decided in its entirety, including merits, and not in the piecemeal. In fact there was a lot of controversy between Counsel on both the sides on this question.

(13) In support of his submission that the preliminary objection should be considered and decided first by this Court, learned Attorney General heavily relied upon a judgment reported as Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, particularly paragraphs 9, 126 and 127.

(14) In my view, the submission of the learned Attorney General that the preliminary issue should be considered and decided first is well founded and merits consideration. The Supreme Court in Mohinder Singh Gill's case has clearly come to the conclusion that the High Court had no jurisdiction to entertain a petition under Article 226 of the Constitution and it was not correct for that Court to enter into any controversy, on merits, either on law or on facts, and to

pronounce finally on the same. Furthermore, in view of the Scheme of Part Vi of the Act, the Delhi High Court could not have embarked upon an enquiry on any part of the merits of the dispute. Thus, it could not have examined the question whether the impugned order was made by the Election Commission in breach for rule of natural justice. That is a matter relating to the merits of the controversy and it is appropriately for the election Court to try and decide it after recording any evidence that may be led at the trial. In fact, the Supreme Court has clearly observed that they should have expected the High Court to have considered the basic jurisdictional issue first and not the last as they did and avoided sallying forth into a discussion and decision on the merits, self-contradicting its own holding that it has no jurisdiction even to entertain the petition. In view of this authoritative pronouncement of the Supreme Court, it would not be appropriate and proper for this Court to embark upon the enquiry on the merits of the dispute. At this stage the proper course for this Court is to decide first the jurisdictional issue whether this Court has jurisdiction to entertain and try the petition under Article 226 of the Constitution in view of the blanket ban in view of Article 329(b) of the Constitution of India.

(15) The question as to how far the blanket ban under Article 329(b) of the Constitution of India bars the maintainability of the petition has been the subject-matter of interpretation and discussion in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . This is a land mark case in election laws and deals with the scope, amplitude, rational and limitation of Article 329(b) of the Constitution. The ratio of that case has consistently been followed in various subsequent decisions of the Supreme Court and still holds the filed. In that case the rejection of the nomination paper of the petitioner was challenged in a writ petition praying for a writ of certiorari to quash such an order. The High Court had dismissed the petition on the ground that there is no jurisdiction to interfere with the order by reason of Article 329(b) of the Constitution. In appeal filed before the Supreme Court of India, the Supreme Court has interpreted Article 329 of the Constitution. The Supreme Court, in appeal, upheld the order of the High Court and dismissed the appeal.

(16) The Supreme Court, in that case, interpreted Article 329 of the Constitution. To facilitate the reference this Article is quoted as follows:

"NOT WITH STANDING 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 Art. 327 or Art. 328, . 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."

(17) While interpreting Article 329, the Supreme Court observed and held:

"THE most important question for determination is the meaning to be given to

the word "election" in Art. 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared election. In *A.V. Srinivasalu Reddy and Another Vs. S. Kuppaswami Goundar*, the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term "election" may, be taken to embrace the whole procedure whereby an "elected member" is returned, whether or not it be found necessary to take a poll,"

(18) The Supreme Court has further considered as to what is meant by the words "no election shall be called in question" in the context of improper rejection of a nomination paper, when this ground was available u/s 100 of the Act. The Supreme Court has laid down asunder :

".....whether the law of elections in this country contemplates 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 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. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to pre scribe the manner in which and the stage at which this ground, and other grounds which maybe raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art. 329(b) and in setting up a tribunal. Any other would lead to anomalies, which the Constitution could not have contemplated, one of them being High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it. I think that a brief examination of Part the scheme of Xv of the Constitution and the Representation of the People Act, 1951 will show that the construction I have suggested is the correct one. Broadly speaking, before an election machinery can be brought into operation, there are namely (1) there are three requisites which require to be attended to, namely (1) there should be a set of law and rules

making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites. Article 324 with the second and Article 329 with the third requisite. The other two Articles in Part Xv, viz., Articles 325 and 326 deal with two matters of principle to which the Constitution framers have attached much importance. They are : (1) prohibition against discrimination in the preparation of, or eligibility for inclusion on the electoral rolls, on grounds of religion, race, caste, sex or any of them; and (2) adult suffrage. Part Xv of the Constitution is really a Code in itself providing the entire ground work for enacting appropriate laws and setting up suitable machinery for the conduct of elections. The Representation of the People Act, 1951, which was passed by Parliament under Art. 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part I deals with "the qualifications and disqualifications for membership," Part II deals with the notification of General Elections. Part III provides for the administrative machinery for the conduct of elections, and Part IV makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part V deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VI outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made there under. The provisions of the Act which are material to the present discussion are Secs. 80, 100, 105, 170, and the provisions of Chap. I of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Art. 329(b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part." Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that every order of the Tribunal made under this Act shall be final and conclusive." Section 170 provides that "no Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election." These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere

to the effect that anything connected with elections can be questioned at an intermediate stage. It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

(19) It has further been observed that if Part Xv of the Constitution is a Code by itself, i.e., it creates rights and provides for the reinforcement by a special tribunal to the exclusion of all Courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Art. 329 covers all "electoral matters". Following two conclusions have been summed up by the Supreme Court in that case :

"(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 of 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 "elections"; 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."

