
(1982) 04 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 7 and 80 of 1982

Mahaveersingh and Laxmidan

APPELLANT

Vs

Raghunath and Narpat Karan

RESPONDENT

Date of Decision : 09-04-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Citation : (1982) RLW 491 : (1982) WLN 452

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—In the above two writ petitions, a common preliminary objection as to the maintainability of the writ petitions has been raised, so I propose to dispose of that objection by this order.

2. By these writ petitions, the elections of Pradhans of Panchayat Samitis have been challenged and it is prayed that the respondent No. 2 in both the writ petitions namely; Narendrasingh in civil writ petition No. 7 of 1982 and Tejsingh in civil writ petition No. 80 of 1982 may be declared elected as Pradhan of Panchayat Samiti, Bali and Balotra respectively and the elections of respondent No. 1 namely; Raghunath Parihar in the first writ petition and Narpatkaran in the second writ petition may be declared invalid.

3. I may briefly advert to the material facts of the first writ petition. The petitioner in that petition was elected as a Panch from ward No. 5 of Gram Panchayat, Boya Tehsil Bali. The elections, whereof, were held on December 10, 1981. The petitioner was a voter for the office of Pradhan of Panchayat Samiti as Gram Panchayat, Boya, Tehsil Bali was its constituent. The election for Panchas and Sarpanch were held simultaneously. Shri Arjun Singh, respondent No. 3 came to be elected as Sarpanch of ward No. 7 of village Panchayat, Beda. Being a Sarpanch, he is a member of the Panchayat Samiti, Bali. The election for the

office of Pradhan, Panchayat Samiti, Bali was held on December 26, 1981. Shri Narendrasigh respondent No. 2, Sarpanch of Gram Panchayat, Bijapur was one of the candidates and the other candidate was the respondent No. 1 Raghunath Parihar. He was neither a panch nor a Sarpanch of any Gram Panchayat. In all 440 votes were cast, out of which one was declared illegal. Shri Raghunath Parihar (respondent No. 1) secured 220 votes, whereas, Shri Narendrasingh (respondent No. 2) secured 219 votes. Consequently, Shri Raghunath Parihar was declared elected. The petitioner's case in that writ petition is that the name of third respondent Shri Arjunsingh was shown in the electoral roll, published in Form No. V as per rule 16 of the Rajasthan Panchayat Samitis and Zila Parishads "Election of Pradhan and Pramukh) Rules, 1979 (for short "the Rule"). Shri Arjun Singh chose to cast his vote twice over purporting to have done so, once as Sarpanch and then as Panch. He being a supporter of Congress (I) and Shri Raghunath Parihar being a candidate of Congress (I) , the two votes cast by Shri Arjunsingh must have gone to Shri Raghunath Parihar. When Shri Arjunsingh was called upon to cast his vote for second time, a protest was raised by the second respondent Shri Narendrasingh by an application made in this behalf, but the Returning Officer rejected the same on the ground that Shri Arjunsingh is entitled to vote twice over as his name is placed in the electoral roll at two places; at one place as a Panch and at another place as a Sarpanch of Gram Panchayat, Beda. The ground of challenge is that Shri Arjunsingh under the scheme of the Rules and the Act can not hold office both of Panch and Sarpanch simultaneously and so, he was not entitled to cast votes twice and thus, the votes cast by him have been rendered void and so, Shri Raghunath Parihar can not but be deemed to have secured 218 as against 219 votes secured by the second respondent Under the Rajasthan Panchayat Act, a Panch is elected from award whereas the Sarpanch is elected by the entire electorate of the Gram Panchayat and on being elected as a Sarpanch, he ceases to be a Panch unless he chooses to demit the office of Sarpanch. Simultaneously he can not hold two offices of a Panch and Sarpanch.

4. The petitioner has challenged the election in his capacity as elector for the office of Pradhan and in the capacity of a tax-payer and a resident of the area falling within the jurisdiction of the Panchayat Samiti, so is deeply interested in the proper constitution of the Panchayat Samiti and as such, he has a right to challenge the election of the first respondent. The petitioner averred that he can not prefer an election petition as in terms of Section 13 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (hereinafter referred to as "the Act") it is only a member of the. Panchayat Samiti, who can file an election petition, which the petitioner is not. Thus, there is no alternative remedy available to the petitioner.

