
(2002) 11 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 2286 of 2002

Mahmadul Haque Laskar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Assam Panchayat (Constitution) Rules, 1995 — Rule 45, 45(1)
Assam Panchayat Act, 1994 — Section 11, 127, 129, 37, 37(1)
Constitution of India, 1950 — Article 226, 227, 243O

Citation : AIR 2003 Guw 71

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : N.M. Lahiri and N. Choudhury, for the Appellant; A.K. Phukan, General, for Respondent 1, A.M. Mazumdar and K.A. Mazumdar, for Respondent 5, for the Respondent

Final Decision : Partly Allowed

Judgement

I.A. Ansari, J.—Terming arbitrary, manipulative, mala fide and on extraneous considerations, the declaration of the result of the election of the respondent No. 5 as President of No. 10 Silchar Anchalik Panchayat the petitioner has approached this Court, with the help of his present writ application made under Article 226 of the Constitution, challenging the said election, held u/s 37 of the Assam Panchayat Act, 1994, as violative of Rule 45(1) of the Assam Panchayat (Constitution) Rules, 1995, and seeking issuance of writ/writs setting aside and/or quashing the impugned order, dated 31-3-2002 (Annexure 5 to the writ petition), whereby the respondent No. 5 was declared as President of the Panchayat aforementioned and commanding the respondents to hold afresh, in accordance with provisions of Rule 45, election to the office of President and Vice-President of the Panchayat aforementioned.

2. Whether Section 129 read with Section 127 of the Panchayat Act, 1994, bars jurisdiction of the High Court under Article 226 to interfere with the election of

the President of Anchalik Panchayat too and if it is so, (i) whether Section 129 is ultra vires the Constitution of India and (ii) whether Article 243O of the Constitution of India, introduced by way of 73rd amendment of the Constitution, is ultra vires the proviso to Article 368(2) of the Constitution, the same having not been ratified by requisite number of State legislatures, are the momentous questions, which this writ petition has raised for consideration by this Court.

3. In a narrow compass, petitioner's case may be put as follows :--

(a) The Assam Panchayat Act, 1994 (hereinafter referred to as "the said Act") envisages three-tier Panchayat system, Gaon Panchayat being at the base of the whole system, Zilla Parishad being at the top of the system, and Anchalik Panchayat being in the middle of the system of the Panchayat Raj. The members of Gaon Panchayat and its President are "directly" elected by the voters of the territorial constituency of the respective Gaon Panchayat areas u/s 6 of the said Act. For each Development Block, there shall be, according to Section 31 of the said Act, one Anchalik Panchayat. The Anchalik panchayat consists of, according to Section 32 of the said Act, one member from each Gaon Panchayat "directly" elected from the territorial constituency of those Gaon Panchayats which fall under the jurisdiction of the Anchalik Panchayat concerned. This apart, the President of the Gaon Panchayats, which fall within jurisdiction of the Anchalik Panchayat concerned, and the members of the House of People (Lok-Sabha) and the Members of Legislative Assembly of the State concerned also form part of Anchalik Panchayat. The President and Vice-president of the Anchalik Panchayat are, however, elected, according to Section 37 of the said Act, by the "directly" elected members of the Anchalik Panchayat from amongst the "directly" elected members of the Anchalik Panchayat concerned, but the collegium for the purpose of election of the President and Vice-President does not include ex-officio members of the Anchalik Panchayat. For every district, there shall be, u/s 64 of the said Act, a Zilla Parishad, which shall consist of the members "directly" elected for the Zilla Parishad from the territorial constituency of the district concerned, President and Vice-President of the Zilla Parishad being elected, u/s 70 of the said Act, by and from amongst the members "directly" elected for the Zilla Parishad.

(b) The petitioner got elected as a member of No. 10 Silchar Anchalik Panchayat from Berenga Gaon Panchayat in the district of Cachar, Silchar, there being altogether as many as 12 Gaon Panchayats under the Silchar Anchalik Panchayat. The respondent No. 2, namely, Deputy commissioner, Cachar, Silchar, issued, under Rule 48 of the said Rules, a notification on 16-3-2002, informing all the Silchar Anchalik Panchayat members to be present, on 30-3-2002, at the specified venue, namely, conference room of the respondent No. 2 and at the specified time, namely, at 1 P. M., for the purpose of taking oath as Anchalik Panchayat members and also to elect, from amongst them, President and Vice-President for the said Anchalik Panchayat. The respondent No. 3 was, vide this notification, authorized by respondent No. 2 to conduct the requisite proceeding.

After the Anchalik Panchayat members were duly sworn-in on 30-3-2002, respondent No. 3 requested the elected members to elect their President and Vice-President. The petitioner's name was then, proposed for the office of the President, the proposer as well as the seconder for the petitioner's candidature being from Bharatiya Janata Party (in short, "B. J. P"). Thereafter, the name of the respondent No. 5 was proposed as a candidate from the Indian National Congress (in short, "Congress") for the said office of President. The respondent No. 3, therefore, proceeded to hold election on the basis of ballot, but, upon counting of votes, it was found that the petitioner as well as respondent No. 5 had secured six votes each, Since both the contenders aforementioned had secured equal number of votes, the respondent No. 3 decided to declare one of them elected as President by tossing up of a coin in presence of the candidates as provided under Rule 45 of the said Rules. While the petitioner opted for head, the respondent No. 5 opted for tail of the coin. When the respondent No. 3 was about to hold the toss, the reporters and photographers of the newspapers including Dainik Sonar Cachar, Jugasankha as well as electronic media, such as, CNN, Barak TV, Khoj Khabar and Khabar Khabar took positions to take snaps of the proceeding to which respondent No. 3 vehemently objected. The petitioner and Shri Ajit Kumar Bhattacharjee, district President of the BJP, urged upon the respondent No. 3 to allow the photographers to remain present and arrest the scene of holding of the toss in their camera to eliminate any doubt as regards legitimacy, propriety and/or transparency of the election, but the respondent No. 3 remained adamant, although some of the photographers had managed to stand in convenient positions. Under Rule 45(1), each candidate will be assigned one side of the coin before the toss and the candidate, whose side appears visible at the top of the coin after it has "FALLEN FLAT ON ANY GROUND OR TABLE". shall be declared elected. The respondent No. 3 tossed the coin, but did not allow it to fall on the ground or on the table and instead, caught the same in his right palm, while the coin was still in the air. Not only the petitioner and Sri Ajit Kumar Bhattacharjee aforementioned, but many others present there could clearly notice that the head of the coin was visible at the top of the coin, but the respondent No. 3, immediately, placed his left hand over his right hand covering the coin and turned it upside down transferring the coin to his left hand thereby reversing the position of the coin. The petitioner, Sri Ajit Kumar Bhattacharjee aforementioned and their supporters got agitated at such partisan act of the respondent No. 3 and protested by raising their voices. The photographers did not miss the chance of taking snaps, at that stage, showing that the coin was on the left hand of the respondent No. 3. The said photograph was published in various newspapers including Dainik Sonar Cachar. Such partisan action of the respondent No. 3, based on extraneous considerations visibly to favour the candidate sponsored by the congress, resulted in large scale resentment, uproar and pandemonium at the said venue, when a large number of persons including party activists and others rushed in. The respondent No. 3 could not stand the protests and exhibited signs of making good his escape without making declaration of the result. At this juncture, Shri Ajit Kumar Bhattacharjee

