

(1983) 12 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 1523 of 1983

Meva Ram Arya

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 06-12-1983

Acts Referred:

Citation : AIR 1984 Delhi 123 : (1984) 25 DLT 201

Hon'ble Judges : Rajinder Sachar, J; Jagdish Chandra, J

Bench : Division Bench

Advocate : P.N. Lekhi, Arun Jaitley, Y.S. Chitale, Y.K. Sabharwal, P.S. Sharma and C.L. Choudhry, for the Appellant;

Judgement

Sachar, J.

(1) This petition under Article 226 of the Constitution of India challenges the election as members of Delhi Development Authority of three representatives of the Metropolitan Council from amongst themselves held on 21.7.1983.

(2) Election to the Metropolitan Council were held in the month of February, 1983. At present out of 56 elected members 34 belong to the political party, known as Congress (1) and 22 belong to the opposition ; 19 of political party known as Bharatiya Janata Party (B.J.P.) ; 2 of Lok Dal and 1 of Janata. The petitioner is elected member from the Patel Nagar Constituency and belongs to B.J.P.

(3) Parliament has passed an Act called Delhi Administration Act, 1966 (hereinafter to be referred to as the Act of 1966). The Act provides for the administration of the Union Territory of Delhi and for matters connected therewith.

(4) Section 3 of the Act of 1966 provides for a constitution of Metropolitan Council for Delhi. Total number of seats in the Metropolitan Council to be filled by persons chosen by direct election from territorial constituencies shall be 56.

Section 8 provides that every person whose name is for the time being entered in the electoral roll of a constituency shall be entitled to vote at the election of a member from that constituency.

(5) Election to the Council is held in the same manner, as the provisions of Representatives of People Act, 1951 provide for in relation to the election to the legislative assembly of a State. The council, unless sooner dissolved shall continue for five years.

(6) Parliament has passed an Act called the Delhi Development Act 1957 (hereinafter to be referred to as the Dda Act) being an Act to provide for the development of Delhi according to plan and for matters ancillary thereto.

(7) Section 3 of the Dda act constitutes an authority to be called the Delhi Development Authority (hereinafter to be called the Authority) which shall be a body corporate. Sub-section (3) provides-for the constitution of the Authority. The total membership is 13. Section 3(3) (e) & (f) originally enacted read as under.

(3)The authority shall consist of the following members ; namely ;

(E)as and when the Municipal Corporation of Delhi is established, two representatives of that Corporation to be elected by the Councillors and aldermen of the Corporation from among themselves ;

(F)Two representatives of the Advisory committee in respect of the Union Territory of Delhi constituted by the President by notification of the government of India in the Ministry of Home Affairs. No. 19/30/56 Sri dated the 8th November, 1956, to be elected by the members of that committee from among themselves ;

(8) Section 36 of the Act of 1966 substituted for clause (f) of Sub-section (3) the following clause and it continues in existence even now ;

(F)as and when the Metropolitan Council for the Union Territory of Delhi is constituted three representatives of that council to be elected by the members of the council from amongst themselves and until that council is constituted, three representatives of the interim Metropolitan Council to be elected by the Members of the Interim Metropolitan Council from among themselves.

(9) By section 3(7) of the Dda Act an elected member shall hold office for a term of five years. Section 56(1) of the Act authorises the Central Government to make rule to carry out the purpose of the Act. Sub-section (2) empowers the Central Government without prejudice to the generality of the foregoing powers to frame rules to provide for amongst others for the following matters.

(A)the manner of election of representatives of the Municipal Corporation of Delhi under clause (e) of Sub-section (3) of Section 3.

(10) As noticed above Section 3(3)(f) of the Dda Act provides that three

representatives of the Council are to be elected by members of the Council from amongst themselves to the DDA. On 21.7.83 Mr. Jag Parvesh Chander, Chief Executive Councillor, Metropolitan Council moved motion in the Council for election of three representatives to the authority by majority vote. Objection was raised by a member of the Council who pleaded that the election should be by means of proportional representation by means of single transferable vote. The Chairman of the Council however stated that a motion had been received and he could not decide about the propriety of the election. The result was that the motion as moved was passed. It may be mentioned that though that is not of such significance in the present proceedings that earlier the chairman had suspended the opposition B.J.P. members from attending the session so that when the motion was moved and passed only members of the congress-d) party were present. The petitioner's challenge is based on the assertion that in law and convention and under the direction of the chairman of the Council the only permissible method for electing three representatives to the Authority from amongst the members of the Council is through the principle of proportional representation by means of a single transferable vote and as that method was admittedly not followed in the election held at the meeting of July, 21, 1983 the election of three representatives now imp led as respondents Nos. 6 to 8 by means of our order dt. 27.10.83 is vitiated and null and void. The respondents do not accept that there is any legal infirmity in the method adopted namely majority vote through a motion. It is the validity of these respective contentions that has to be examined in the present proceedings. The insistence on choice of the method of voting by the respective parties is not because of any emotional attachment to the particular method being supported. It has a practical consequence. Thus if the principle of majority vote by which the election has been held is followed then the majority party in the Metropolitan Council as represented by the respondents 6 to 8 is in a position to elect all the three representatives to the Authority while if the alternative method of voting on the principle of proportional representation by means of single transferable vote is to be followed (then in the absence of any floor crossing) the result may be that the petitioner's party will be able to elect one of its own party member as representative to the authority out of three representatives that are to be elected to the Authority. Of course the controversy before us is to the principle of method of voting and not to the actual result that may or may not follow.