5. In the second writ petition, the petitioner was elected as a Panch from ward No. 4 of Gram Panchayat, Parlu a constituent of Panchayat Samiti, Balotra and as such, the petitioner was a voter for the office of Pradhan. Shri Prahladram (respondent No. 2) came to be elected as Sarpanch and Panch from ward No. 2

of Gram Panchayat, Kalewa. On being elected to two offices, he submitted his resignation on December 24, 1981, which was accepted on the same day and was duly notified by the Deputy District Development Officer, Barmer Vide Annexure. 1. The election of Pradhan was held on December 30, 1981. In all 411 votes were cast out of which 3 votes were rejected. Of the remaining 408 votes, Shri Narpatkaran first respondent secured 205 votes, whereas, Tejsingh second respondent secured 203 votes. In the electoral, the name of Shri Prahladram appears twice although he had resigned from the post of Panch. In a small electoral roll, the inclusion of even one name renders the electoral roll fundamentally defective. According to the petitioner, Shri Prahladram being the supporter of first respondent, he must have cast his votes for the first respondent regarding which an objection was preferred by Shri Tejsingh (respondent No. 2) but the Returning Officer passed no order and if both the votes are excluded, then the respondent No. 1 and the respondent No. 2 will secure equal votes. It was urged that a vote in the name of one Shri Nenuram was cast by somebody else, when Shri Nenuram later on appeared and sought to exercise his vote, the vote cast by Shri Nenuram was taken as tendered vote and was not accepted in the counting of the votes. Nenuram has cast his vote in favour of the second respondent. In respect of this tendered vote, the petitioner took the ground that the tendered vote is required to be counted amongst the votes validly cast and that vote should be excluded which was cast in the name of Shri Nenuram by somebody else. If two votes of Shri Prahladram are excluded and if the tendered vote is counted in favour of the respondent No. 2, then he has to be declared elected and respondent No. 1 is clearly an usurper of the office of Pradhan. The writ petition has been presented in the same capacity like the petitioner in the first writ petition.

6. Reply to the show cause notice of the writ petition has been filed, in which, an objection has been raised that the election of the Pradhan can be challenged only under the provisions of the Act and under the provisions of the Rajasthan Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1959 (hereinafter referred to as the "Election Petition Rules"). The election of a Pradhan can be challenged only by way of an election petition. The writ petition is wholly misconceived. The remedy of challenging election is not a common law right but it is a right given by a statute and can be exercised according to the mode provided under the statute itself and by the persons to whom the right has been given. There being an alternative remedy, so the writ petition is not maintainable. It was alleged that the election petition has already been filed in both the cases by the defeated candidates i.e. respondent No. 2 and an allegation has also been made that both the writ petitions have been got filed at the instance of the defeated candidates. A plea of disputed question of fact has also been raised and it has not been admitted that the respondents Shri Arjunsingh and Shri Prahladram had cast their votes over.

7. In both the writ petitions, rejoinders to the replies of the first respondent have been filed. It was reiterated that the petitioner in his various capacities has a

right to maintain the writ petition and as regards the disputed question of fact, it was alleged that no investigation is required to be made except to look into the documents and the ballot-papers and this Court may call for the record and make scrutiny thereof. It was alleged that the filing of the election petition by the defeated candidates would not come in the way of the petitioner in maintaining the writ petition. In rejoinder, the allegation regarding filing of the writ petitions at the instance of the defeated candidates was not controverted. Even when, the writ petitions were heard, that allegation was not controverted. But after the hearing was over, additional affidavits were filed by the petitioners controverting that allegation.

8. I have heard Mr. Mridul, learned Counsel for the petitioners and Mr. H.M Parekh, learned Counsel for successful candidates (respondents No. 1) in both the writ petitions.