aforementioned pressed the respondent No. 3, in writing, to give the decision. However, the respondent No. 3 left the venue, but before leaving the venue, he wrote on the said written appeal of Shri Ajit Kumar Bhattacharjee, "No decision will be given today. All concerned will be intimated next course of action in due course". Shri Ajit Kumar Bhattacharjee, District President of the BJP, then, submitted a representation to the Chief Secretary to the Government of Assam through fax giving a copy thereof to the respondent No. 2 and also to the local MLA informing them about improper, partisan and illegal action of the respondent No. 3 and requesting them to hold the election afresh inasmuch as the respondent No. 3 had left the venue without declaring the result. However, to their utter surprise, the respondent No. 2, vide his order, dated 31-3-2002, declared the respondent No. 5 elected on the basis of the said tossing of coin by the respondent No. 3, though the respondent No. 2 was not present at the time of tossing of the coin as described hereinbefore. The respondent No. 2 has, thus, no jurisdiction or authority under the law to declare the result of the toss inasmuch as Rule 45 mandates that the Deputy Commissioner or the Sub-Divisional officer, as the case may be, or any officer, authorized by him in this behalf, shall decide which of the two candidates shall be declared elected by toss of a coin in presence of the candidates concerned. The result of the said election ought to have, therefore, been announced by the respondent No. 3 before leaving the said venue.

4. It may be pointed out that while issuing Rule on 10-4-2002, the learned Single Judge of this Court (Hon"ble PC Phukan, J.) stayed the operation of the impugned order, dated 31-3-2002, aforementioned till hearing on the prayer for interim reliefs sought for by the petitioner. The respondent No. 5 appeared in this case and filed an application praying, inter alia, for vacating the interim order, dated 10-4-2002, aforementioned. This application gave rise to Misc. Case No. 541/2002. However, learned Single Judge of this Court (Hon"ble AH Saikia, J.), upon considering the nature of the controversy involved in this case and as agreed to by the learned counsel for the parties, directed, vide order 23-5-2002, that the matter be listed for final hearing. Upon hearing, on 29-8-2002, this Court found that though this writ petition had not originally, challenged the vires of the provisions of Section 129 of the said Act, the submissions, made on behalf of the parties, had raised not only the question of constitutionality and vires of Section 129, but also constitutionality and vires of Article 243O of the Constitution of India. This Court, therefore, directed that notice be issued to learned Advocate General, Assam, and the matter has been accordingly heard on 1-10-2002. However, delay in the service of notices on the respondent Nos. 2 and 3 caused further delay in the disposal of this writ petition and this writ petition could, therefore, be finally heard on 8-10-2002.

5. Resisting the reliefs sought for by the petitioner, respondent No. 5 has filed affida-vit-in-opposition, her case being, briefly stated, thus : The election, in question, was held in accordance with the provisions of Rule 45 and the toss was held, in presence of all the candidates by the respondent No. 3, strictly in

compliance with the relevant Rules and thereafter, respondent No. 5 was declared elected in a free and fair election. The writ petition is not maintainable inasmuch as a combined reading of Article 243O and Section 129(b) shows that no election to any Panchayat shall be called in question except by way of election petition made to the Panchayat Election Tribunal constituted u/s 127 of the said Act. By a notification, dated 30-9-2002, the Government of Assam has, in exercise of powers vested in the Government u/s 127, already constituted, for the district of Cachar, a Panchayat Election Tribunal. Article 243O and Section 129(b) bar jurisdiction of the High Court under Article 226 in respect of elections of the Panchayat. That apart, an election petition has already been filed in the Panchayat Election Tribunal, Cachar, by one Shri Deb Prasad Singha challenging the declaration made by the respondent No. 2 that the respondent No. 5 of the present writ petition stood elected as President of the said Panchayat on the ground that the declaration, so made, is illegal, arbitrary and void. In the face of the provisions of Article 243O and Section 129(b) coupled with the fact that an election petition is already pending on the subject-matter, which is also the subject-matter of the present writ petition, this writ petition is not maintainable.

6. I have carefully perused the materials on record. I have heard Mr. N. M. Lahiri, learned senior counsel for the petitioner assisted by Mr. N. Choudhury, Advocate, and Mr. A.M. Mazumdar, learned senior counsel for the respondent No. 5, assisted by Mr. K.A. Mazumdar. I have also heard Mr. A.K. Phukan, learned Advocate General, Assam, as a notice of this Court. The respondent Nos.2 and 3 have not contested this case by filing any affidavits.