(20) PONNUSWAMI'S case was followed in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In that case, the polling was held peacefully. However, when the counting was going on in the hall, it was stated that a mob of about 16,000 by over-powering the police attacked the counting hall where postal ballot papers were being counted. Police could not control the mob being out-numbered. Part of postal ballot papers excepting partly rejected ballot papers and other election material was destroyed by the mob. Lot of damage to the property was done. The Election Commission satisfied himself taking into account all the circumstances and requests that the poll has been vitiated to such an extent, that, it affects the results of the elections under Article 324 of the Constitution read with Section 153 of the Act cancelled the poll already taken and extended the time of completion of election. In that case the Supreme Court again reiterated the law laid down in Ponnuswami's case and having discussed the matter at length concluded :

"(a) Article 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."

The plenary bar of Art. 329(b) rests on two principles ; (1) the per-emptor urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution.

(21) The Supreme Court while endorsing and Following the views expressed in Ponnuswamy's case, further elaborated the scheme, procedure and steps contemplated under the Act for conducting the election and has held :

"12.A. free and fair election based on universal adult franchise is the basic; the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections are the specifics. Representation of the People Act, 1950 (for short, the 1950 Act) and the Representation of the People Act, 1951 (for short, the Act), Rules framed there under, instructions issued and exercise prescribed, constitute the package Of electoral law governing the parliamentary and assembly elections in the country. The super-authority is the Election Commission, the kingpin is the returning officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions. 13. The scheme is this. The President of India (under Sec. 14) ignites the general elections across the nation by calling upon the People, divided into several constituencies and registered in the electoral rolls, to choose their representatives to the Lok Sabha. The constitutionally appointed authority, the Election Commission, takes over the whole conduct and supervision of the mammoth enterprise involving a plethora of details and variety of activities, and starts off with the notification of the time table for the several stages of the election (Section 30). The assembly line operations then begin. An administrative machinery and technology to execute these enormous and diverse jobs is fabricated by the Act, creating officers, powers and duties, delegation of functions and location of polling stations. The precise exercise following upon the calendar for the poll, commencing from presentation of nomination papers, polling drill and telling of votes, culminating in the declaration and report of results are covered by specific prescriptions in the Act and the rules. The secrecy of the ballot, the authenticity of the voting paper and its later identifiability with reference to particular polling stations, have been thoughtfully provided for. Myriad other matters necessary for smooth elections have been taken care of by several provisions of the Act."

"14...of the plot at Adjournment any polling station in certain emergencies is sanctioned by Section 57 and fresh poll in specified vitiating contingencies is

authorised by Section 58. The rules run into more particulars. After the votes are cast comes their counting. Since the simple plurality of the votes clinches the verdict, as the critical moment approaches, the situation is apt to hot up, disturbances erupt and destruction of ballots disrupt. If disturbance or destruction demolishes the prospect of counting the total votes, the number secured by each candidate and the ascertainment of the Will of the majority, a re-poll confined to disrupted polling stations is provided for. Section 64A chalks out the conditions for and course of such re-poll, spells out the power and repository thereof and provides for kindred matters."

(22) It has further been held that 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. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election.

(23) These decisions have subsequently been also followed. It is suffice to refer to two decisions : Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, and Indrajit Barua and Others Vs. Election Commission of India and Others, .

(24) In order to determine whether Article 329(b) is attracted in this case, it will be necessary to examine, the ambit, scope and powers of election Commission u/s 58A(2)(b) and the nature of order passed by him. For this purpose it is necessary to refer to Section 58(2)(b) of the Act as under :

"58A. Adjournment of poll or countermanding of election on the ground of booth capturing-(1) If at any election,-(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereinafter in this Section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or (b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission. (2) The Election Commission shall, on the receipt of a report from the returning officer under Sub-section (1) and after taking all material circumstances into account, either-(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or (b) "if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is

(25) It is apparent from Section 58A that if booth capturing has taken place at a polling station or at a place fixed for the poll or at a place for counting of votes in such a manner that the result of the poll at that polling station or place or counting at that place cannot be ascertained, the Election Commission shall, on

receipt of a report from the Returning officer and after taking all material circumstances into account, either can declare that the poll at that polling station or place be void and order for re-poll. However, Section 58A provides for a different and more serious situation. Election Commission, if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, can countermand the election in that constituency. In the same Section the Election Commission in different situations has been given power to declare the polling at a particular polling station or place void and to order fresh poll at such polling station or place. However, in case the Election Commission is satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, he has been given a power to countermand the election of that constituency. In other words, in case of booth capturing taking place at a large number of polling stations or place, which are likely to affect the result of the election of that constituency, the whole atmosphere gets vitiated and the purity of election process gets polluted and, Therefore, the Parliament in its collective wisdom considered it appropriate that the whole electoral process should be cancelled and, therefore. Section 58A(2)(b) has been enacted and the power has been given to the Election Commission to countermand the "election". This provision obviously has been enacted with a view to maintain the purity of the election process and to hold a free and fair election which is the foundation of the democratic system. It may be noted here that this provision is nothing to modify, nothing to alter, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences, even if absurdity or anomaly be the result of such interpretation. If the words of the statute are in themselves precise or unambiguous, no more is necessary than to expound those words in their natural or ordinary sense; the words themselves in such a case best declare the intention of the legislature.