9. Mr. Parekh raised the preliminary objection with all emphasis at his command that the writ petitions are not maintainable, as the elections can only be challenged by way of an election petition in the manner provided under the Act and under the Election Petition Rules. Numerous authorities of this Court and of the Supreme Court have been cited by him in support of his above contention. The question has been hotly contested by the learned Counsel for the parties. Mr. Mridul too, countered the argument with equal vehemence, placing reliance on various decisions and distinguishing the cases, cited by Mr. Parekh in support of his contention. I shall be referring to the catena of decisions cited by both the learned Counsel for the parties. But before that, it is necessary to refer to the relevant provisions of the Act and the Election Petition Rules. Section 13 of the Act reads as under:

Section 13--Dispute as to election u/s 12 (1) The election of a Pradhan or Up-pradhan of a Panchayat Samiti may be called in question by any member thereof by presenting in the prescribed manner to the Judge, a petition in this behalf on the prescribed grounds and within the prescribed period.

(2) A petition presented under Sub-section (1) shall be heard and disposed of in the prescribed manner and the decision of the Judge thereon shall be final.

Rule 3 of the Election Petition Rules reads as under:

Rule 3. Grounds on which election may be called in question : The election of a Pradhan, Up-Pradhan, Pramukh or Up-Pramukh may be questioned by any member of the Panchayat Samiti or the Zila Parishad, as the case may be, by an election petition on one or more of the following grounds, namely:

(a) that such person had committed during or in respect of the election proceedings a corrupt practice as specified in rule 4

(b) that such person was declared to be elected by reason of the improper rejection or admission of any nomination or for any other reason was not duly elected by a majority of lawful votes; or

(c) that such person was disqualified for election as Pradhan, Up-Pradhan Pramukh, Up-Pramukh as the case may be, under the provisions of the Act.

(d) that the result of the election in so far it concerns returned candidate, has been materially affected:

(i) by the improper reception, refusal or rejection of any vote or the reception of any vote, which is void, or

(ii) by any non-compliance with the provisions of the Act or any rules made thereunder.

It would appear from the provisions of Section 13 of the Act that a member of the Panchayat Samiti alone has a right to call in question, the election of a Pradhan or Up-Pradhan of a Panchayat Samiti and that can be called in question by presenting the petition in the prescribed manner, on the prescribed grounds and within the prescribed period. The grounds on which the election can be challenged, find mention in rule 3 of the Election Petition Rules. One of the grounds of challenge is provided in Clause (d) of rule 3 of the Rules. That ground is that the result of the election, in so far it concerns the returned candidate, has been materially affected: (1) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or (ii) by any non-compliance with the provisions of the Act or any rules made thereunder. It is not in dispute that the grounds, on which, the election has been challenged in the present writ petition can be agitated in an election petition. But the petitioners case is that as they are not the members of the Panchayat Samitis, so they have no right to call in question, the election of Pradhan u/s 13 of the Act or under rule 3 of the Election Petition Rules. So they have no alternative remedy by way of an election petition. The petitioner being voters for the office of Pradhan and being taxpayers and residents of the area of Panchayat Samitis and as such, they are very much interested in the proper constitution of the Panchayat Samitis and they have a further right to challenge the usurpation of office by the respondent No. 1 by seeking issuance of writ of quo warranto.

11. It is to be seen as to whether the remedy under Article 226 of the Constitution is completely barred where an election is open to challenge by way of an election petition under the relevant statute, irrespective of the question as to who can challenge the election by way of an election petition or whether the jurisdiction of this Court is not barred under Article 226, but the circumstances may be such that this Court may refrain from invoking its extra-ordinary jurisdiction as a remedy by way of an election petition may be available.

12. I may now proceed to advert to the case law, cited by the parties.

13. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, Fazl Ali, J. speaking for the court, consisting of seven judges observed in para 18 that (i) the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the

limitations imposed by it. (ii) Strictly speaking it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

14. In *Nanhoo Mal and Others Vs. Hira Mal and Others*, , an election petition under Article 226 of the Constitution was presented, challenging the validity of the procedure adopted by the District Magistrate for holding the office of the President of the Municipal Board, Soron to fill up a casual vacancy. An interim stay order was not granted but it was directed by the Judges, who admitted the writ petition that the election would be subject to the ultimate decision in the writ petition. The first respondent was elected, who was impleaded in the writ petition and a relief was claimed to the effect for quashing the proceedings. Section 43-B of the UP. Municipalities Act provided that no election of the President shall be called in question except by an election petition presented in accordance with the provisions of that Act, and Sub-section (2) thereof provided that an election petition may be presented by any member entitled to vote at the election on one or more grounds stated therein. Ground (c) of Section 43-B(2) is analogous to grounds (d) of Rule 3 of the Election Petition Rules quoted above. Their Lordships referred to the observations made in para 16 in *N.P. Ponnuswami's* case supra and also referred to the observations made in para 18 extracted above and further re-produced the observations made by William, J. in *Wolverhampton New Water Works Co. v. Hawkesford* RLW 1959 609 and observed in para 5 as under:

But once the legal effect above set forth of the provision of law which we are concerned with is taken into account, there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution.