(11) The whole controversy centres on what interpretation is to be given to the words three representatives of the council to be elected by members of the council from amongst themselves. In short what did Parliament precisely mean by specifying "from among themselves". Parties are in agreement that electoral college for purpose of voting are to be members of the council. They are also agreed that three representatives to be elected must be members of the Council and not from outside. But there is irreconcilable difference on how this mandate of the legislature is to be effectuated i.e. the manner of voting. The respondents maintain that the manner of voting has been left to the sole discretion of the

metropolitan council which may devise any system of voting for this purpose. The petitioner however insists that Parliament meant to permit and authorise only one manner of voting i.e. according to the principle of proportional representation by means of a single transferable vote. Which of the contentions is the correct one is the burden of this judgment.

(12) In appreciating the problem we feel that it will be helpful to know in what manner three representatives have been elected to the Authority from amongst the members of the council in the previous years.

(13) Section 32 of the Act of 1966 makes a provision for interim metropolitan council to be constituted until a metropolitan council has been duly constituted and summoned to meet for the first time under the provisions of 1966 Act. Section 32(1) (a) provides that the interim metropolitan council shall consist of 42 members to be elected by members of the electoral college for Delhi and such election being held in accordance with the system of proportional representation by means of a single transferable vote.

(14) The interim Metropolitan Council was first constituted in 1966. On 17.10.66 the Chief Executive Councillor moved that the members of the interim Metropolitan Council do proceed to elect by majority three members from amongst themselves to serve as members of the Delhi Development Authority. The Chief Executive Councillor then belonged to the Congress Party. An amendment was moved by the opposition suggesting that the word "by majority vote" should be substituted by the words "by a system of proportional representation by means of a single transferable vote. This amendment to the motion was accepted and then approved by the Metropolitan Council. The election was subsequently held by a system of proportional representation by means of a single transferable vote.

(15) The successive Metropolitan Council have been elected and constituted in 1967 ; 1972 ; 1977 and the present one in 1983. In the year 1967 the then Jana Sangh had a strength of 36 members and the Congress party had a strength of 21 members and four members belonging to the other opposition group. In 1972 Congress Party had a majority in the Metropolitan Council. In 1977 the Congress party was a minority and the Janata Party had a majority in the Council. The proceedings of the Metropolitan Council shows that on 10.4.67 the Chief Executive Councillor who then belonged to the Jana Sangh moved that the election to elect three members to the Dda be held by means of proportional representation through a system of single transferable vote and the detailed programme finalised by the Chairman The said "motion was carried.

(16) The Metropolitan Council was also constituted in 1972. Extract from the Council Bulletin of the Metropolitan Council dated 24/3/1972 details the direction issued by the Chairman of the Council in regard to the election of three representatives of the Council on D.D.A. to the effect that they shall be elected in accordance with the system of proportional representation by means of a single

transferable vote and the voting at each election shall be by secret ballot. The Secretary of the Council shall be the returning officer for these election.

(17) Again the chairman issued directions dated 16.8.1977 in regard to the election of:

(1)two representatives of the Council to serve as members of the Court of University of Delhi. (2) one representative of the Council to serve on D.T.C. (3) three representatives of the council on D.D,A. to the effect that the representatives of the council on the above mentioned bodies shall be elected in accordance with the system of proportional representation by means of a single transferable vote and by secret ballot. Direction was also given with regard to the Secretary being Election Officer. Form was also presented for nomination papers.

(18) Thus ever since 1966 when the interim council was constituted the method of election of three representatives to the Authority has consistently been by a system of proportional representation by means of single transferable vote. This previous practice and history is not disputed by the respondents who however maintain that this only shows the practice but docs not mean that section 3(3)(f) of D.D.A. Act only permits .this course of action and Therefore it was permissible for the Metropolitan Council as it has done in the present case to change the method of voting to that of majority vote.

(19) The contention of Dr. Chitley. learned counsel appearing for the council is that the previous practice cannot control the meaning of-the word "elected" in section 3(3)(f) of D.D.A. Act which lays down no set procedure. He emphasises that the election of representatives does not necessarily postulate following one single method of election that is proportional representation by means of single transferable vote and that democratic functioning cannot be said to suffer simply because election was held by majority vote. Thus it has been stated that "Unless the law under which the election is held expressly requires more, a plurality of votes cast will be sufficient to elect notwithstanding these may constitute but a small portion of those who are entitled to vote ; See Constitutional Limitations by Thomas M. Cooley ; third edition page 619.

(20) "ELECTION" is defined as act of choosing by vote a person to fill an office or to membership in a Society as the ballot, uplifted hands, or viva voce and hence electorate"s regular exercise of its function; S Words and Phrases Vol. 14 Permanent Edition published by Weed Publishing Ce., page 225.

(21) The simplest means of deciding an election is the plurality rule. To win a candidate need only poll more votes than any other single opponent ; he need as required by the majority formula, poll more votes than the combined opposition vide The New Encyclopedia Britannica; Vol. 6 (15th Ed) page 530.

(22) The argument so put is unexceptionable. As a matter of fact Mr. Lekhi ably assisted by Mr. Arun Jaitley never suggested that the plurality rule is by itself undemocratic. Indeed it would be heresy to say so because our national and

stale assembly elections are themselves held on the basis of plurality rule. His argument only is that Section 3(3)(f) of D.D.A. Act which provides for election from members of the Council from amongst themselves means that the only method of election permissible and contemplated by the legislature was by system of proportional representation by means of a single transferable vote. The argument is that election from bodies like Metropolitan Council and Municipal Corporation from amongst its members either to its own committees or for sending representatives to the outside bodies like D.D.A. University, must necessarily reflect the consensus of the entire council and that. the same is only possible if elections to these bodies are held by method of proportional representations by means of single transferable vote.

(23) Now elections also serve to reinforce the stability and legitimacy of the political community in which they take place. Elections lend authority and legitimacy to the acts of those who wield power in the name of the people.

"ELECTION can also confirm the worth and dignity of the individual citizen as a human being. It is for just this reason that the age long battle for the right to vote and the demand for equality in electoral participation can be seen as the manifestation of a profound human craving for personal fulfillment, (See the New) Encyclopedia Britannica Vol. 6 page 53).