7. It has been submitted, on behalf of the petitioner, that every statutory authority vested with powers to perform its duties in a particular manner has to perform it in that manner only and not otherwise, but if this cardinal principle, as enunciated in AIR 1936 253 (Privy Council) and reiterated in 2001 (4) SCC 9 : AIR 2001 SC 1512 is applied to the facts of the present case in the light of the statutory and constitutional provisions relevant thereto, it becomes clear that under the provisions of Rule 45, the officer authorized to conduct election meeting has to toss up the coin and has to allow the coin to fall flat on the ground or on the table and, then, declare the result in favour of the candidate, who wins the toss. In the case at hand, the petitioner chose head of the coin for his victory, whereas the respondent No. 5 chose to depend on the tail of the coin for the purpose of her election. The respondent No. 3, upon the agreement so reached, tossed the coin in the air, but did not allow it to fall on the ground or on the table and caught it with his right hand in the air and deliberately turned his two hands upside down transferring thereby the coin to his left hand to show tail of the coin as a sign of victory for the respondent No. 5. The process of election, so held, it is contended, is completely manipulative, the declaration of the result, so made, is arbitrary and such election being wholly contrary to the Rule 45, the same deserves to be set aside.

8. It is also submitted, on behalf of the petitioner, that it is u/s 127 that

Panchayat Election Tribunal is constituted and such an Election Tribunal has, in fact, been already constituted for Silchar Anchalik Panchayat. A bare reading of this Section shows, it is pointed out on behalf of the petitioners, that this Tribunal has jurisdiction to decide the election petition challenging only "direct elections" held under the said Act. The election of Anchalik Panchayat held u/s 37 is, it is submitted, an "indirect" election inasmuch as "directly" elected members of the Anchalik Panchayat elect from amongst themselves, i.e, from amongst the "directly elected" members, two of their members as President and Vice President respectively of the Anchalik Panchayat. It is further submitted that the bar u/s 129(b) applied only to the "direct" elections held under the said Act. Viewed from this angle, it is contended, there is no bar in the High Court entertaining a writ application under Article 226 of the Constitution of India challenging election of the President of Anchalik Panchayat inasmuch as the election of the President of Anchalik Panchayat is an "indirect" election.

9. Controverting the above submissions made on behalf of the petitioner, Mr. A.M. Mazumdar has submitted that the expression "no election", used in Section 129 (b), is an indication of the fact that the legislature has made it clear that "no election" in respect of any election of Panchayat, direct or indirect, held under the said Act, can be called in question in any Court except before a Tribunal constituted for this purpose u/s 127. This apart, contends Mr. Mazumdar, a close reading of Article 243O shows that no Panchayat election can be called in question in any Court except before the Tribunal, which legislature of the State concerned decides by law to constitute for determination of disputes and/or differences arising out of election of the members and officebearers of the Panchayat.

10. In support of his contention that a writ petition under Article 226 is not maintainable in an election matter, when the subject-matter relates to non-compliance of the Act governing the election, which is under challenge, C. Subrahmanyam Vs. K. Ramanjaneyullu and Others, It is also submitted by Mr. Mazumdar that validity of Ss. 127 and 129 (b) can not be questioned before this High Court inasmuch as in WP(C) No. 2029/ 2002, decided on 24-5-2002, this Court has upheld the constitutionality of Sections 127 and 129 (b) of the said Act.

11. It is further submitted by Mr. Mazumdar that since an election petition is already pending before the Panchayat Election Tribunal, Silchar, in which the subject-matter of controversy is the same as the subject-matter for decision in the present writ petition and since both the writ petitioner as well as respondent No. 5--are parties thereto, this writ petition has become infructuous and may be dismissed accordingly.

12. Reacting to the above submissions made on behalf of the respondent No. 5, Mr. Lahiri has contended that if Section 129 (b) is treated to have taken away powers of the High Court under Article 226. then, not only the provisions of Section 129(b) will be ultra vires the Constitution, but that even 73rd amendment of the Constitution to the extent that it incorporates Article 243O

imposing bar, in such matters, on the jurisdiction of the High Court, under Article 226, shall be unconstitutional and void inasmuch the power of judicial review vested in the High Courts under Article 226 forms part of the basic structure of the Constitution and it cannot be taken away by way of an amendment of the Constitution based on simple majority in Parliament without ratification by requisite number of States as envisaged under the proviso to Article 368(2).

13. It is further submitted, on behalf of the petitioner, that in the case of Tenth Schedule too, the writ jurisdiction was impliedly ousted without directly changing the language of Article 226 or 136. This amendment was, points out Mr. Lahiri, introduced without there being ratification by State legislatures, as required under the proviso to Article 368(2), and, hence, the Constitutional Bench in *Shri Kihota Hollohon v. Zachilhu* AIR 1993 SC 411, struck down and adjudged paragraph 7 of the Tenth Schedule ultra vires. Same is the case here. So contends Mr. Lahiri. The 73rd amendment was effected by the Parliament, reiterates Mr. Lahiri, without being ratified by one-half the State legislatures and hence, Article 243O, to the extent that the same adversely affects the powers of the High Courts under Article 226, contained in Chapter V of Part VI of the Constitution, is ultra vires the proviso to Article 368(2).

14. Elaborating his above contention, it is submitted by Mr. Lahiri that Section 129 (b) or Section 127 relate to only such elections, which are "direct" in nature. Election of the president of Anchalik Panchayat u/s 37 of the said Act is, according to Mr. Lahiri, not a "direct" election as referred to in Section 127 and the same is, in fact, only an in-house arrangement to choose the leader of the house in the manner analogous to the election of Speaker and Deputy Speaker of Lok Sabha under Article 93 and, hence, the present writ petition cannot be said to have been barred by the provisions of the said Act.