Their Lordships did not consider it necessary to go into the question as to whether there can be any extra-ordinary circumstances, in which, the High Courts could exercise their power under Article 226 in relation to elections.

15. In *K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others*, , the validity of the election to the Bar Council of Madhya Pradesh of twenty returned candidates was challenged. The election to the Bar Council M.P. took place under the Indian Advocates Act and the rules were framed by the Bar Council of Madhya Pradesh with the approval of the Bar Council of India regulating the disputes regarding the election, and rule 31(4) provided for adjudication of all disputes by an election tribunal. It was held in that case that exercise of the power under Article 226 of the Constitution can be described as mis-exercise & their Lordships in para 4 observed as under:

It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court, there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them,

which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition, it is perfectly clear that merely because the challenge is to plurality or returns of elections therefore, a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked it that the period of limitation presented by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Again in the present case an election petition covering the same subject matter is actually pending. There is no foundation whatever for thinking that there the challenge is to an "entire election" then the writ jurisdiction springs into action. On the other hand, the circumstances of this case convince us that exercise of the power under Article 226 may be described as mis-exercise.

16. In *Tekchand Vs. Banwarilal and Others*, the petitioner was a resident of Karanpur and stood as a candidate in the Municipal Elections. He filed his nomination paper from Ward No. 3. On the day fixed for the scrutiny of the nomination papers, on objection by the opposite party No. 1. the Returning Officer rejected the nomination paper of the petitioner. The petitioner stated that u/s 20 of the Rajasthan Town Municipalities Act, the jurisdiction of the Civil Court is barred and the remedy by way of an election petition is only a post election remedy and so, the petitioner sought the remedy of writ of certiorari. An objection regarding the alternative remedy by way of an election petition was raised. Modi, J. speaking for the Division Bench consisting of himself and Wanchoo, C. J. held that the petitioner has a remedy to question the validity of the election by an election petition on the ground that his nomination paper was wrongly rejected by the Returning Officer. After holding as above, their Lordships next considered the question as to whether this Court should interfere in the exercise of certiorari jurisdiction, answer to this question was given, in the negative. The observations made in *N.P. Ponnuswami's case supra* were relied upon and it was held that the court is most reluctant to hear in the writ jurisdiction.

17. In *Milakhraj v. Jagdischandra* RLW 1957 (RAJ) 609, the petitioner sought a writ of quo warranto. He was a resident of Karanpur and was a voter. u/s 19 of the Rajasthan Town Municipalities Act, a provision was made for an election petition by any candidate, who stood for election, or by any ten persons qualified to vote at the election. Wanchoo, C.J. (as he then was) speaking for the Division Bench observed:

We can not permit the applicant to come to this Court even before the election was over to have the election set aside when there is a specific provision in the Town Municipalities Act for having the election set aside by an election petition.

We may also point out that Section 19 provides that any ten persons qualified to vote at the election would be entitled to make an election petition. In the fact of that provision, it would in our opinion be improper for any one elector like the applicant to come to this Court to challenge an election even after it has been held on the ground that the law only entitles ten electors to present an election and, therefore, one elector should be allowed to come to this Court under Article 226 and challenge the election. If this were permitted, we would be negating the policy of the legislature, which in its wisdom has thought fit that an election to a Municipal Board, if it is to be challenged by electors, should be challenged by at least 10 of them. If we were to say that because of this provision one elector can come to us and challenge the election. We would in effect be setting aside the provision of the law which requires that ten electors should join together in filing an election petition against a Municipal election. We are, therefore, of the opinion that as it was open to ten electors to challenge the election from ward No. 3 after it had been held, if the provision of rule 14 of the Rajas-than Town Municipal Election Rules was not complied with, we should not in our extraordinary jurisdiction go in to that very matter on the application of one elector even before the election was held. We can only go into a matter of this kind after the Election Tribunal has decided the matter.