(24) It is also recognised that neither the majority nor the plurality formulas distribute legislative seats in proportion to the share of the popular vote one by the competing parties. Both the formulas tend to award the Strongest party disproportionately and to handicap the weaker parties. On the other hand, "Proportional representation requires that the distribution of offices be proportional to the distribution of the popular vote among competing political parties or candidates. It seeks to overcome the distribution imbalances that result from majority and plurality formulas and to create a representative body that reflects the distribution of opinion within the electorate.

(25) Developed in the 19th Century in Denmark and in Britain the single transferable vote formula or Hare system (after one of its English Development T. Hare) employs a ballot that allows the voter to rank the competing candidates in order of preference.

(26) Any Candidate receiving the necessary quota of first preference votes is awarded a seat (See. The New Encyclopedia Britannica Vol. 6 Page 530-531).

(27) The object of holding elections by proportional representation by means of a single transferable vote is that every party or group may as far as possible get representation in the committee in proportion to the numerical strength of the party in the house : See Practice and Procedure of Parliament by M.N. Kaul and S.L. Shakdher Vol. 2 page 623 (Foot Note 1).

(28) It is in the context of these principles that Mr. Lethi seeks to suggest that the words "from amongst themselves" used by the legislature could only have

means a system of voting by proportional representation and that is why not only the practice of the Council right since its inception but also relies on the understanding of these words by the rule making authority.

(29) Now section 3(3)(e) of D.D.A. Act provides for election of two representatives of the corporation to the Authority to be elected by the Councillors and aldermen from amongst themselves (the same phraseology as used in Section 3(3)(f) of D.D.A. Act). The Government of India in exercise of the powers conferred by Section 56(1) of the Act read with clause (a) sub-section 2 of said section has framed rules which were published on 10/5/1958 which are called the Delhi Development Authority (election of representatives) of Delhi Rules 1958 (to be called 1958 Rules).

(30) Rule 2 provides that the election of 2 representatives of the Municipal Corporation of Delhi shall be held at a meeting of the Corporation in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.

(31) Counsel for the petitioner naturally invokes the 1958 rules and practice of the Council itself to urge that this is what legislature meant by using the words elected from amongst themselves.

(32) Dr. Chitaley concedes that for election in terms of Section 3(3)(e) of D.D.A. Act the method of election will have to be that laid down in the Rules of 1958 that is the system of proportional representation by means of single transferable vote. It is however his contention that the mere fact that the election u/s 3(3)(e) is to be by means of one method it does not mean that the same method has mandatorily to be followed under clause (f) of Section 3(3) of the D.D.A. Act especially when no rules have been framed for election under clause (f) of Section 3(3) of the D.D.A. Act. According to the the counsel the words "elect from amongst themselves" only means that the electoral college would be in the case of Corporation all the Councillors of corporation and in the case of Metropolitan Council all the members of the Metropolitan Council and that elected representative must also be from amongst Councillors but this does not give any indication as to by what method the representatives have to be elected. In this argument Mr. Chitaley ignores the aid to the interpretation for the words from amongst themselves to be found not only by the constant practice of council in the past but to the understanding of the rule making authority in giving shape to these words in 1958 Rules. Right from the beginning of 1966 onward even when the Congress party was a minority in 1967 & 1977 but a majority party in 1972 the procedure of proportional representation by means of single transferable vote was consistently followed by the council without objection.

(33) The doctrine of contemporanea Expositions an aid to interpretation if the language is ambiguous is well recognised in our country. In this connection reference may be made to Mathura Mohan Saha and others Vs. Rarnkumar

Chittacona District Board AIR 1916 Cal. 136. Section 138(d) of the Bengal Local Self Government Act authorised the Lt. Governor to make rules consistent with the Act for the purpose of regulating the powers of the District Boards to transfer property. It was contended before the Court that the word "regulate" only authorised the Lt. Governor to frame rules which impose restrictions on alienation but not to prescribe the formalities to be observed for alienation. Overruling thus the court observed that "regulate" was comprehensive enough to include not only rules which restrict the power of alienation to property of specified value and kind, but also rules which regulate the mode in which the alienation is to be effected. In coming to this conclusion it took note of the fact that in the interpretation of the scope of S. 138 (d) some stress may also be laid upon the circumstances that immediately after the enactment of the section by the legislature the construction was accepted by the bench was placed thereon by the authority charged with the duty of framing the rules. The bench referred with approval the earlier bench decision in *Baleshwar Bagatri* V. *Bhagirathi Dass* (1908) 35 Cal. 701 : which said :

IT is well settled principal of interpretation that courts in constructing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means a controlling effect upon the courts and may be disregarded for cogent and persuasive reasons." (Page 142).

(34) Reference may also be made to *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*, . By a notification of 1969 issued u/s 16(1) of the Securities Contracts (Regulation) Act, 1956 the Central Government banned with immediate effect all forward trading in shares at all the Stock Exchanges in the country. The appellant had pleaded that the word "but such contract" under the proviso to the notification issued on June 27, 1969 was referable to existing outstanding contracts. The courts negated this contention. In coming to this conclusion the bench referred to some documents which had come into existence simultaneously with the issuance of the notification by the Central Government explaining the manner in which outstanding transactions were intended to be closed or liquidated. The principle of contemporanea exposition was accepted by the bench when it observed :

" THE principle of contemporanea exposition (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked through the same will not always be decisive of the question of construction (Maxwell 12th ed. page 268). In *Crawford on Statutory Construction* (1940 ed) in para 219 (at pp. 393-395) it has been stated that administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) Generally should be clearly wrong before it is overturned ; such a construction, commonly referred to as practical construction although not "controlling is nevertheless

entitled to considerable weight ; it is highly persuasive."

