

(1982) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 150 of 1982

Nagendra Nath Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-02-1982

Acts Referred:

Constitution of India, 1950 — Article 170, 171, 171(3), 213, 226
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 2, 2(2), 5, 6(2)

Citation : AIR 1982 All 226

Hon'ble Judges : K.C. Agarwal, J;A.S. Srivastava, J

Bench : Division Bench

Advocate : Nikhil Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

1. This petition filed under Article 226 of the Constitution challenges the validity of Section 2 of U. P. Kshetra Samitis and Zilla Parishads (Amendment) Ordinance, 1981, (U. P. Ordinance 26 of 1981), (hereinafter referred to as Ordinance 26 of 1981). This Ordinance was promulgated by the Governor on 14th Dec. 1981, on being satisfied that the circumstances existed which rendered it necessary for him to take immediate action.

2. The main challenge before us in this petition was that of (validity of?) Section 2 of the Ordinance, which amended Section 6 of U. P. Kshetra Samitis and Zilla Parishads Adhiniyam 1961, (hereinafter (referred) to as the Adhiniyam) Section 2 of the Ordinance is reproduced below.

"2. In Section 6 of the Uttar Pradesh Kshetra Samitis and Zilla Parishads Adhiniyam, 1961 hereinafter referred to as the principal Act.

(a) in Sub-section (1), after clause (v) the following clause shall be inserted, namely

(vi) Such persons as are nominated (sic) with the provisions of Sub-section (2)."

(b) for Sub-section (2), the following sub-section shall be substituted, namely.

"(2) The State Government shall in the manner prescribed, nominate the following as members of the Kshettra Samiti, namely

(i) persons not exceeding seven in number who are interested in planning and rural development or engaged in social, cultural, literary or professional activities :--

(ii) women not exceeding three in number

(iii) persons belonging to Scheduled Castes and Scheduled Tribes not exceeding five in number.

Provided--

Firstly, that no person whose name is not registered as an elector in the Assembly rolls from the area of the Khand or who is disqualified u/s 13 shall be chosen as member under Clause (iii) of Sub-section (1) or nominated as member under Sub-section (2) Secondly, that during the period of vacancy in the office of Pradhan. Chairman of Town Area Committee, or President of Notified Area Committee, the person (if any), holding the Office of U. P. Pradhan, Vice-Chairman or Vice-president, as the case may be shall be entitled with a right to vote to attend the meetings of the Kshettra Samiti or committees thereof in place of the Pradhan. Chairman or President."

3. The relevant provisions of Section 6 of the Adhiniyam which have been amended, are being reproduced below.

"6. Composition of Kshettra Samiti-(1) A Kshettra Samiti shall have as its members.

(i) all Pradhans of constituent Gaon Sabhas

(ii) Chairman of the Committee for a town area and President of the committee for a notified area, contiguous to the Khand and declared as such by order in writing by the District Magistrate of the district in which the Khand lies.

(iii) so many representatives, being neither less than two nor more than five, as the State Government may by notification in the Gazette fix of such co-operative societies or groups thereof as have their registered offices within the Khand and fulfill the requirements which the State Government may by order specify to be chosen in the manner prescribed.

(iv) all members of the House of the people and the State Legislative Assembly whose constituencies include any part of the Khand and every such member, if any whose constituency includes no rural area but whose place of residence is in the district in which the Khand is situated and who on being required by the State Government in the prescribed manner to choose any Khand in the district has chosen the Khand and

(v) all members of the Council of State and the State Legislative Council who have their residence in the Khand and every such member whose place of residence is in the district in which the Khand is situated but not in the rural area and who on being required by the State Government in the prescribed manner to choose any Khand of the district has chosen the Khand.

(2) Subject to the provisions of Sub-section (2) of Section 10, the members mentioned in clauses (i), (ii), (iv) and (v) of Sub-section (1) shall, subject to the conditions and in the manner prescribed co-opt the following as members of the Kshettra Samiti, namely.

(i) person not exceeding two in number who may appear to the co-opting members to be interested in planning and development.

(ii) if the number of women amongst the members mentioned in Sub-section (1) is less than five so many women as will make their number five in all and.

(iii) if amongst the members mentioned in Sub-section (1) the number of members belonging to Scheduled Castes, if any, is less than eight so many persons, belonging to Scheduled Castes as will make their number eight in all."

4. We will make reference of the submissions made in support of the petition later. However, the only thing which is required to be mentioned for understanding the controversy arising out of the amendment is that in respect of co-option by the members elected, as provided initially in Section 6, the provision now made is that of nomination by the State Government. The argument raised was that this amendment from co-option to nomination has brought about a drastic change in the constitution of the Kshettra Samitis.

5. Before we take up the main points urged, we may dispose of some of the side issues which will have bearing on the main points as well.

6. The first thing in this connection was about the competence of the Governor to issue the Ordinance, The submission of the petitioner's learned counsel was that there was no material before the Governor to satisfy him for the exercise of his power to issue the Ordinance, and that it had been done to subvert the provisions of the Constitution. The ordinance-making power has been conferred on the Governor by Article 213 of the Constitution. The Governor's power to promulgate ordinances under Article 213 is subject to two conditions, namely.

(1) that the State Legislature must not be in session when the Ordinance is issued, and

(2) the Governor must be satisfied as to the existence of circumstances which rendered it necessary for him to take immediate action.