18 In *Kalicharan Sharma v. The Chief Panchayat Officer* ILR (1958) 8 Raj. 177 , the Division Bench agreed with the view expressed in the case of *Milakh Rajiv v. Jagdish Chandra* AIR 1960 Raj. 87 and observed that the policy of legislature under the Rajasthan Panchayat Election Rules, 1954 apparently challenge the validity of an election and that at least ten electors should join together before the validity of an election can be challenged by them. It was held that in the circumstances, it would be improper for the High court to permit one elector to challenge the validity of the election by a writ petition, it would then be allowing him to do something which the legislature has obviously not permitted. It was also observed in that case that if ten people are prepared to join with the two applicants they have their remedy also under Rule 19.

19. In *Daulat Ram v. State of Rajasthan* the petitioner was a duly elected member of the Municipal Board, Ladhu and was personally interested in the election of its Chairman. D.S. Dave, J followed the decision in *Tekchand v. Banwari Lal* (supra) and the case of *Anandilal Vs. Chief Panchayat Officer and Others*, was distinguished. In *Anandilal*'s case, the words used in rule 19 of the Rajasthan Panchayat Election Rules 1954 were "defeated candidate." But, no such words appeared in rule 14 of the Rajasthan Town Municipal Boards Chairman Election Rules, 1951 and it was observed that the provisions of law have to be interpreted as they stand and the language of one law cannot be imported into the other. This contention was also negated that the petitioner can not file an election petition, unless he begs two other persons for jointly filing the writ petition, he can have no remedy. In this connection also, the provisions of rule 14 were considered and reliance was placed on the case of *Milakhraj v. Jagdish Chandra* (Supra).

20. In *Qurabali v. Government of Rajasthan* AIR 1960 Raj. 158, their Lordships found that the alternative remedy does not bar a writ application under Article 226. The ground of challenge was that local limits of an existing Municipal Board were not altered by a competent authority and the error was considered to be fundamental and not merely an error in holding of the election. Bhandari J., in his separate though concurring judgment observed that where certain members who had no right to vote have voted at an election, the proper procedure for determining the validity of such election is u/s 19 of the Act and not by a writ of quo warranto. When there is a remedy by of an election petition, a writ of quo warranto is displaced. A writ of quo warranto will not lie to determine the issue involved in the contested election because such issues involve the validity of such election and not the title to the office

21. In *Atma Singh v. State of Rajasthan* RLW 1967(RAJ) 275, Bhandari, J., speaking for Full Bench in para 17 observed that "election to an office should not generally be brought into question except by an election petition. At one time in England, a writ of quo warranto was issued for ousting any person who had unlawfully usurped the office at a particular time. This was replaced by information in the nature of quo warranto. The Municipal Corporations Act 1882 which applied to all local authorities prevented an election from being questioned by quo warranto whenever an election petition would lie. (Page 283, Hart's Introduction to the Law of Local Government and Administration 7th Edition). However, it was further observed as under:

It is not possible for us to lay down any hard and fast rule as to how this Court should exercise its discretion beyond saying that this Court shall exercise its extraordinary jurisdiction under Article 226 of the Constitution with due regard to all the circumstances including the conduct of the petitioner who has come before it, the fact that he could have come earlier, the nature of the breach of the provision of law relating to the preparation of electoral roll, its effect on the final electoral roll and even the circumstance how far it has affected the election.

22. In *Purshottam Lal Sharma Vs. State of Rajasthan and Others*, while dealing with the issue of a writ of quo warranto, it was observed that the writ of quo warranto is not issued as a matter of right. When there are statutory provisions dealing with the conduct of an election, the writ of quo warranto is displaced and an election can only be challenged in the manner laid down by the statute, and reliance was placed on the decision of Bombay High Court in *Bhairulal Chunilal Vs. State of Bombay*, . That was a case where the provisions contained in Article 329(b), was attracted, which barred the remedy of the writ petition, challenging the election of a person as a member of Legislative Assembly, the only remedy was by way of an election petition. It was observed that an election is not a constitutional or a common law right and the petitioner can avail of only the remedies which were available to him under the law. Rather the Constitution itself bars all remedies except the ones provided by the Parliament, however short of complete satisfaction to the aggrieved persons they may be. ft the

petitioner cannot challenge the electoral roll or if he cannot file an election petition, not being an elector in the constituency that itself cannot leave him scope to challenge the election by way of a writ petition. To permit a person to do so will be to violate the provisions of Article 329(b) of the Constitution.