The Court specifically approved of the observations made in earlier Calcutta decisions namely 35 Cal. 701 and AIR 1916 Cal. 136.

(35) Mr. Chitaley however referred us to Maxwell on Interpretation of Statute 12th Edition Page 269 and the observations made therein; namely; "The leading modern case on contemporizes exposition is the Campbell College case in which the House of Lords has made it clear that the doctrine is to be applied only to the construction of ambiguous language in very old statutes. The view expressed by Lord Watson last century that Contemporizes exposition could have no application to a modern Act, is thus confirmed."

(36) He also referred to Cruise on Statute Law Ed. I page 81 to the following observations;

"CONTEMPORANEA exposition ought rarely, if over, to be applied to modern Acts."

(37) In 1964 the House of Lords again declared that contemporizes exposition is of no value in construing a modern statute ; Lord Upjohn said that contemporanea exposition could have no application to a statute, although it was passed over 100 years ago the language of which was plain and unambiguous."

(38) We do not read these observations to mean that the principle of contemporanea expositio is never to be invoked even whenever the language "from amongst themselves" has been given a meaning over such a long course and where at the minimum there could be some ambiguity (though in the context of election to similar other bodies as we shall show later) it has only one meaning that is a system of proportional representation by means of a single transferable vote. However in view of Desh Bandhu Gupta case an argument suggesting total rejection of principle of contemporanea exposition is not even an arguable contention.

(39) In our view the meaning of the "words elected by the council from amongst themselves "must necessarily denote a system of proportional representation by means of a single transferable vote. This flows not only from the language but also from the universal practice and rules of other bodies in the country which all require this system of proportional representation to be followed whenever elections are held by a larger body to elect a smaller committee to itself or to any other outside committee.

(40) It is well established that to find out the meaning of the word recourse may legitimately be had to the state of law and the process by which the law has evolved. The Metropolitan Council constituted in 1966 which is elected on adult suffrage by voters of Delhi which is elected on adult suffrage by voters of Delhi is to send three representatives to the Authority Prior to that since 1958 Rules had been framed u/s 3(3)(e) of the D.D.A. Act laying down that election for representatives to the Authority from amongst members of the Corporation shall be by a system of proportional representation by means of a single transferable

vote. When Clause (f) of Section 3(3) of D.D.A. Act was substituted by Section 36 of the 1966 Act providing for election of representation from amongst the members of the Council to the Authority, it would be legitimate to hold that Parliament was aware of the method of electing two representatives from amongst the Councillors of the Corporation as laid down in 1958 Rules and Therefore must have meant that the same method will be followed when electing representatives from amongst the members of the Metropolitan Council. There is no earthly reason to imagine why the Parliament would think of providing two different procedures for election to the same body i. e. Authority. Both the Municipal Corporation and the Metropolitan Council are elected by the same set of voters. For over a decade 1958 Election Rules have satisfactorily worked. The election of representatives is to the same body i. e. Authority. In the absence of any compelling reason which we find none, continuity of the system as well the same method of voting by proportional representation to be found in all analogous bodies and situations compel us to come to the conclusion that the only logical rational interpretation of Section 3(3)(f) is to hold that mode of election of three representatives to be elected by members of the council from amongst themselves that is permissible is by a system of proportional representation by means of a single transferable vote. The council itself recognises that any small committee to be elected by its members the process must be this system of proportional representation. Thus in exercise of powers u/s 24 of 1966 Act, Metropolitan Council has framed Rules called Rules of Procedure and Conduct of Business in Metropolitan Council of Delhi By an amendment made on 18th June, 1983, Rule 183A has been added providing for constitution of a committee on Estimates 9 members for which members of the house are to be elected from amongst its members by the principle of representation by means of a single transferable vote. Dr. Chitley however sought to minimise the importance of this amendment by saying that at the same time amendments had also been made of Rule 181A and Rule 190A for Constitution of Library committee or committee on petitions which empower the chairman to nominate members of the. e committees obviously suggesting that in theory chairman may nominate all members from the majority party. But this conclusion is not correct because the action of chairman is controlled by Rule 136 (1) (e) of the Rules of Procedure which empowers "the chairman-to make nomination to a council committee in proportion to the strength of the party thus bringing the same result which would follow if vacancies were filled by election by the system of proportional representation by means of a single transferable vote-thus this is the only mode of election recognised for filling vacancies to all the committee of the council.

(41) Part Iv A of Representation of People Act, 1950 provides for the manner of filling seats in the council of States to be filled by Representatives of Union Territories u/s 27A of 1950 Act for the purpose of filling any seat, there shall be an electoral college for each such territory. Under fourth schedule to the Constitution, Delhi has been accorded three seats in the council of States. By

Section 35 of 1966 Act, Sub-section (3) of Section 27A of 1950 Act was substituted to provide that the electoral college for Union Territory of Delhi shall consist of members of Metropolitan Council constituted under 1966 Act. Section 27H of 1950 Act further provides for seats to be filled in accordance with the system of proportional representation by means of a single transferable vote.

(42) Now let us have a look at how the Constitution directs the filling of seats to the Council of States. Article 80(4) provides that the representatives of each State in the Council of States shall be elected by the elected members of State legislatures in accordance with the system of proportional representation by means of a single transferable vote. Clause (3) of Article 171 also provides that of total number of legislative Council of a State $\frac{1}{3}$ shall be elected by electorates consisting of members of municipalities, district boards, and such other local authorities in the State as Parliament may by law specify sub clause (b) of clause (3) of Article 171 provides that one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India ; Sub clause (e) provides that one twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State---...Clause (d) provides that one third shall be elected by the members of the Legislative Assembly of the State from amongst the persons who are not members of the assembly. Clause 4 (of Article 171 makes it clear that the members, to be elected under sub-clause (a) (b) and (e) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by the Parliament and the election under the said sub-clause and under clause (d) shall be held in accordance with the system of proportional representation by means of a single transferable vote

(43) It is important to note that of election from municipalities and local authorities (and Metropolitan Council in Delhi could as well be equated as a local authority) the only permissible method is that of proportional representation indicating the constitutional sanction to the principle that normally democratic functioning requires that when a bigger body has to elect a smaller number of representative to an outside body the only fair manner of doing is to follow the system of voting of proportional representation by means of a single transferable vote.