(26) In *Ashok Kumar Golu V. Union of India & Others*, 1991SC 1792 the Supreme Court has held in paragraph 7 that when the language of section is clear and unambiguous as does not call for extrinsic aid for its interpretation, to put an interpretation with an aid of extrinsic material would result in violence of the plain language and, Therefore, such an interpretation is not permissible.

(27) In view of this, I do not find any hesitation to hold that the election Commission has power to countermand the election u/s 58A(2)(b) of the Act.

(28) At this stage, it may be high-lighted that the Election Commission after the countermand of the election cannot sleep over the matter but has to initiate and commence fresh steps with promptitude to complete the elections as laid down in *Ponnaswami's case* (supra). It is no doubt true that the legislature has omitted to specify u/s 59A(2)(b) of the Act as to what steps should be taken by the

Election Commission to complete the election after the countermand of the election. It is settled principle of law that the omission made by the legislature may be supplied in order to give the legislation an effective meaning and to prevent it from becoming devoid of effect. Since after the Election Commission has countermanded the elections, the steps taken to hold elections prior to the stage of countermand shall also stand scrapped as will be discussed hereinafter and the Election Commission has, Therefore, been left with no power to order repoll simultaneously and extend time u/s 153 of the Act. In these circumstances the Election Commission in order to complete the elections will have to recommend to the President u/s 14(2) or Section 15(2) of the Act (as the case may be) for issue of fresh notification for holding elections in such constituencies and the President thereafter will issue notification under the aforementioned provisions, and thereafter the elections to the respective constituencies shall be held in accordance with the law after complying with the requirements of the Act. It may be made clear that these new proceedings which the Election Commission will have to initiate for completing the completion and thereafter declaring the results after the polls are held, ultimately shall not convert it into new election but shall be apart of the same election as has been held in Ponnuswami's case (supra) that the word "Election" in the wide sense connotes the entire process culminating in a candidate being declared elected. Such an interpretation also finds support from provisions of Section 52 of the Act as well which also provides for countermand of poll and election as has been discussed later.

(29) There is no dispute that the impugned order has been passed by the Election Commission u/s 51A(2)(b) in the interest of free and fair election which the order itself speaks. However, it cannot be said that the Election Commission lacked inherent jurisdiction in passing the order of countermanding the election. It is again beyond doubt that the impugned order has been passed by the Election Commission after the poll is complete and before counting and that further their step of countermanding election has been taken by the Election Commission after the issue of notification under Sec .14(2)(b) for holding such elections to call upon the Parliamentary Constituencies to elect members in accordance with the Act, Rules and orders framed there under, i.e., at the intermediate stage. Therefore, in such circumstances, it is undoubtedly a step during the course of election and after the electoral process has started add before declaration of the result.

(30) Further next question that arises for consideration is whether such a step of countermanding the election by the Election Commission u/s 58A(2)(b) of the Act is a step towards the completion of the election proceedings and in furtherance of the election, in other words, whether it sub-serves the progress of the election and facilitates the completion of the election. As already discussed above, this provision has been enacted by the legislature in the interest of free and fair election and for maintaining purity of elections. It is needless to say that the Election Commission has been assigned to conduct the elections in a fair and free manner, which is the basis of the democratic system and this step, as the order

itself speaks, has been taken by the Election Commission in the interest of purity of elections and such a step no doubt would amount to a step in furtherance and completion of the elections and not the interference in the electoral process. This step of countermanding of the elections is a part and-a vital part-of the elections in the interest of free and fair elections and, therefore. Article 329(b) undoubtedly halts the judicial interference during this period, as this clearly lays down that no election can be called in question except by an election Petition.

(31) The next question that arises for consideration would be whether Article 329(b) of the Constitution is a bar to the maintainability of the writ petition depends upon whether a remedy is available to the writ petitioner. Section 100(l)(d) is a complete answer and this remedy of election petition, in my view, will be available to the petitioner for challenging the impugned action of the Election Commission by way of election petition. Justice Krishna Iyer in para 20 of his judgment in Mohinder Singh's case (supra) has clearly observed that Section 100(l)(d) of the Act takes care of such a situation, being broad enough, as a residual provision, to accommodate, in the expression non-compliance, every excess, transgression, breach or omission and the span of the ban under Article 329(b) is measured by the sweep of Section 100 of the Act. Section 100(l)(d) reads as under :

"100. Grounds for declaring election to be void.-(1) Subject to the provisions of Sub-section (2) if the High Court is of opinion: (a) (b) (c) (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected- (i) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (iv) by the non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act the High Court shall declare the election of the returned candidate to be void."