23. The cases dealt with above, were cited by Mr. Parekh and on the other hand, Mr. Mridul placed reliance on some of the cases, which I now proceed to take up.

24. In Anandilal's case *supra* the petitioner was a candidate for election as a Panch, but his name was removed by the Returning Officer. On that ground he could not file an election petition. It was not possible for the applicant to file an election petition under rule 19 of the Rajasthan Panchayats Rules, which provides that the validity of the election of any panch, Sarpanch, or Up-Sarpanch may be challenged by a petition presented by a defeated candidate or by any ten duly qualified electors. This rule applies to the Tehsil Panchayat also by virtue of rule 40. It was found that the petitioner was not a defeated candidate, so he could not file an election petition because it was possible for him to do so along with nine others. The Division Bench consisting of Wanchoo, C. J. and Bapna, J. held that where a person stands as a candidate at an election and his nomination paper is rejected, he has a right in himself to contest the rejection of his nomination paper if it has been done illegally and he should not be compelled to beg nine other persons to come to his help. It was further observed that the petitioner was a candidate for the election and as he cannot by himself file an election petition because he cannot be called a defeated candidate. He is entitled to approach this Court because it is not possible for him to file the election petition to safeguard his rights, which have been invaded by the rejection of the nomination paper. It would appear that a candidate's right when he is not a defeated candidate, has been recognized to approach the court under Article 226 of the Constitution despite its the provisions that an election can be challenged by any ten qualified electors.

25. In *Prabhudayal v. Chief Panchayat Officer* RLW 1957 (RAJ) 317 : ILR (1958) Raj. 177 the same Division Bench also entertained a writ petition on the ground that rule 19 contemplates election petition against individual Panchas. It does not contemplate an election petition asking the tribunal to declare the entire election invalid on the ground of a fundamental deficiency in carrying out the mandatory Rules relating to the holding of the election. Rule 19 does not cover this kind of deficiency. The challenge was to the entire election on the ground of fundamental deficiency in the procedure preceding the election. This case was distinguished by the Division Bench in the case of *Kalicharan supra*.

26. Strong reliance has been placed by Mr. Mridul on the decision of *Udaram v State of Raj.* ILR (1960) Raj.540. In that case, the challenge was to the election of 24 members and 2 nominated members of Ganagangar Municipal Board. The ground of challenge was that no order as contemplated u/s 10 of the Act, was passed either by the Government or by the Collector determining the number of members to the Board and delimiting the area into wards. The petitioner

contended that Section 10 is mandatory in nature and the election was invalid. Jagatnarayan, J., considered the question of maintainability of the writ petition. It was held that Article 329 of the Constitution takes away jurisdiction of the courts in the matters relating to election to the Parliament and the State Legislature. There is no similar provision in the Constitution barring the jurisdiction of the High Court in the matters relating to the election of the Municipalities and the High Court has power to interfere in such matters under Article 226 of the Constitution. It was further held that limitation imposed in the Town Municipalities Act regarding the number of voters, who may apply for determination of the validity of the election cannot be made applicable to the petition under Article 226 of the Constitution, which is a remedy under the Constitution. Jagatnarayan, J. made the above observation, after referring to the decisions in Kalicharans's case supra, Milakhraj's case supra and Anandilal's case supra and he observed that the view taken in Anandilal's case supra, appears to be correct and not the view taken in Milakhraj's case supra" It was further observed that even if the alternative remedy by way of an election petition u/s 19 was open to the petitioners, this is a proper case, in which, this Court should interfere and grant relief to the petitioner on an application under Article 226 of the Constitution. In a case, where the entire election is vitiated as in this case, this Court has never refused to set aside the election on a petition under Article 226. It was further observed that where the election is vitiated by a patent transgression of a mandatory provision of law, this Court can restrain the invalidly elected members from taking charge of the affairs of the local body as soon as this is brought to its notice by a petition under Article 226. Any single voter can file such a petition. The fact whether or not, there, has been a transgression of a mandatory provision of law that can be easily determined by a perusal of the official record.