(44) Now let us have a look at how Parliament the source of legislative procedure and wisdom deals with this aspect of electing representatives by it to those of its committees or to outside bodies. Thus Rule 308, Rule 310 Rule 312A of Rules of Procedure and conduct of Business in Lok Sabha deals with the constitution of a committee on public Accounts committee or estimates committee on public undertakings respectively. All these committees are to be elected by House from amongst its members according to the principle of proportional representation by means of a single transferable vote vide Rule 309, 311, 312B (1) respectively.

(45) Some manner of voting as that for elections to committees namely by

means of single transferable vote as per Rule 108A of Directions by the Speaker of Lok Sabha is used for other committee and finds mention in Practice and procedure of Parliament by M. N. Kaul and S.L. Shakdhar 3rd Edition page 623 :

"ON a motion moved by the Minister concerned members of Parliament are elected by either House to serve on committees or bodies other than Parliamentary committees, which are set up in pursuance of the provisions of the Constitution, or under the provisions of an Act of Parliament, or in accordance with the Provisions of any resolution of the Government Constituting such a committee or body Elections to such committees or bodies are held in the same manner as in the case of other Parliamentary committees."

(46) Mr. Chitlay had sought to minimise the importance of this method being followed by Lok Sabha by urging that as motion has to be moved for election it means that the motion could specify a method other than by the system of proportional representation. We do not agree. The motion is moved because anything that is to be decided by the House must necessarily be initiated and that can be done only by a motion. But there is a compulsion as mentioned above because Rules 309, 311 of Rules of Procedure and Direction 108A lay down the mode i. e. the system of proportional representation by means of a single transferable vote. It must Therefore be accepted that the practice and procedure of Lok Sabha is against the plea of the respondent,

(47) Dr. Chitlay then argued that even if we were to interpret the words "from amongst themselves" in Section 3(3)(f) of the Act to require a system of proportional representation to be followed the matter would remain inchoate because no mention of various details of election including the procedure for counting is to be found therein. He referred to Rule 10 (b) D.D.A. (Election of Representatives of Delhi Municipal Corporation Rules 1958) (called 1958 Rules) which incorporates the provisions of Rules 115, 116 etc. of the 1956 representation of People (Conduct of Elections and Election Petition) Rules, 1956 (now substituted by Part VII of 1961 of Conduct of Election Rules. 1961) to urge that all the details of counting etc. are brought in by specific incorporation, so put the problem my look deceptively insuperable but in fact is not so. The reason is that in the direction issued by the Chairman of the Council in 1971 and 1977 it has been mentioned that the representatives to the Authority shall be elected by system of proportional representation by means of a single transferable -This system is being followed ever since 1966. Directions have been even provided form of nomination and even specified that the Secretary of the Council shall be the Returning Officer, Representation of People Act 1951 (Part I and Part III XI-dealing with elections, counting) and the Rules are applicable to the elections to the Council vide Section 9 of 1966 Act. But most important is that in election from Council to DDA ever since 1966 it is this system of proportional representation by means of a single transferable vote that has been consistently followed, so that this problem of various details of counting are well known and already part of the election procedure of the council itself, which has been in

existence for over decades. We may also mention that in this system of proportional representation by means of a single transferable vote there is only one procedure of counting of votes, and Conduct of Elections, Elections Rules 1956 (Rule 115 onwards) only illustrate the manner of working of this system. This method is so well known and established that once it is held, as we do, that voting will be in accordance with the principle of proportional representation by means of a single transferable vote, the rest is a matter of routine and details can be filled up easily and there is no ambiguity about it. This argument of imagined lacuna is obviously without merit.

(48) Mr. Chitley then urged that because there were no rules framed u/s 3(3)(f) of the Act unlike u/s 3(3)(e) of the Act no compulsion in law can be read as requiring the Metropolitan Council to go on following this system of election by proportional representation. This is miss-appreciating the argument of the petitioner. The question is not of any such compulsion of practice, because on our finding the interpretation of words "shall be elected by members from amongst themselves" only permits one mode of voting to be followed i. e. by system of proportional representation by means of single transferable vote. It is also not difficult to divine why no rules for electing representatives from the Council have been framed unlike that for Municipal Corporation. It would be readily conceded that even though both bodies have been constituted by Parliament Act, yet there is a vital difference of power and privilege between these two bodies. Municipal Corporation represents an aspect of the local administration. Delhi has not got full fledged statehood though there has been a long standing near unanimous demand from all parties and section of the people. Effort, Therefore, has always been made by the Parliament to grant as liberal a representations possible to the people of Delhi in governing themselves. The statement of objects and reasons for the 1966 Act clearly states that the bill has been brought forward with the object of providing a larger measure of association of the representatives of the people of the Union Territory of Delhi with the Administration of the territory. Thus the qualification for being a member of the Council are the same as being for a member of the house of Parliament; the procedure to determine whether a member has become disqualified also is the same as provided in the case of a member of Parliament, (See Section 19 of the Act of 1966). The powers and privileges of the members u/s 20 of the Act are much more than given to the Corporation members either under the D. M. C. Act or under any other statutory provision. It was presumably in recognition of the delicacy of the situation and the status of the members of the Metropolitan Council that no rules have been framed for the purpose of Section 3(3)(f) of Dda Act. It was considered more graceful to let the council determine its own procedure. But this freedom to the Council could not be invoked by it not to act in the manner as was the intention of the Parliament by using the words elected from amongst themselves, and also indicated by Dda (Corporation Rules) 1958. This sensitivity of refrain on the part of Government of India can not assist the respondent in their untenable stand.