(32) The Election Commission has passed the order u/s 58A(2)(b) of the Act and it is within the scope and ambit of Section 58A(2)(b). If there is any illegality in exercise of power under this Section by the election Commission or under any provisions of the Act, there is no reason why Section 100(l)(d) (iv) of the Act should not be attracted as this clause is broad enough as a residual provision, to accommodate, in the expression non-compliance, every excess, transgression, breach or omission and the span of the ban under Article 329(b) of the Constitution is measured by the sweep of Section 100 of the Act, as observed by Justice Krishna Iyer.

(33) The question whether the power has been exercised arbitrarily, without any report of the returning officer and without having taken into consideration any material circumstance in view, is in fact an argument about the illegality and mode of exercise of the power. If Election Commission is competent and has the inherent jurisdiction to pass the order of countermand either under the

provisions of the Constitution or under any other provisions of law, any illegality in the exercise of that power is, in truth and substance, amounts non-compliance with the provisions of law, since law, demands of exercise of power by its repository, as in a faithful trust, in a proper, regular, fair and reasonable manner.

(34) In the light of what is discussed above, the writ petition is not maintainable in view of the ban under Article 329(b) of the Constitution of India.

(35) Most of the arguments advanced by Counsel for the petitioner indifferent writ petitions were common, which I shall deal first.

(36) Mr. Shanti Bhushan and Mr. R.P. Bansal, learned Counsel for the petitioner in Kiran Pal Singh (Civil Writ No. 1976/91) strenuously contended time and again that once the election process started and notification issued by the President u/s 14(2) of the Act calling upon the people in several parliamentary constituencies to elect members in accordance with the provisions of the Act and of the rules and orders made there under, it is the duty of the Election Commission to complete the election. The Election Commission has been given plenary and comprehensive powers and functions of 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. After notification is issued u/s 14(2) of the Act by the President, the Election Commission takes over the charge to conduct the elections. u/s 30, the Election Commission issues a notification for fixing the last date for scrutiny of nominations, the last date for nominations, the date for withdrawal of candidatures, the date or dates on which a poll shall, if necessary, be taken and a date by which the election shall be completed. Various electoral officers vested with the powers and functions are appointed by the Election Commission to carry out the task of conducting of elections and after the withdrawal of the candidatures, the list of the validly nominated candidates is prepared with their addresses and other particulars and thereafter poll is conducted in accordance with the time schedule fixed by the Election Commission. After the poll, votes are counted and the results declared. By countermanding the elections, according to the learned Counsel, the Election Commission has revoked and cancelled the whole election process and in fact all steps taken by him or officers appointed by him for the conduct of the elections u/s 30 onwards, including the holding of the poll and has even scrapped the notification issued by the President under Article 14(2) of the Constitution for which no power has been vested in him either under the Constitution or under the Act. He has only to conduct and complete the elections and not to scrap or abrogate it. Election can only be set aside, cancelled or declared void by the High Court u/s 100 of the Act by way of election petition. Since the Election Commission lacks inherent jurisdiction in countermanding the election, such an order is a nullity and deserves to be set aside.

(37) It was, further, contended that by countermanding the election, new elections necessarily will have to be ordered to return a candidate from a constituency for which President has been left with no power to issue notification

order u/s 14(2) of the Act having regard to the provisions, and scheme of the Act as new House of People already stands constituted and condition precedent for issue of such notification cannot be complied with. Therefore, new elections are not contemplated nor can this be ordered. In support of his submission. Counsel relied upon heavily on Mohinder Singh Gill's case (supra) 1978 Sc 851, particularly they relied upon paras 31 and 32 of that case. In paragraph 31 the Supreme Court has observed that if the regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter. It was further observed in paragraph 32 thereof that on the assumption, but leaving the question of the validity of the direction for repoll open for determination by the election Tribunal, the Supreme Court held that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in election and is Therefore barred by Art. 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case.

(38) In order to appreciate these contentions, it is necessary first to know what the word "election" connotes and what is its interpretation. What is "election" in the context of Article 329(b) of the Constitution, has been the subject matter of interpretation by the Supreme Court in various decisions and the matter is so well settled. At this stage it may be highlighted that the word "election" has to be interpreted as provided in Article 329 while considering the question of its blanket ban to the entertainment of the writ petition. At the cost of repetition, again, what is "election", the matter was considered in Ponnuswami's case (supra) and it was held that the word "election" has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is not poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. The word "election" has been used in Part Xv of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature. The use of the expression "conduct of elections" in Art. 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part Xv including Art. 329(b). The term "election" may be taken to embrace the whole which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll. It is not used in a narrow sense. This interpretation has been consistently followed in subsequent decisions of the Supreme Court and this law still holds the field, as already discussed.