15. Lending support to the above submissions of Mr. Lahiri, Mr. N. Choudhury has submitted that neither the law enacted by the State legislature, namely, Section 129(b) of the Act nor an amendment of Constitution, such as, Article 243O can oust writ jurisdiction of the High Court inasmuch as the power of judicial review under Article 226 forms part of the basic structure of the Constitution. So far as the decision in *C. Subramonyam's case* (Supra) is concerned. It has not decided, points out Mr. Choudhury, any law. It is also pointed out by Mr. Choudhury that the submissions made, in the present writ petition, as to the constitutionality of the provisions of Article 243O and Section 129(b) were neither raised nor decided in the said case. The said decision, therefore, does not apply, contends Mr. Choudhury, to the facts of the present case.

16. It is also contended, on behalf of the petitioner, that S- 127 under which the notification, dated 30-9-2000, aforementioned, has been issued constituting the Panchayat Election Tribunal, Silchar, shows that the word "election" is prefixed by the word "direct". Thus, according to Mr. Chaudhury, the word "election" is qualified by the word "direct" in Section 127 and this aspect of the matter cannot be ignored, pleads Mr. Chaudhury, because it is settled principle of Interpretation

of statutes that any interpretation, which brushes aside the word used in the statute as inappropriate or surplusage, is not fair and that the Court should avoid interpreting the language of the statute in such a way, which renders a part of the statute devoid of any meaning or application.

17. As far as the learned Advocate General is concerned, his submission is very limited and his submission is that neither Article 243O nor Section 127 and/or Section 129 (b) is ultra vires the Constitution inasmuch as none of these provisions, according to the learned Advocate General, oust the power of judicial review of the High Court, but at the same time, points out the learned Advocate General, Article 243O as well as Sections 127 and/or 129(b) provide adequate alternative remedy to the persons aggrieved by any of the elections of the Panchayat, direct as well as indirect, and, hence, the High Court should, as indicated by the Apex Court in C. Subramaniarn's case (supra), allow the matter to be decided by the Tribunal. The learned Advocate General has also submitted that the Panchayat Election Tribunal can look into all elections held under the said Act and that is why, Section 129 impose complete bar in respect of all elections held under the said Act. The learned Advocate General has also maintained that since the subject-matter of the present writ petition involves determination of questions of fact and a duly constituted Tribunal has already come in seisin of the matter, this Court may allow the election petition to proceed and whatever decision the Tribunal renders can then, be challenged before and/or looked into by, this court under Article 226/227 of the Constitution of India. It is further submitted by the learned Advocate General that if this Court opines that Article 243O is unconstitutional, this Court may issue notices to the Attorney General of India as well as Advocate General of all the States in general so as to enable them to have their say in the matter before this Article is struck down.

18. Having heard learned counsel for the parties and upon perusal of the materials on record, what attracts my eyes, most prominently, is that the basic facts, which have given rise to the present writ petition, have not been specifically and categorically disputed and/or challenged before this Court inasmuch as the writ petitioner's case is that upon counting of ballot papers for the election of the President of No. 10 Silchar Anchalik Panchayat, both the writ petitioner as well as respondent No. 5 were found to have secured equal number of votes, namely, six votes each and it was, then, decided by the respondent No. 3 to resort to the provisions of Rule 45 (1), which is, admittedly, applicable to such cases. It is also not disputed before me that: Rule 45 (1) lays down that if, upon counting of votes, it is found that two candidates of whom only one is to be declared elected, have received equal number of votes, the Deputy Commissioner or the Sub-Divisional Officer or the Officer authorized by Deputy Commissioner in this behalf shall decide which of the two persons shall be declared elected by tossing up a coin in presence of such candidates. It is not questioned before me that according to Rule 45(1), each candidate shall be assigned one side of the coin and the candidate, whose side appears visible at the top of the coin if it has fallen flat on any plain ground or table, shall be

declared elected.

19. It is submitted by the writ petitioner that the respondent No. 3, instead of allowing the coin to fall flat on the ground or on a table, caught the coin in the air in his right palm. On a close scrutiny, I notice that there is absolutely no specific denial on this aspect of the matter and it has been merely contended by the respondent No. 5 that the election was conducted under Rule 45 in a free and fair manner. It is nowhere asserted by the respondents that the coin was allowed to fall flat on the ground or on a table. That apart, the official respondents including respondent No. 3 have not filed, as already indicated hereinabove, any affidavit disputing petitioner's assertion that the coin, in question, was not allowed to fall flat on the ground or on the table.

20. Situated thus, one has no option but to hold that strictly speaking, Rule 45 (1) was not properly adhered to by the respondent No. 3. What is, however, in dispute is whether it was the head or tail, which was visible at the top of the coin, when the same was held by the respondent No. 3 in his hand. This has, perhaps, happened, because respondent No. 3 was caught with the coin in his hand as can be seen in the photograph published in the newspaper (Annexure-2 to the writ petition). The correctness of the report or of the photograph has not been challenged before the Court by the respondent No. 3.

21. Notwithstanding, therefore, what the learned Advocate General has submitted, the essential facts showing that the provisions of Rule 45(1) were violated are, strictly speaking, not in dispute.

22. Situated thus, I have to, now decide, in the face of the admitted facts stated hereinabove, whether the present writ petition is maintainable? My quest for an answer to this vital question brings me, first, to the contents of Section 127, which, admittedly, is the provision under which the Tribunal, in question, has been constituted. Section 127, it is interesting to note, lays down as follows :

"127. Constitution of Panchayat election Tribunal: (1) The Government shall constitute such Panchayat election Tribunals as may be necessary, on the recommendation of the High Court to dispose of all direct election petitions challenging election under this Act. The jurisdiction, powers and functions and the headquarters of the Tribunal shall be decided by the Government in consultation with the High Court, except as provided in Section 10 of this Act."

(Emphasis is supplied by me)

23. A bare reading of the above provisions shows that Section 127 conceives of constituting Tribunal for deciding election petitions arising out of "direct" elections held under the said Act. I find considerable force in the submission of Mr. N. Choudhury that since the word "election" is prefixed by the word "direct", the election, which Section 127 conceives of stands qualified by the word "direct". In fact, if I may further point out, not only Section 127, but even the notification, dated 30-9-2000 (Annexure-1 of the Affidavit filed by respondent

No. 5) clearly shows that before the word "election", there is a prefix "direct". Thus, the word "election" stands qualified by the word "direct", in the notification aforementioned. In other words, the election, which Section 127 speaks of, relates to only "direct" elections.