(49) Dr. Chitley had then urged that all matters including the election u/s 3(3)(f)

of Dda Act are to be disposed of in terms of Section 17(1) of 1966 Act which provides that all questions at any sitting of the Metropolitan Council shall be determined by a majority of vote of members present and Voting and Therefore, the procedure of majority vote adopted at the impugned election was valid. We cannot agree. The first informally and contradiction in this argument if accepted is that it would suggest that all elections to Dda from the members of Council held since 1966 onwards were invalid-rather a tall proposition to accept. This argument also erroneously assumed that the word "question" used in Section 17 included an election of representatives to the DDA. Now the word "question" is defined in the Webster's Iii International Dictionary Vol I page 1863 to mean a specific point at is ue on under discussion, something the correctness of existence of which is open to doubt, a dispute open for discussion or the bring of such a subject on proposal to vote. Similarly Black's Law Dictionary page 1121 defines "question" as a subject or point of investigation, examination or debate appoint on which the parties are not agreed and which is submitted to the decision of a Judge and Jury. To equate the word "election" with "question is to do violence to the former. Election is an Act of choosing or selecting one or more from a greater number of persons""The section of one person from a specified class to discharge certain duties in State, Corporation or Society. Election ordinarily has reference to a choice or selection by electors (Vide B lack's Law Dictionary page 464). Similarly "Election" means choice, selection, or an act of process of choosing a person for office, positioned membership by voting (Webster's Iii International Law Dictionary page 71).

(50) Section 17(1) provides for the manner of voting of any question at a sitting of the Council and must necessarily relate to the functions which are to be performed by the council under the 1966 Act. Those are to be found in Section 22 which lay down that the metropolitan council shall have the-right to discuss and make recommendations on the matters mentioned therein, including proposals for extension to Delhi, or any enactment in force is State or Concurrent List or proposal for undertaking legislation with respect to any of the matters in these lists or proposals for legislation referred to it .by Administrator, estimated receipts and expenditure pertaining to Delhi, or any matter referred to it by Administrator. All these matters have to be decided by the Council and Section 17(1) gives a guideline that they .shall be decided by a majority of votes But the. election of representative to the D. D.A. is not one of the function of the Metropolitan Council under the 1966 Act. The representatives to be elected to the D.D. A. flows from section 3(3)(f) of the D. D. A. Act. It cannot be disputed that if rules had been framed u/s 56 of D. D. A. Act laying down the manner of Election by system of proportional representation it could not have been urged that notwithstanding the said rules section 17 (1) of the 1966 Act would over-ride such a rule and permit the election for representatives to D.D. A. to be held by means of a majority vote. If that be so it is apparent that reliance on Section 17 (1) of 1966 Act to spell out the method for electing representatives u/s 3(3) (f) the D. D. A. Act is misconceived .It is apparent that the method of voting for

election of the representatives of D.D.A. will have to spell out from the meaning to be given to the word "from amongst themselves" mentioned in the D. D. A. Act and which according to us only means in accordance with the system of proportional representation by means of a single transferable vote.

(51) The legislature has always evinced keen intention that whenever the larger body is to elect a representative from amongst its own members to some other bodies even outside the main body the principles of voting that "should be followed is that of proportional representation. The Punjab Panchayat Samiti and Zila Parishads Act, 1961, constitutes Panchayat Samitis for Tehsils or blocks. This is to consist of amongst others the primary members to be elected in the manner prescribed. Of these 8 members are to be elected from every block in the tehsil by the Ranches and Sarpanches of Gram Panchayats in the block from amongst themselves. Rules have been made under the Act called the Punjab Panchayat Samiti (Primary Members) Election Rules, 1961 which provide for voting and result of election. Rule 6 (4) provides for the voters to proceed to the place set apart for voting and there place a cross mark (X) in column (4) of the ballot paper against the name of the candidate for whom he wishes to vote with a red or blue pencil. Each voter shall have one vote. This method of voting is also in accordance with same system excepting that is by system of proportional representation but by means of a single transferable vote, unlike the provision of single transferable vote as in the case of election from the council. The significance of this can be brought out by taking an illustration. Assume there 800 electors they are to elect eight members of the Panchayat Samiti. If the plurality vote is followed as in the present case, the result will be that a block of 401 Sarpanches Ranches would be able to elect all the 8 members while a block of 399 would not be able to elect even a single member; but by providing for a method of proportional representation even by means of a single non-transferable vote the result is that every block of 100 electors, assured of being able to elect one member. Thus in the illustration above the block of 401 electorate will be able to elect only 4 members while the other block of 399 will also be able to elect other 4 members. This will reflect in Block Samiti is the correct position amongst the Ranches and Sarpanches thus preventing distortion of the real state of affairs. Similarly Section 86 of Act, 1961 provides for the Constitution and incorporation of Zila Parishads and Section 86(3) provides that where in a district Panchayat Samiti has been constituted for tahsils the Zila Parishad for such district shall consist of amongst other 5 members from each of primary members of every Panchayat Samiti in the district to be Elected by the Panchayat Samiti by a secret ballot in the manner prescribed. The rules lay down the method of election and Rule 7(4) provides for each member to vote against the name of candidate. It also provides that each member shall have a right to cast as many votes as there are persons to be elected. This is of course a system of proportional representation with multiple votes. Again a broad democratic functioning is visible. Thus in above illustration of 800 electors and 8 persons to be elected ; a block of 90 voters will be able to

cast 720 votes for one candidate thus assuring that the rest of 710 block of voters will only be able to elect 7 persons and not all 8 persons.