27. Reliance has been further placed by Mr. Mirdul on a decision of this Court in Hanumanbux v. Collector Nagaur ILR (1966) 16 Raj. 396, in which, the writ in the nature of quo warranto was sought. The petitioner was a resident and an elector of the village Panchayat Palada. He challenged the co-option of some members and election of Pradhan and UP-Pradhan of the Panchayat Samiti. A contention was raised that only a member of the Panchayat Samiti can challenge the election of Pradhan. An ordinary elector or a resident of Panchayat Circles has no right to question the election of Pradhan. Reference was made to a Bench Decision of this Court in Mishrimal v. State of Rajasthan ILR 1961 Raj. 273, wherein, the following observations were made:

The residents of the various wards in a Municipality are the electors who return the members of the Board. Those elected members go to compose a Municipal Board & the Board inter alia has certain primary & secondary functions which are to be discharged by it towards the citizens residing within the limits of the Board. There are a number of duties thus cast by the Act on the Board which is its creature with corresponding legal rights in the citizens or electors and they can in appropriate cases evidently enforce those rights. As a logical corollary, whoever

interferes in the performance of these duties can also be made answerable to the electors and rate payers who have a right to see that the Board functions in accordance with the law.

It was observed that "in a case where the Court finds that the person who is seeking to unseat another by challenging the election and who, therefore, wants to invoke the jurisdiction of the Court under Article 226 of the Constitution in short circuiting the normal processes by which the election has to be questioned, the Court may decline to exercise its discretionary powers under Article 226. Quo warranto is not a writ of right as such but it is always a matter of discretion and where the Court finds that the petitioner is not acting bonafide, it may refuse to exercise its discretion. All the same it can not be postulated that a person who has no legal right in himself can not maintain a petition under Article 226. It is beyond question that this requirement about the infringement of the legal right of the person concerned will be insisted upon in dealing with a writ petition about mandamus or for an allied relief. So far as writs of quo warranto are concerned, the position to my mind admits of no doubt that even a person who may not be claiming any legal right in himself, will be entitled to file a petition for the relief in the nature of quo warranto. It was held in this case that the petitioner has no right to question the validity of the election by filing an election petition under the Act. Therefore, the alternative remedy being not available to the present petitioner, who is not disentitled from seeking the aid of this Court.

28. In *Pyarelal v. State and Ors.* ILR (1970) Raj. 382, it was observed that the Pradhan holds an important office and persons who are to be under the administration of the Panchayat Samiti in the sphere allotted to the Panchayat Samiti have a right see that the person functioning as a Pradhan has been installed in the office according to the law. The writ petition is more or less one for quo warranto and in view of the exceptional circumstances of the case, the petitioner who is a resident of the area could be allowed to question the right of respondent No. 4 to hold the office of the Pradhan. The exceptional circumstance was that the spirit of rule 4 has been violated by the Govt. as well as by the Collector because it was only on October 4, 1968 that the candidates and the electorates were told that the elections would be held on October 6, 1968 on the basis of the previous nominations.

29. Mr. Mridul also referred to two decisions in *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, and *Krishna C. Mathur v. University of Jodhpur* 1980 WLN 22 in support of his contention that even where a writ of quo warranto is not prayed for but the same relief can be granted, if in the facts and circumstances of the case, it is established that a writ of quo warranto can be issued and it will be of no consequence where the usurper holds office by way of appointment or by way of an election.