24. Moreover, It will be highly improper, on the part of this Court, to ignore the use of the word "direct" on the ground that the use of the word "direct" is inappropriate or surplusage. In fact, if the use of the word "direct" is Ignored, it will be tantamount to avoiding the construction of the language used in Section 127 and such an interpretation would render a significant part of the whole statute devoid of its real meaning and effective application. Such an approach by this Court in interpreting Section 127 will be contrary to the well settled principle of Interpretation of Statutes propounded by the Apex Court. Reference may in this regard, be made to *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, wherein it has been held as follows :--

"It is not a sound principle to brush aside words. In a statute as being inappropriate or surplusage if they can have appropriate application in the circumstances conceived or contemplated by the Statute".

(Emphasis is added by me)

25. Coupled with above, it is incumbent on the Court to avoid a construction on the language, which would render a part of the statute devoid of any meaning or application. I am guided to adopt this view from the law laid down in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, This apart in the interpretation of Statute, as laid down by the Apex Court in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, the courts always presume that legislature inserted every part thereof for a purpose and the legislative intent is that every part thereof should have effect.

26. The impression that the use of word "direct" in Section 127 is not accidental or suffers from surplusage gains strength from the fact the word "direct" has been used in the said Act, I notice, at many places, while qualifying the word "election", some of these words having been introduced, I find, by way of even amendment to the said Act. For instance. Section 6 of the Act lays down constitution of Gaon Panchayat and while so laying down, it states as follows :

"6. Constitution of Gaon Panchayat: (1) The Gaon Panchayat shall consist of--

(a) ten members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayat area one from each constituency in the manner prescribed;

(b) President of the gaon Panchayat, who shall be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed.

(2) For the convenience of election, the prescribed authority shall in accordance

with such rules as may be prescribed in this behalf by the Government, divide the area of the Gaon Panchayat into ten territorial constituencies and allot one seat for each constituency.

(3) when the Gaon Panchayat is constituted under this Section, the Deputy Commissioner or an officer authorized by the Deputy commissioner for this purpose shall call a meeting of the Gaon Panchayat (which shall be hereinafter called the first meeting of the Gaon Panchayat) for election of a Vice President from amongst the members in the manner prescribed.

(Emphasis is supplied by me)

27. A close reading of Section 6 shows that in Section 6(1) (a) and 6(1)(b), the word "election" has been qualified by the word "direct"; whereas in Sub-section (3) of the Section 6, while mentions the word "election" in respect of the vice President, the word "direct" has not been used.

28. It is also transparent from the above that since the members of the Gaon Panchayat are elected by the voters of the area/areas concerned "directly", Section 6(1)(a) speaks of "direct" election and, similarly, since the President too is elected by voters of the constituency "directly", Section 6(1)(b) speaks of "direct" election for the President, but in the case of election of Vice President of the Gaon Panchayat, since voters do not "directly" elect the Vice President and it is members of the Gaon Panchayat who. from amongst themselves, elect the Vice President, the word "direct" or "directly" has not been used in Sub-section (3). This, in turn, shows that when the word "election" is qualified by the word "direct", it will mean, in the context in which it has been used under the said Act, only such elections, which are direct in nature.

29. In other words, in Section 6, the word "directly" has been used to qualify the word "elected" only when the voters of the territorial constituency elect a Gaon Panchayat Member or Gaon Panchayat President, as the case may be, directly. It is clear that Sub-section (3) of Section 6 deals with election of Vice-President of Gaon Panchayat. Since a Vice-President of Gaon Panchayat is not elected by the voters of the Gaon Panchayat but is chosen /elected "Indirectly" by the Gaon Panchayat Members in the first meeting of the Gaon Panchayat, the word "direct" has not prefixed the word "election" in Sub-section 6(3). Thus, Section 6(3) distinguishingly illustrate the exigencies where the elections are direct. The position is made further clear by Section 11 of the Act, whereby the authority for deciding election disputes arising out of the election of the Vice-President of the Gaon Panchayat has been conferred on the Deputy Commissioner of the district. In short, justifiably enough, since the election of the Vice-President of the Gaon Panchayat is not direct, the word election appearing in Section 11 is not prefixed by the word direct.

30. The message, which emerges from a joint reading of Sections 6(3), 11 and 129(b) is that when a person is not "directly" elected by voters, in general, of the Constituency, but is elected "indirectly" by the elected members of the

Constituency, the Panchayat Election Tribunal, constituted within the meaning of Section 127. for deciding all "direct" election petitions, cannot decide an election dispute arising out of an "indirect" election.

31. The above impression gets reinforced, when one goes a little deeper into the provisions of the said Act. A close reading of Section 32 of the Act, which relates to constitution of Anchalik Panchayat reveals that this section states as follows :--

"32. Constitution of Anchalik Panchayat: (1) Every Anchalik Panchayat shall consist of--

(a) one member from each Gaon Panchayat to be directly elected from the territorial constituencies of the Gaon Panchayat under the jurisdiction of the Anchalik Panchayat;

(b) the President of the Gaon Panchayat falling within the jurisdiction of the Anchalik Panchayat

(c) the members of the House of the People and the Members of the legislative Assembly of the State representing constituencies, which comprise wholly or partly, the Anchalik Panchayat.

(2) Every member shall have the right to vote whether or not chosen by direct election in the meetings of the Anchalik Panchayat.

(Emphasis is supplied by me)

32. It is abundantly clear from a bare reading of Section 32 that this Section, which relates to composition of Anchalik Panchayat, clearly lays down that one member from each Gaon Panchayat shall be "directly" elected to the Anchalik Panchayat by the voters of the territorial constituency of the Gaon Panchayat concerned. Here, again, since the Anchalik Panchayat member is elected "directly" from the Gaon Panchayat, Section 32(1)(a") uses the word "directly" elected. Even in the case of Zilla Parishad, which is constituted u/s 65 of the said Act, since members of Zilla Parishad are directly elected, Section 65 (1) too uses the word "directly" elected in respect of members of the Zilla Parishad.