(52) Mr. Chillely then urged that all these instances in these various statute for election in accordance with the system of proportional representation is of no avail as it is no specifically found in the D. D. A. Act or under the 1966 Act. We cannot agree. Even if these instances are treated as conventions they are certainly not irrelevant rather they have much persuasive value in helping to interpret the word "from amongst themselves, as they give an indication of the legislature. It cannot be disputed, the constitutional conventions and practices have importance under unwritten as well as written constitutions and in trying to understand meaning conventions have a role to play in interpreting Articles of a Constitution : see. U. N. Rao V. Smt. Indra Gandhi (1971 (Suppl), Scr 46).

"THUS within the frame work of the law there is room for the development of rules of practice rules which maybe followed as consistently as the rules of law and which determine the procedure which the men concerned with government must follow"

(See Law of the Constitution ; Chapter Iii by Sir Ivor Jennings P. 80). The judiciary must recognise and give effect to the common position and circumstances in the national life.

" Constitutional practice may be spelt out as a course of conduct over a reasonably long period which may indicate how the authorities charged with a duty to implement the constitution have worked out or implemented a certain provision of the constitution."

(see S.P. Gupta Vs. President of India and Others,).

(53) From the conspectus of the arguments above it would appear that the system of proportional representation by means of single transferable vote has been or is being followed consistently as under ;

(1)Ever since the D.D.A. Act of 1957 in electing representatives from the members of Municipal Corporation, of Delhi to Authority since 1958 and also since 1966 from members of Council.

(2)In electing Committee of Estimates and others by Metropolitan Council under its rule of procedure by making an amendment as recent June, 1983.

(3)Even all nominations of Council committee to be made by the Chairman of the Metropolitan Council are to be made in proportion to the strength the parties.

(4)Under Section 27A read with Section 27H of R. P. Act, 1950 filling seats from the members of the Metropolitan Council of State allotted to the Union Territory of Delhi.

(5)Under Article 80(4) of Constitution in electing the representatives of each state in the Council of State from the elected members of the Legislative

assembly of the state.

(6) Under Article 171(4) of the Constitution for election of members to the Legislative Council of the State from the Electorate consisting of members of the municipal committees, district board, graduates of the universities, or persons engaged in teaching.

(7) The Sub-committees to be elected by the members of Metropolitan Councils from amongst themselves as per its Rules of Procedure.

(8) Members of the various committees to be elected by the members of Lok Sabha from amongst themselves under its Rules of Procedure and also for election any committee or bodies in Pursuance of any Provisions of the Constitution or any Act of the Parliament.

(9) All State assemblies in electing Committees or bodies in pursuance of or any statute.

(54) In this state of affairs when universally this method is being followed as above the petitioners repeated complaint as to why and on what legal ground the respondents can justifiably claim this aberration from normal method which it adopted on 21st July, 1983 remains totally unanswered. We must remember that ours is a multi-party and multi dimensional democracy and we must so conduct our public affairs that democratic Participation is the maximum. When, Therefore, the Metropolitan Council is to be represented in the Authority the voice and the image that it must present must be of the whole council and not merely of the majority Party. Diversity of views and representations is the hallmark of a free nation. In a democracy like ours the role of the majority and the opposition Parties are often interchangeable reflecting the preference of the electorate at the time of the last election. The opposition parties also reflect the aspirations and hope of the millions of citizens of this country. No monopoly or special claim to patriotism or the right to perpetual rule can be even momentarily arrogated wither by the majority or the opposition parties. Every party, in a democracy has accepted its role only as that of engaging in public service to poor of the country. That is why the mechanism of democracy must be so arranged and the courts must so interpret the law as to assist the multi-party democracy represented by majority and opposition parties in forming one whole some garland of democratic structure. Democracy after all is the art of possible. A broad consensus on the fundamentals of democratic functioning by all the parties is the absolute necessity in order to strive for peaceful anti-poverty programme for progress of the nation and development of the economy. The opposition parties no doubt must accept with grace the right to govern given by the electorate to the majority party. But equally the majority party at any particular time must similarly accept this confidence of the electorate given to it for a stated definite period in the spirit of a trustee. In this connection it is worth noting what the President of the U. S. A. Mr. Fisen however stated in his speech made on October 3, 1952, the home state of Senator Joseph R.Jc. Carthy, then at the height of his

influence and popularity :

"TO defend freedom .--...is first of all-to respect freedom. This respect demands, in turn, respect for the integrity of fellow citizens who enjoy their right to disagree. The right to question a man's judgment carries with it no automatic right to question his honour."

(See: Plain speaking Harry S. Truman by Merle Miller) Good areas from the side of composition parties has to be matched by acceptance their bonafide, and inevitably necessary role in democratic polity on the part of the Majority party. Lack of sensitivity to each others' sentiments and a constant slinging match ill serves the development of democratic organs and its functioning. There is no gainsaying that institutions in our polity are expected to subserve this over all public interest. We have no doubt that the Parliament when it passes any legislation is attempting to reflect the aspirations of the people through that particular medium. That is why we are firmly of the opinion that the Parliament when it provided in Section 3(3)(f) of the D.D.A. Act for representatives to be elected by the members of the Metropolitan Council from amongst themselves it permitted only one method of election that is in accordance with the system of proportional representations by means of single transferable vote. Incur view the only meaning that can be given to the words "elect from amongst themselves" in the context of the previous history and the various other circumstances is to hold as we do that election of three representatives of the Council to the D. D. A. from amongst themselves must be held in accordance with the system of proportional representation by means of single transferable vote.