30. The fundamental principle, which emerges from the case law, is that the remedy under Article 226 of the Constitution is a constitutional remedy conferring very wide and plenary powers on the High Courts for issuing various

writs, directions and orders as the facts and circumstances of the case may require. The bar which is created under Article 329(b) would not in terms apply to the elections of bodies other than the Parliament and the State legislatures. In respect of elections to the Parliament and the State Legislatures, the bar would apply to the remedy under Article 226 of the Constitution. The constitutional remedy under Article 226 cannot be taken away by any legislation. However, it is well settled that this remedy is an extra-ordinary remedy and is a discretionary one. One of the settled principles is, the whenever there is an appropriate or equally efficacious remedy available, the High Court will not exercise its jurisdiction under Article 226 of the Constitution. It would appear from the cases referred to above that the High Court has exercised its jurisdiction under Article 226 even in the matters of elections, when the matter relates to the process of election preceding the election or when the ground of challenge may not be available in an election petition or where a remedy by way of an election petition may not be available to the applicant or where the entire election may not be open to challenge or where some fundamental defect or deficiency arises on account of breach of some mandatory provisions of law whereby the whole election is rendered void or the election may be wholly farce or illusory or merely a pretence and a facade. The main thrust of the argument of Mr. Mridul is that the remedy by way of an election petition is only available to a member of the Panchayat Samiti. The petitioners being not members, that remedy is not available to the petitioners and the petitioners being residents and tax-payers of the area have a vital interest in the proper constitution of Panchayat Samiti, so have a right to maintain the petition. He urged that a returned candidate may get an election petition filed he may then get a writ petition dismissed on the ground of alternative remedy and subsequently get the election petition withdrawn and thereby perpetuate a void election. Such a situation will not be countenanced. He also submitted that if a void election is not challenged by an election petition by any member of the Panchayat Samiti, then, the election would go unquestioned, if the remedy under Article 226 would not be allowed to a non-member of Panchayat Samiti. So far as, the present cases are concerned, the Court need not dilate on the hypothetical situations as suggested by Mr. Mridul. In the present cases, the hard fact is that the defeated candidates have filed the election petitions, which are pending. The defeated candidates are very much interested in the conduct of their election petition. It is not necessary to conceive a situation that they may withdraw their election petition. Besides that even if, such a situation arises, the Court may decline to exercise its jurisdiction under Article 226 of the Constitution, if it feels, that it would not be proper to ignore the legislative policy where under the election can only be challenged by way of an election petition in a prescribed manner and not otherwise. Permitting to challenge would mean stultifying or circumventing the law, but, where the case presents some fundamental defects and deficiencies or presents some fundamental defects and deficiencies or presents extra-ordinary and exceptional circumstances, the Court may instead of keeping its hands off, may come forward to intervene. In K.K. Sarivastava's case (supra) it has been observed

that if a writ petition is entertained long afterwards, it will stultify the statutory provision. Their Lordships of the Supreme Court, thus, have taken into consideration that the party approaching the court should not be allowed to stultify the provision.

31. In *Nenu Mal*'s case *supra*, the Supreme Court has gone to the extent of observing that the provisions of Art 329 are relevant only to the extent that even remedy under Article 226 of the Constitution is barred as a result of the provisions of the U.P. Municipalities Act. After examining the legal effect of that Act, it was observed that there is no room for High Courts to interfere in exercise of its power under Article 226 of the Constitution. The court refrained from considering the question as to whether, there can be any extra-ordinary circumstances in which the High Courts could exercise their powers under Article 226 in relation to the elections. In *K.K. Srivastava*'s case *supra*, the Supreme Court said that we need not go to the extent of stating that if there are exceptional or extra-ordinary circumstances, the court should still refuse to entertain a writ petition. In the present case, a plea has been raised on behalf of the returned candidates that the writ petitions have been filed only at the instance of the defeated candidates and this fact was not refuted earlier by the petitioners. But, it was only after the close of hearing, additional affidavits have been filed. It may be that the writ petitions may not have been filed at the instance of the defeated candidates, still the fact remains, that the defeated candidates have already filed the election petitions and the same are pending and the cases do not present any extra-ordinary or exceptional circumstances calling for interference in the exercise of extra-ordinary jurisdiction. Even, seeking an issuance of a writ of quo-warranto is not a matter of right and is a matter of discretion under Article 226 of the Constitution. Thus, I do not find the present cases as appropriate and fit cases for invoking the extra-ordinary jurisdiction. The writ petitions are, therefore, liable to be dismissed on this ground alone and I need not go into the question that the writ petitions may not also be entertained on the ground that they involve disputed questions of fact.

32. In the result, both the writ petitions are dismissed with no order as to costs.