(39) The action of countermanding of election u/s 58A(2)(b) of the Act has been taken by the Election Commission, as already discussed, in the interest of purity of free and fair elections for which various provisions have been made in the Constitution and under the provisions of the Act there is no dispute that this step has been taken at the intermediate stage after the issue of notification u/s 14(2) of the Act and before the declaration of the result. Such a step undoubtedly is a step towards the completion of the election and cannot be considered as a step interfering in the process of election. It is an integral part of electoral process. Therefore such an action cannot be termed as scrapping and halting the election process completely or the election and in fact such an act of Election Commission is a part of the election and towards the completion of election and in the interest of purity of free and fair election and has been passed during the course of election. It is a step towards the completion and Therefore, this will be within the ambit and scope of the word "election" as used in Article 329(b) of the Constitution.

(40) The next question that arises for consideration is that once the action of the Election Commission of countermanding is held as a part of the election process and come within the ambit and scope of the word "election" under Article 329(b) of the Constitution, will commencement of fresh proceedings for returning a candidate to the legislature amount to afresh election or the same election ?

(41) Once the countermanding of election is held to be a part of the entire procedure to be gone through to return a candidate to the legislature, and admittedly no candidate has yet been returned to the legislature and such step has been taken in the purity of elections and to promote a free and fair elections, procedure to be initiated for holding elections to return a candidate to a legislature cannot be termed as a "new election". As a matter of fact so long as a candidate to a legislature is not returned, it will continue to be the same election and not a "new election". No doubt, after countermanding of elections by the Election Commission, new steps will have to be taken to hold the election as if it is a new election, which will include issue of notification u/s 14(2) of the Act by the President and the notification by the Election Commission u/s 30 etc. There is no legal impediment in the issue of notification under Sections 14(2) and 15(2) of the Act by the President. The President has power to issue one or more notifications-general notification for elections to various constituencies as well as separate notification for a particular constituency as the circumstances warrant. It is settled law that under the Representation of People Act there is no concept of election to the legislature as a whole but in substance it is an election from each constituency.

(42) In *Indrajit Barua and Others Vs. Election Commission of India and Others*, , the question arose about the validity of the elections to the Assam Legislative Assembly held as a whole on the ground that the electoral rolls were not revised before the elections in contravention of the provisions of Section 21, Sub-section (2)(a) of the Representation of the People Act, 1950 and the elections were held

on the basis of the electoral rolls of 1979. In that context the Supreme Court held :

"IN the first place, Article 329(b) of the Constitution bars any challenge to the impugned elections by a writ petition under Article 226 as also on the ground that the electoral rolls on the basis of which the impugned elections were held were invalid. The petitioners sought to escape from the ban of Article 329(b) by contending that they are challenging the impugned elections as a whole and not any individual election and that the ban of Article 329(b) Therefore does not stand in the way of the writ petitions filed by them challenging the impugned elections. But we do not think this escape route is open to the petitioners. There is in the Representation of the People Act, 1951 no concept of elections as a whole. What that Act contemplates is election from each constituency and it is that election which is liable to be challenged by filing an election petition. It may be that there is a common ground which may vitiate the elections from all the constituencies, but even so it is the election from each constituency which has to be challenged though the ground of challenge may be identical. Even where in form the challenge is to the elections as a whole, in effect and substance what is challenged is election from each constituency and Article 329(b) must Therefore be held to be attracted."

(43) The action of Election Commission as such u/s 58A(2)(b) of the Act has not only statutory sanction, as already discussed, but also is in accordance with the notification issued by the President under Sections 14(2) or 15(2) of the Act. So, in fact by acting u/s 58A(2)(b) of the Act, the Election Commission has complied with the notification issued by the President u/s 14(2) and not violated the same, as the notification itself speaks of conduct of election under the provisions of the Act and rules.

(44) This above interpretation find full support from Section 52 of the Act where in case of death of candidate before poll, countermanding of poll has been contemplated and also the commencement of proceedings with reference to this election as if it is a new election. It is settled principle of law that when the statute is ambiguous, the intention of the Legislature may be gathered from statutes relating to the same subject-matter, i.e., statutes in pari materia, on the presumption that whenever the Legislature enacts a provision, it has in its mind the previous statutes relating to the same subject-matter. u/s 52 if a candidate whose nomination has been found valid on scrutiny u/s 36 and who has not withdrawn his candidature u/s 37 dies and a report of his death is received before the publication of the list of contesting candidates u/s 38, or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the returning officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election. This provision "no doubt, Therefore,

contemplates countermanding of the election as it provides for countermanding of the poll and commencement of new proceedings for holding such election as if it is a new election. Of course in such a situation, no further nomination is necessary. In case of countermanding the election u/s 58A(2)(b), countermanding of poll is also necessarily involved.