(55) The alternative contention by Mr. Lekhi for the compulsion for the the council to hold election to elect representatives to the D. D. A. in accordance with the system of proportional representation by means of single transferable vote is founded on the direction admittedly issued by the Chairman in 1972 and 1977. It is conceded that no contrary directions had been issued when the impugned election took place July, 1983. Rule 59 of the Rules of Procedure and of Business in the Metropolitan Council of Delhi framed u/s 24 of the 1966 Act empowers the Chairman to issue such directions as he may consider necessary for regulating the procedure and organisation of his work. Rule 184 provides for a Rule Committee whose one of the functions is to recommend additions or amendments Mr. Lekhi's contention is that a direction issued by the Chairman cannot be superceded or avoided except by means of a further direction or the matter being placed before the Rules Committee. Admittedly no rule has been framed superseding these directions and hence it is urged that election could only be held in the manner laid down in the directions. Parliament has several distinct sources from which the existing forms and rules of procedure are drawn are stated in the order of importance ; (1) (practice, (2) the standing orders and occasional orders and resolutions of either House, (3) rulings from the Chair, and (4) (rarely) statute.

(56) Practice is that part of procedure which developed spontaneously in the

course of the transaction of business in each House. The authority for many of the old-established forms and rules of practice is unrecorded. Some of the them were no doubt invented in Parliament itself, but others have been traced to apologies in the medieval courts of law and in the councils of the Church. This older practice is some-times distinguished as "ancient usage," and needs no other authority than proof of its defacto existence. (Many Parliamentary Practice 19th Edition P. 208).

(57) The Rules of Procedure in their proper sense are the directions which govern the working of the forms of proceedings and the machinery of each house (Many Parliament Practice P. 205).

(58) That part of the procedure which derives its authority from statute is comparatively small. But the Speaker is in a sense Jaw giver too ; for by application of principles and precedents to new circumstances I establish general rule in the course of deciding a particular case Parliamentary Practice p. 212). Rule 389 of Rules of Procedure of Lok Sabha confer Residuary powers not provided in the rules to the Speaker. Similarly Rule 239 of Rules of Procedure of Metropolitan Council confer the residuary powers on the Chairman of the Council. In pursuance of provision of Rule 389 the Speaker has issued directions from time to time, which have been collected and issued as "Directions by the Speaker Of Lok Sabha. Amongst other directions is Direction 108 A laying down that if elections of members to a Committee, Commission or other body constituted by the government (under the provisions of the Act or otherwise) shall unless the speaker otherwise directs be held in accordance with the regulations by means of a single transferable vote. On the same basis the Directions issued by the Chairman in 1972 and again in 1977 to hold election to elect representatives u/s 3(3)(f) of D.D A. Act in accordance with the principle of proportional representation by means of a single transferable vote derive their source and authority from the residuary powers of the Chairman of Council under Rule 239 of Rules of Procedure. These directions of 1972 and 1977 having never been withdrawn or amended by the Rule Committee mandatorily had to be followed in the method of election held on July 21, 1983. This admittedly was not done. Therefore apart from our finding earlier that on the interpretation of Section 3(3) (f) of D.D.A. Act the system of proportional representation by means of a single transferable vote was to be followed, an additional ground for vitiating the impugned election flows from non-compliance with the existing directions of the Chairman. On both the counts the impugned elections were illegally conducted and suffered from initial fatal infirmity.

(59) The result of the above discussion is that we have no manner of doubt that Section 3(3)(f) of the Dda Act which provides for 3 representatives of the Council to be elected from amongst themselves mandates that this election will be in accordance with the system of proportional representation by means of single transferable vote. The impugned election held on 21.7.1983 was in defiance of this procedure and was by- a procedure impermissible in law. As an election

must be held in the manner permitted by law any other mode of election is illegal and the result of that election must consequently be null and void. The result is that on our finding the election of respondents 6 to 8 hold on 21.7.1983 being against the authority of law was no election in the eye of law and was in violation of the mandate of Section 3(3)(f) of the Dda Act. Respondents 6 to 8, Therefore, would be deemed not to have been elected. The result would be that we would issue a writ of mandamus holding that respondents 6 to 8 have not been validly elected as representatives of the Metropolitan Council to the D.D.A. Their seats shall stand vacated. As the impugned elections have been set aside the Metropolitan Council will naturally now take necessary steps to hold elections u/s 3(3)(f) in accordance with law and in terms of the opinion given by us in our judgment. We should think that a period of 4 weeks should be sufficient for the process to be set in motion so that fresh elections can take place as directed by us. We feel that though we have held the election to be void we do not think that it would be justified to deprive the Metropolitan Council of its representation in the D.D.A. in the interval. We are more persuaded to take this course by the practical situation that even if elections had been in the manner in accordance with the system of proportional representation by means of a single transferable vote at least 2 of the respondents from respondents 6 to 8 could in any case have been elected keeping in view the strength of the various parties in the Metropolitan Council and Therefore if all the three are permitted to function for this short period of 6 weeks till fresh elections take place no such serious injustice will take place.

(60) We would, Therefore, in consideration of the practical benefit, so that large segment of representative body like the Metropolitan Council should not be without any representation in an important institution like D.D.A. stay the operation of our order for a period of 6 weeks only. We wish to make it clear that even if no fresh election takes place within a period of 6 weeks from today our main order will come into operation and Therefore stay given for 6 weeks of our order herein of setting aside the election will stand revoked. Thus, in any case respondents 6 to 8 will cease to function as member of D.D.A. after a period of six weeks from today. After that period only the newly elected members will be entitled to function. Non-holding of election will not permit respondents 6 to 8 to continue to function after a period of six weeks from today.

(61) We may note that though in the reply objection had been raised to the maintainability of the writ petition by relying on section 26 of the 1966 Act to this point was specially given up and not pressed at the time of arguments by Dr. Chitley, who addressed us only on the merit of the petition.

(62) As a result the writ petition is allowed and writ of mandamus is issued as directed above. In the circumstances however there will be no order as to costs.