33. It may be noted that since the voters of the various constituencies of the Gaon Panchayats, coming within the territorial limits of the jurisdiction of the Anchalik Panchayat, do not directly elect President and Vice-President of the Anchalik Panchayat, Section 37 (1), which relates to election of Vice President and President of Anchalik Panchayat lays down as follows :

"37. Election of President and Vice President of Anchalik Panchayat: (1) The directly elected members of the Anchalik Panchayat shall elect from amongst the directly elected members two members as President and Vice President respectively of the Anchalik Panchayat in a meeting (which shall be called the first meeting of the Anchalik Panchayat) to be convened by and presided over by the Deputy Commissioner or the District Commissioner of the District in the manner prescribed. The Deputy commissioner may delegate the powers of

presiding over such meeting to any officer not below the rank of Class-1 Gazetted officer.

(2) If there occurs casual vacancy in the office of the President or the Vice-President, the members shall elect another member from amongst the members as hereinafter provided, as the President or the Vice President, as the case may be, in the manner prescribed:

Provided that no election shall be held if the vacancy is for a period of less than one month."

(Emphasis is added by me)

34. From a bare reading of Section 37 (1), it becomes abundantly clear that the "directly" elected members of Anchalik Panchayat elect from amongst the "directly" elected members, two members as President and Vice President of the Panchayat. The election of the President and Vice President can, therefore, not be described as direct election and it is, in fact, an in house arrangement made by the "directly" elected members of the Anchalik Panchayat to elect two members as President and Vice President. The impression that wherever the voters of the constituency are not involved in electing a member or an office-bearer of the panchayat system, election has not been described as direct becomes strengthened from the fact that even Section 70(1), which relates to election of the President and Vice President of the Zila Parishad, lays down as follows :

"70. Election of President and Vice President of Zilla Parishad: (1) When the Zilla Parishad is constituted u/s 64, the Deputy Commissioner shall call a meeting of the Zilla Parishad (which shall be called the first meeting of the Zilla Parishad) for the election of a President and a Vice president by and from amongst the members di-rectly elected u/s 65(1)(i).

(2) The election of the President or the Vice President of the Zilla Parishad and filling up vacancies in the said office and the determination of disputes relating to such election shall be in accordance with such rules as may be prescribed by the State Government /State Election Commission."

(Emphasis is supplied)

35. A bare reading of Section 70(1) shows that this sub-section speaks only of "election" of President and Vice-President and does not qualify the same as direct election, but at the same time, it lays down that such election of the President and Vice-president have to take place from amongst the members "directly" elected u/s 65(1)(i).

36. It is common knowledge that in a democracy, there are two methods of electing representatives. If the voters directly participate in the election to elect their representatives, it is known as direct election. The election of the members of the House of Commons in Britain as well as election of the members of the

State Assemblies and Lok Sabha, in India, are accepted examples of direct elections except for the members who are nominated to such houses. When, however, voters do not directly participate in the election of their representatives but only choose a directly elected body of representatives as an intermediary body, which, in turn, elects the final representatives for the people is called indirect method of election. Thus, the elections of the speakers of the State Assembly or of Lok Sabha are examples of indirect elections. In indirect election, directly elected representatives of the people make in house arrangement in accordance with their laws to elect their ultimate representative. Election of Upper Chamber in France can be cited as an example of indirect election. In pre-independence era, under the Government of India Act, 1935, members of the Provincial Legislative Assembly were directly elected by the people, but the members of the Federal Legislative Assembly were indirectly elected members inasmuch as people, in general, did not elect members of the Federal legislative Assembly directly; rather, the representatives of the people elected for the Provincial Legislative Assembly used to elect members of the Federal legislative Assembly. In fact, direct and indirect elections form an acknowledged topic of study for students of Political Science.

37. Turning to Section 127, what is worth emphasizing is that since Section 127 speaks of "direct" election petition, there can be no escape from the conclusion that the said Act empowers the State Government to constitute, on recommendation of the High Court, Parichayat Election Tribunal for the purpose of disposing of petitions challenging all "direct" elections held under the said Act. In other words, it is only "direct" election, which can be adjudicated upon and/or decide by such Election Tribunal.

38. It was pointed out by the learned Advocate General, Assam, that notwithstanding the fact that a question of constitutionality of any particular provision has been raised in the writ petition, the writ Court should not decide such question if it is not necessary to ascertain for the purpose of disposal of a writ: petition, the constitutionality or otherwise of such provisions.

39. I find considerable force in the above submissions of the learned Advocate General. Situated thus, it is not necessary for this Court to embark upon the question of constitutionality of Article 243O or of Section 129(b), unless for the purpose of disposal of this writ petition, determination of constitutionality of Article 243O or of Section 129(b) becomes essential.

40. I am guided to adopt the above view from the law laid down in *The State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills and Another*, wherein it has been held as follows :

"In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be

examined and decided. If, however the facts admitted or proved do not attract the impugned provisions, there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters, of academic importance."

(Emphasis is added by me)

41. I may also pause here to point out that it is settled position of law that before pronouncing a law to be void on the ground of inconsistency with Article 226, an attempt should be made to give the statute a construction, if possible, as will not affect the constitutional jurisdiction of the Supreme Court or High Court according to the well known principle of construction that if a provision in a statute is capable of two interpretations, then, that interpretation should be adopted, which will make the provision valid rather than the one, which will make it invalid.

42. Keeping in view the above aspect of the matter, when I closely analyse Section 127, it becomes transparent, as already indicated hereinabove, that Panchayat Election Tribunal, constituted u/s 127, can not decide disputes relating to, and/or arising out of, indirect elections held under the said Act.