(45) Neither in Section 58A(2)(b) nor Section 52 no time is prescribed for holding election to return a candidate to the legislature but it is obvious that elections inevitably will have to be held in case the election is countermanded and the steps will have to be taken promptly and fresh proceedings will have to be commenced as if these are commenced for holding new election. It will, however, not be new election but the same election to return a candidate to the legislature. It will be only a new election for the limited purpose for starting and commencing proceedings for holding such election of returning a candidate to the legislature. .

(46) The observations of the Supreme Court in para 31 of the judgment of Mahender Singh Gill's case that fresh poll (not a new election), can still be a step in the Election, cannot advance the case of the petitioner. As already stated Section 58A(2)(b) of the Act has been enacted only w.e.f. 15.3.1989 and at the relevant time there was no such provision for countermanding the election and since this provision has now been enacted and is a valid legislation and the President himself has asked the constituencies to return a candidate to the legislature in accordance with the Act, Rules and Orders made there under and such an action is within the ambit and scope and functions of the Election Commission and if such a piece of legislation warrants commencement of a procedure as if it is a new election, there cannot possibly be any objection to such a procedure. At any rate, this question was not in issue at that time and such a procedure has since now the statutory sanction.

(47) In this context the Supreme Court has explained the position in Mahender Singh Gill's case whether the Election Commissioner was clothed with plenary and comprehensive powers and functions under Article 324 of the Constitution and could cancel the whole poll of a constituency and direct a fresh poll. In the absence of any provision to that effect in the Act or Rules framed there under, it has been held that 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 Article 324 is a reservoir of power to act for the avowed purposes 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 canone can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz., elections. Admittedly, at that time This provision did not exist enabling the Election Commission to countermand the election and order for re-election. However, the position, as it standstoday, provisions of Section 58A(2)(b) of the Act empower the Election Commission to countermand the Election, and inevitably the fresh proceedings with reference to that election, will have to be commencedafresh, as if it is a new election.

(48) In A.C. Jose v. Sivan Pillai and Others AIR 1985 Sc 921 the Supreme Court has expressed a similar view as regards conduct of elections is as follows: -

"(A)When there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections.(b) Where there is an Act and express Rules made there under, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Art. 324(c) Where the Act or the Rules are silent, the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election, and"

(49) Since there is a specific provision in the Act itself for countermanding the election, in view of the settled law, Therefore, steps can certainly be commenced for holding elections as if it is a new election and,therefore, this argument of learned Counsel for the petitioner must fail.

(50) It was vehemently contended time and again and strong reliance was placed on para 32 of the Mahender Singh Gill's case wherein Justice Krishna Iyer has observed "If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play."

(51) In the light of these observations. Counsel have contended thatthe cancellation of election would thwart the course of election and such a course is not permissible and, Therefore, the order of countermand has to be declared void.

(52) I am afraid this argument again cannot be sustained for the same reasons. Justice Krishna Iyer has not concluded this question and has observed that this question need not be chased as it was an hypotheticalcase. At the cost of repetition, it can be high-lighted that Section 58A(2)(b)has been enacted only w.e.f. 15.3.1989 at the relevant time whenMahender Stngh Gill's case was considered by the Supreme Court This provision was not available. It has a ready been held that the election commission has got a power to countermand the election. However, he has no power to order re-poll after countermand of the

election. The President on recommendation of Election Commission will have to issue notification under Sections 14(2) or 15(2) of the Act and only thereafter, the Election Commission can issue notification fixing the dates of nominations, withdrawal of nominations and poll etc. Therefore, in these circumstances, Election Commission could not have ordered simultaneously for holding repoll or re-election while passing the impugned order of countermand.

(53) Furthermore, it may be highlighted that the countermanding of election itself is an integral part of the election and is a step towards the completion of the election. Therefore, it cannot conceivably thwart the course of election as it has been tried to be argued by Counsel for the petitioners.

(54) These observations of the Supreme Court have been made in entirely different set of circumstances and situations and, Therefore, this case is clearly distinguishable.

(55) Even otherwise, these observations cannot advance the case of the petitioners as such observations have lost significance in view of the enactment of Section 58A(2)(b) of the Act w.e.f. 15-3-1989 which has nullifying effect on such observations.

(56) Next submission was that the impugned order had been passed in violation of the principles of natural justice. Such an order, Therefore, is null and void. This order is also bad in the eyes of law as that the same has been passed without the report of the returning officer, which is a condition precedent for passing of such an order and also without taking into consideration the material circumstances into account. These arguments are based on merits of the case. The petition is not maintainable. It is neither necessary nor permissible to decide these questions in these writ petitions. These questions can be raised in the election petition in case it is filed and the order of the election commission can be challenged u/s 100(1)(d) of the Act, i.e. non-compliance with the provisions of the Act and the Rules.

(57) Mr. Shanti Bhushan next contended that Section 58A(2)(b) of the Act empowering the election commission to countermand the entire elections is unconstitutional, arbitrary and is violative of Article 14 of the Constitution and the action taken by the election commission there under, therefore, will have to be declared ultra vires. He further submitted that since the validity of Section 58A(2)(b) of the Act itself has been challenged, the writ petition is maintainable.