43. Bearing above aspect of the matter in mind, when I come to Section 129, what I find glaringly noticeable is that Section 129 does not confine itself to direct or indirect election inasmuch as Section 129 lays down as follows:--

"129. Bar to interference by Courts in electoral matters : Notwithstanding anything contained in this Act (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made under Article 243 of the Constitution of India, shall not be called in question in any Court.

(b) no election to any Panchayat shall be called in question except by an election petition presented within sixty days from the date of declaration of election results to the Tribunal constituted u/s 127."

(Emphasis is added by me)

44. Since the use of the word "election", appearing in Section 129(b), does not stand qualified by the word "direct", Section 129 (b) will, on a cursory reading, obviously include "direct" as well as "indirect" elections. The question, which, now, arises is this : can Section 129 be considered independent of Section 127? The answer to this vital question has to be an emphatic "no"; the reason being that for every wrong, there has to be a remedy available with the aggrieved person. Since the State legislature has chosen, in its wisdom, not to constitute Panchayat Election Tribunal for determining disputes arising of "indirect" elections, the Tribunal, so constituted, can not to my mind, look into or decide disputes arising out of "indirect" elections. When the Tribunal cannot decide the cases Involving indirect elections, the person aggrieved by the result of indirect

election will not be able to seek remedy for his grievances u/s 127. At the same time, Section 129 will bar him from approaching any other Court for redressal of his grievances. The aggrieved person is, thus, left with no remedy at all. Such a situation will be a ridiculous one.

45. The inference that can safely be drawn from the above observations is that Section 129 has to be read subject to the provisions of Section 127 if the legislative intent has to be given its due. In fact, Section 129 and 127 cannot be read keeping each of them in water-tight compartments and/or completely isolated from each other. If Panchayat Election Tribunal has not been vested with powers to decide a particular category or class of disputes arising out of an election, then, such a class or category of disputes would not be barred u/s 129. In other words, not only that Section 129 has to be read subject to the provisions of Section 127, but that Section 129 has to be treated as co-extensive with Section 127.

46. On such a reading, as indicated hereinabove, it will become more than transparent that the disputes arising out of "indirect" election will not be amenable to the jurisdiction of Panchayat Election Tribunals u/s 127 and grievances arising out of such election can be looked into and decided by the High Court under Article 226/227 of the Constitution. Even if there was a Panchayat Election Tribunal for looking into and deciding disputes relating to indirect elections, the Election Tribunals would be subject to the power of superintendence vested in the High Court by Article 227. Viewed from this angle, it is difficult to hold that power of judicial review has been taken away by Section 127.

47. The question, now, which pauses itself for consideration by this Court is this : whether it is possible for the State to vest in Panchayat Election Tribunals limited powers for determination of disputes arising out of a particular class of elections; ? The answer to this question has to be found within the ambit of Article 243O.

48. It is Article 243O, which really empowers the State Legislature to enact laws in matters relating to Panchayat Elections curtailing perhaps, if need be, the jurisdiction of the Civil Courts and High Court. It is, therefore, necessary to look into the provisions of Article 243O, which, I find, lays down as follows :

"243O. Bar to interference by Courts in electoral matters : Notwithstanding anything in this constitution.--

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

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

49. For the purpose of this writ petition, we are not concerned with Article 243O(a). What concerns us is the ambit and scope of Article 243O(b).

50. A careful reading of Article 243O(b) shows that no "election" to any panchayat shall be called in question except by way of an election petition presented before such authority as is provided for by or under any law made by the legislature of a State. In other words, no election to any Panchayat can be questioned before any Court except by making an election petition to such authority as may be provided for by or under any law made by the State Legislature.

51. What Article 243O(b) lays down is that it gives power to the State to make laws for deciding disputes arising out of, or in relation to, elections held to any Panchayat and it is left to the State legislature to provide for the authority, which will dispose of all such disputes. This shows that State has been the given power to exclude jurisdiction of all Courts in matters of election of Panchayat except by way of an election petition presented before such authority as the State Legislature may provide by making law in this regard.

52. In other words, unless and except to the extent the State enact laws barring Courts from deciding questions arising out of elections held for Panchayat, Article 243O(b) will not, by itself, create any bar for a person aggrieved by an election to a Panchayat to approach Civil Court or even High Court. However, if the State legislature enacts laws to constitute an authority to look into such disputes, then, except for the class of disputes in respect of which the State legislature, by making law, vests powers in such authority, the remaining disputes can be raised before any other competent Court, notwithstanding the fact that Panchayat Election Tribunal exists. It is, thus, really for the State legislature to decide the scope and ambit of the Panchayat Election Tribunals.

53. Thus, the State Legislature, in Assam, too have the powers, under Article 243-O, to make law for creation of authority, which will look into the disputes arising out of Panchayat Elections and the State legislature has, in its own wisdom, enacted the said Act. However, instead of imposing complete bar on the jurisdiction of all Courts to entertain all petitions relating to elections to the Panchayat, the State Legislature, in Assam, vested in the Tribunals to be constituted, as indicated above, the powers to decide only such disputes, which arise out of "direct" elections. In short, the State Legislature had the power under Article 243O(b) to enact laws and could have enacted laws for constitution of a Tribunal to look into the disputes arising out of, or relating to, direct as well as indirect elections held under the Panchayat Act, but the State legislature, in their own wisdom, have chosen to bring only direct elections under the jurisdiction of such Tribunal.

54. It logically follows that the disputes arising out of, or relating to, "indirect" elections have to be raised before Courts other than Panchayat Election-Tribunals, Viewed from this angle, when the writ petitioner in the present case

has not been left with any adequate alternative remedy, there is no reason why the High Court under Article 226 cannot entertain matters of "indirect" elections.

55. Coupled with the above, it is also of immense importance to note that while members of Lok Sabha (except for those who are nominated members) are directly elected by the people as their direct representatives, the speaker is elected Indirectly by people's representatives constituting the Lok Sabha (House of People). Though Articles 93 and 178 have advisably used the word "choose" and not "elect" in connection with election of Speakers or Deputy Speakers in respect of Lok Sabha and State legislature respectively, the fact remains that though Speakers are also part of the Lok Sabha or of the Legislature of the State, Speaker's elections are not subject to, and/or governed by, the Representation of People Act.

56. Thus, though Article 329 bars interference by Courts in electoral matters in respect of elections to either House of Parliament or either House of Legislature of a State, the election of Speaker can be challenged/brought before the High Court inasmuch while enacting the law, as per the freedom vested in the appropriate legislature, the Representative of Peoples Act chooses to keep the elections to the office of the Speaker and Deputy Speaker out of the purview of the said Act. This gives an indication that it is possible for the State to not to bring all elections or all categories of elections held in respect of Panchayats within the purview of special Tribunal constituted under Article 243O.

57. What, thus crystallises from the above discussion, if I may reiterate, is that Article 243O(b), in itself, does not impose complete bar on interference in electoral matters by Courts. Any other interpretation of this Article will lead to several incongruent consequences. Assuming for a moment: that the State legislature of a particular State does not enact any law constituting any authority before whom elections held to Panchayat are to be challenged. If Article 243O(b) is treated to have, in itself, imposed a bar on the jurisdiction of the Courts to interfere with every election held under Panchayat system, then, the consequences will be that a person aggrieved by any wrong done in an election to any Panchayat held in such a State will not have any relief at all inasmuch as there being no authority constituted by the State legislatures in this regard, such a person cannot present his grievances in the form of any election petition before any such authority and, at the same time, the Courts will also refuse to entertain the matter on the ground of complete embargo placed on its power by Article 243O(b). In such a situation, the citizens will be left with no remedy in law, which no civilized society, claiming to be governed by Rule of Law, can permit. Looked at from this angle, it is clear that it is eventually for the State legislature to decide as to who will be the authority to consider and dispose of grievances in relation to electoral matters of the Panchayats, what class/classes of disputes arising out of such elections can be entertained by such authority, etc. In other words, contours of the powers of a Panchayat Election Tribunal are basically for the State legislature to settle and decide.

58. In the case at hand, the State legislature, as indicated hereinabove, with the help of its enactment, namely, Assam Panchayat Act. 1994, has chosen to vest in Panchayat Election Tribunals, constituted u/s 127, the power to dispose of election petitions relating to, and arising out of, "direct" elections to the Panchayat held under the said Act. The remedy having not been provided under the said Act for the wrongs done in respect of "indirect" elections held under the said Act, no election petition will lie in respect, of "indirect" elections before such tribunal and the aggrieved person is, therefore, left to agitate the matter before the Civil Court by way of suit or before High Court by way of writ application.

59. In the case at hand, as is reflected from the discussions held hereinabove, elections of the President of the Anchalik Panchayat is an indirect election. Since such an election is not governed by the provisions of Section 127, the bar, which Section 129 chooses to impose, on the powers of the Civil Court and/or the High Court, will not apply.

60. In the course of his submissions made before this Court, Mr. A.M. Mazumdar has also drawn the attention of this Court, as already indicated above, to the decision of this Court in Amal Chandra Choudhury v. State of Assam reported in 2002 (2) GLT 547, and submitted that in this case, the learned single Judge has taken the view that in respect of all election matters relating to Panchayat, jurisdiction of the High Court under Article 226 is barred and this Court may, therefore, not take a contrary view in the matter.

61. I have carefully perused the decision in Amal Chandra Choudhury's case (supra) and I find that the subject matter in Amal Chandra Choudhury's case (supra) was covered by Article 243O(a); whereas the present writ petition raises a subject of controversy under Article 243O(b) inasmuch as the case of Amal Chandra Choudhury (supra) relates to reservation of office of President and Vice-President of Zilla Parishad for women. The decision in Amal Chandra Choudhury's case is confined to the facts of its own case and this decision has nowhere decided as to what the scope and ambit of Section 127 and/or of Section 129 is and whether Section 129 should be read subject to, or independent of, the provisions of Section 127.

62. In view of the above, whatever view this Court may take on the subject matter of the controversy of the present case, it has, strictly speaking, has not been dealt with in, arid/or decided in, Amal Chandra Choudhuary's case (supra).

63. Reverting to the factual matrix of the present case, it opposite is to emphasise, if I may, that the essential facts, as Indicated in Para 20 and 21 above, leading to the present writ petition have not been controverted by any of the respondents. Under these circumstances, one has na option but to hold, and I do hold, that the Respondent No. 3 failed to adhere to the procedure laid down by Rule 45 (1).

64. Since, as already indicated above, no expeditions and effective alternative remedy has been prescribed by the State Legislature in the said Act for

settlement of disputes arising out of "indirect" elections, the person aggrieved by indirect elections held under the said Act, such as, election, to the offices of President and/or Vice-president of the Anchalik Panchayat cannot be deprived of their right to approach the High Court for appropriate reliefs under Article 226. In other words, this Court can, indeed, exercise powers of judicial review in matters of disputes arising out of "indirect" elections envisaged under the said Act.

65. In view of what has been discussed above and in consideration of the factual matrix of the present case, I hold that the present writ petition is maintainable under the law and since the respondent No. 3 violated the procedure prescribed under Rule 45(1), as indicated hereinabove, the election of the respondent No. 5 as President of Silchar Anchalik Panchayat cannot be sustained and the notification, dated 31-3-2002, declaring the respondent No. 5 as elected to the office of the President of Silchar Anchalik Panchayat deserves to be set aside and quashed.

66. In the result, and for the reasons discussed above, this writ petition succeeds. The impugned order, dated 31-4-2002, declaring, the respondent No. 5 as elected to the office of the President of No. 10 Silchar Anchalik Panchayat is hereby set aside and quashed and the respondent No. 2 is directed to hold an election afresh for the office of the President of No. 10 Silchar Anchalik Panchayat, within a period of one month from today, and until the election is held as directed and the result announced, Vice President of the said Anchalik Panchayat shall discharge, in terms of Section 41 (C) of the said Act, the functions of the President of the said Panchayat.

67. This writ petition shall stand disposed of in terms of above directions.

68. No order as to costs.