(58) I am afraid. Section 58A of the Act cannot be assailed and no arguments to this effect can be raised by the learned Counsel as paragraph 23 "L" of the writ petition does not contain any specific, clear or unambiguous allegation on the basis of which the Section can be declared ultra vires. Infact it only makes bald assertions without any basis in the absence of which this question whether or not the Section is ultra vires of Article 14 of the Constitution cannot be examined. It is settled law that the burden of showing that the Act is arbitrary is basically upon the person who impeaches the latter and that further the pleading must

contain the allegations on which violation of Article 14 are based and that these allegations must be specific, clear and unambiguous and must contain sufficient particulars. In this connection, reference may be made to *Bank of Baroda Vs. Rednam Nagachaya Devi*, . It has been observed by the Supreme Court that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judging from the point of law laid down by the Supreme Court, there is absolutely no material on record to show that Section 58A is violative of Article 14 of the Constitution. Even otherwise having regard to the contents of Section 58A(2)(b) of the Act and the Scheme of the Act, there are ample safeguards provided in the statute against the arbitrary exercise of power by the election commission in countermanding the election. Therefore this contention of the learned Counsel must fail.

(59) It may be noted here that the Union of India was not a party to the petition. Since the validity of Section 58A of the Act was challenged, notice was given to the Attorney General and also the Union of India. Mr. Madan Lokur, who appeared for the Union, chose not to file any reply, as according to him no material had been placed on record in the pleadings which required reply and the matter was, Therefore, heard without reply.

(60) Lastly it was contended by Mr. Shanti Bhushan and Mr. Bansal that after countermanding the election by the election commission, no new election has been ordered and unless new elections are held and concluded and results are declared, the validity or otherwise of the order of countermanding the election held on 21.5.1991 cannot be made a ground in the election petition. There is no indication or likelihood of the elections being re-held shortly. Therefore, the remedy before the election Court, is illusory and, Therefore, the petitioners have every right to seek a writ of mandamus from this Court directing the respondents to hold the elections. This question, again, cannot be gone into/examined as no such case has been set up in the petition, nor any such relief has been asked for in the writ petition. In para (25)(b) of the petition, they have asked a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing respondent No. 1 to re-consider the matter and order re-poll only in such polling stations as are said to have been affected by electoral malpractice as indicated in the reports of the Electoral Officers of the Constituency or the Central Observers.

(61) However, it cannot be denied that once the order of countermanding the election has been passed by the election commission, the respondents are under statutory and constitutional obligation to take new steps for holding the election as if it is a new election and these steps have to be taken promptly and elections concluded at the earliest. In case the respondents are unable to take steps for

holding the election promptly, the petitioners will be entitled for the writ of mandamus commanding the respondents to hold the elections. I specifically asked the Attorney General and Counsel for Uoi as to why the new steps for holding elections have not been commenced so far once the countermanding of elections has been ordered. They stated to the Court that elections were being held in similar circumstances in certain constituencies and the date of polling in such elections was fixed as 16.11.1991. Judicial notice can be taken now that elections have been since held in those constituencies. However, because these writ petitions are pending in the High Court, the Government of India has not issued the notification for holding elections in these constituencies. However, they will hold elections promptly. In view of such statement of the Attorney General it is not necessary for this Court to issue a writ of mandamus as there is no failure of duty on the part of the respondents to hold elections. In this connection reference may be made to *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, wherein the Supreme Court has held that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. the respondents are duty bound to take steps for holding elections promptly and conclude such elections as early as possible after the disposal of the writ petition. But at any rate, as already stated, neither the relief of holding election after the order of countermand has been asked for nor any case has been set up. It is hoped that the respondents will take immediate steps for holding the elections and the elections will be held as early as possible. The petitioners shall be free to challenge such elections of the returned candidates on the ground the order of countermand passed by the election commission u/s 58A(2)(d) of the Act was not legal and valid u/s 100(I) (d) of the Act.

(62) Mr. Bansal next contended that the word "countermand the election" used in Section 58A(2)(B) of the Act should be read as "countermand the poll" as the interpretation in the context requires otherwise. He has tried to substantiate his submission not only on the ground that the election Commission under Article 324 of the Constitution has been given power only to complete the election and not to interfere with the election once the election process is set in motion but also referred to Sees. 149 and 153 of the Act. According to him in case of casual vacancies falling vacant in the House of People or an election to the House of the People is declared void, the Election Commission shall, subject to the provisions of Sub-section(2), by a notification in the Gazette of India, call upon the Parliamentary Constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification. Further, according to him, Election Commission for the conduct of the election, if situation arises, can extend the time for the completion of any election by making necessary amendments in the notification issued by it u/s 30 or Sub-section (1) of Section 39. Furthermore, according to him. Chapter Iv deals with the matter relating to "The Poll". This Chapter provides for fixing time

for poll, adjournment of poll in emergencies fresh poll in the case of destruction etc. of ballot boxes and adjournment of poll or countermanding of election on the ground of booth-capturing etc. Having regard to the scheme of the Act, the words "countermand the election" as find place in Section 58A(2)(b) of the Act, should be read as "countermand the poll". Furthermore such an interpretation shall be in harmony having regard to the provisions of counting of votes in Chapter V, Section 64A and also Article 324 of the Constitution. If such an interpretation is not put, according to him, it will be in conflict not only with other provisions of the Act but also Article 324 of the Constitution and such a provision, Therefore, will be ultra virus of Article 324. He further stated that in such a situation, startling and embarrassing situations might arise that the President would be left with no power to call upon the Parliamentary constituencies to elect member and issue notification u/s 14(2) of the Act in the facts and circumstances of the case as u/s 14(1) general election can be held for the purpose of Constituting anew House of the People on the expiration of the duration of the existing House or on its dissolution. According to him the House already stands constituted and at this stage there is no question of dissolution and the condition precedent for holding election u/s 14(1) are not satisfied. Therefore, in case the word "countermand the election" is not read as "countermand the poll", no election can be held to return a candidate to the Legislature as the President has no power to issue such a notification.

(63) This argument of Mr. Bansal has got to be rejected. It has already been discussed in detail that the order of countermand is an integral part of the election and has been taken with a view to complete the elections and in the interest of free, fair and purity of elections. It has further been discussed and held that after the countermand of elections, fresh steps will have to be commenced for holding elections as if it is a new election for which the President has every power to issue notifications u/s 14(2) and/or 15(2) of the Act to hold the elections and set in motion the electoral process. There is no legal impediment for the President to issue another notification as the Act itself provides for one or more notifications keeping in view the situations and circumstances of the case. In such a situation, there will be no inconsistency in reading the words "countermand the elections" in Section 58A(2)(b) of the Act as they are and not as "countermand the poll", nor any context otherwise requires as has been contended by Mr. Bansal. As already discussed earlier in detail that The word "election" has to be given natural meaning and it has to be read as such and it cannot be read as "poll".

(64) It was again submitted by Mr. Bansal that once the power to countermand the election is conceded to be with the Election Commission, there is likelihood that it might act arbitrarily like dispute and at certain times thereby abrogate and scrap the election process not only in one or more constituencies but in all the constituencies as a whole. In this process the very democratic system which is a basic feature of the constitution might lead to jeopardy and peril and, Therefore, this power to the election commission u/s 58A(2)(b) of the Act should be

considered only as a power to countermand the poll.

(65) This reasoning of Mr. Bansal, I must say, is strained and farfetched and cannot be accepted. In this context, the observations of the Supreme Court in para 38 in *Mahender Singh Gill's case* (supra) are relevant wherein the Supreme Court observed that the rule of law postulates the pervasiveness of the spirit of law throughout the whole range of government in the sense of excluding arbitrary official action in any sphere. And the supremacy of valid law over the Commission argues itself. No one is an imperium in imperium in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Art.324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system.

(66) Mr. Bansal lastly contended that in case such an interpretation that the word "election" is not read as "poll", which, according to him, are interchangeable, it will have startling repercussions and will frustrate the mandate of the provisions of the Representation of People Act. according to him, in case the election is allowed to be countermanded, then the new election will have to be held and it is possible that on the date of election, a returned candidate who was not qualified in the previous election may become qualified in the new election and if elected, his election cannot be challenged u/s 100 of the Act on the ground that he was not qualified on the date of the previous election. Furthermore, it may be possible that under the provisions of the Act, the name of a candidate may be deleted for some reason or the other from the Electoral Rolls u/s 23(3) of the Representation of People Act, 1950 and he may not be able to contest the new election and as such would not be able to challenge the order, of countermand passed in the previous election. It is further possible that a candidate may use corrupt practice in the earlier election but not in the new election and if he is returned to the legislature, then no ground can be taken to challenge his election for using corrupt practices which has already been held and countermanded. Therefore, such an interpretation will but a premium on the corruption of the candidates and frustrate very idea of purity, free and fair election.

(67) This argument of Mr. Bansal has also to be rejected. As already discussed the Election connotes the entire procedure to be gone through to return such a candidate to the legislature. The new procedure which has to be commenced to return the candidate to the legislature, after countermand of the election, will be only for a limited purpose that proceedings will be initiated as if it is a new election. In substance it will be the same election and not a different election. If the order for countermand of election has been passed by the Election Commission arbitrarily and violation of principles of natural justice or otherwise in contravention of the provisions of the Constitution, Act or Rules framed there under, the same can be challenged by way of election petition.

(68) In other connected writ petitions, the petitioners adopted the arguments of Mr. Shanti Bhushan and Mr. Bansal, which need not be dealt with separately.

(69) In the light of what is discussed above, the writ petitions are not maintainable and are accordingly dismissed. In the circumstances, however, there shall be no order as to costs.