7. There is no dispute that when the Ordinance was promulgated, the State Legislature was not in Session. However, the contention raised was that no circumstances existed which rendered it necessary for the Governor to take action, and that there was no material before him which could necessitate for

issuance of the Ordinance. The submission made is devoid of substance. The question of immediate action and of promulgating the Ordinance is a matter of subjective satisfaction of the Governor. It has been held times out of number that the subjective satisfaction of the Governor is not justiciable.

8. In *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, Bihar Ordinance No. 3 was, inter alia, challenged on the ground that it was beyond the competence of the Governor under Article 213, for, there was no urgency for the promulgation of the Ordinance. While dealing with this question, the Supreme Court observed (at pp. 1536 & 1537) :--

"It is however, well settled that the necessity of immediate action and of promulgating an ordinance is a matter purely for the subjective satisfaction of the Governor. He is the sole Judge as to the existence of circumstance necessitating the promulgating of an ordinance. His satisfaction is not a justiciable matter. It cannot be questioned on ground of error of judgment or otherwise in Court,"

9. To the same effect was the view taken in *Bijayananda Patnaik and Others Vs. President of India and Others*, . It was observed (at p. 66) :--

".....,.. The President's satisfaction and the basis thereof are subjective and are not subject to objective test, to a judicial review. The Court will find out no standard for resolving it except in respect of the subject matter.....".

10. There are ample authorities of this Court for the proposition that necessity of immediate action and of promulgating an ordinance is a matter purely of subjective satisfaction of the Governor and it is not open to the High Court to question the issuance of the ordinance on the ground that there was no circumstance in existence necessitating the promulgation of ordinance. Recently, the Supreme Court was called to consider this question in *R. K. Garg v. Union of India* AIR 1981 SC 2138 . in that case, the promulgation of ordinance by the President relating to Special Bearer Bonds was questioned. The Supreme Court held that the power conferred on the President was to meet emergent situation. The question that there was no occasion to exercise the emergent power was beyond judicial review.

11. The main question, however, in this petition is about the extent of the legislative power of the Governor under Article 213 of the Constitution to promulgate an ordinance. We will deal with the point more elaborately with reference to the arguments raised before us. It may only be observed here that the legislative power of the Governor under Article 213 to promulgate an ordinance is co-extensive with the power of the State Legislature to make laws. The Supreme Court has said in *R. K. Garg v. Union of India* AIR 1981 SC 2138 (supra) that.

"The President is invested with this legislative power only in order to enable the executive to tide over an emergent situation which may arise whilst the Houses

or Parliament are not in session."

12. The next submission made by the petitioner's learned counsel was that as the amendment of Section 6 made by Ordinance 26 of 1981 destroys the democratic character of the Kshettra Samitis by making a provision of nomination, the amendment made is against the basic features of the Constitution and is ultra vires. In that connection, the submission made also was that Section 6 destroys the requirement of a Kshettra Samiti to be a public body by conferring the power on the State Government to make nominations and taking away the power of co-option conferred on the duly elected members themselves. The submission made is not correct. The Constn, does not describe as to what democracy is. In Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, after observing that the ratio of the majority in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, were merely illustrative, are not intended to be exhaustive, Cban-drachud J. mentioned four features as basic part of the Constitution. One of them was that India is a Sovereign Democratic Republic. The question as to what democracy means was considered by Ray. C. J. in that case. It was said by him,

"I do not think that an ordinary law can be declared invalid for the reason that it goes against the vague concepts of democracy justice, political economic and social liberty of thought, belief and expression or equality of status and opportunity."

13. The learned Chief Justice in this case further found that although democracy has precise literal meaning but that does not help in understanding as to what an actual democracy is.

Dealing with this question, the learned Chief Justice further said.

"One cannot test the validity of an ordinary law with reference to the essential elements of an ideal democracy. It can be tested only with reference to the principles of democracy actually incorporated in the Constitution."

14. Without going further into this question, it may be noted here that the settled position of law is that the validity of an ordinary law cannot be tested with reference to the basic features of the Constitution. An Act is either ultra vires the Constitution or is beyond the legislative powers of the State Legislature, the same would be liable to be struck down on that basis. It was with reference to the amendments made in the Constitution that the Supreme Court considered the importance of basic features and laid down that an amendment of the Constitution cannot run contrary to the basic feature. For the proposition that the principles of basic features do not apply for testing the validity of an Act, reference may be made to the decision of the Supreme Court in Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, In paragraph 21 of his judgment Krishna Iyer, J. observed that the question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment. To the same effect is the view

taken by Mathew, J. in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, . He said in paragraph 329 : "Being cases of legislative valuation of removal of disqualifications by legislature, they are not liable to be tested on the basis of the theory of basic structure, which, I think, is applicable only to constitutional amendments."

15. We also find that the Constitution itself does not debar the making of nomination in the democratic institutions, which are constituted under it to run the Central and the State Governments. Rather a survey leads one to hold that nomination forms integral part of constitution of high representative bodies. We may make a reference of only some of the provisions of the Constitution to illustrate the points. Article 80, which deals with the composition of Council of States, lays down that it shall consist of inter alia, twelve members nominated by the President in accordance with the provisions of Clause (3). Clause (3) provides that the members to be nominated by the President under Sub-clause (a) of Clause (1) shall consist of persons having special knowledge or political experience in respect of literature, science, art and social service. Article 81, which relates to the composition of the House of the People is prefaced by the clause, "Subject to the provisions of Article 331."

16. Article 331 of the Constitution provides for the representation of persons belonging to the Anglo-Indian community in the House of the people by the President. This would show that the power of nomination has been conferred on the President for making nomination in the House of the People and the Rajya Sabha. Similar provision of nomination in the Legislative Assembly and Legislative Council in the States can be found from Articles 170 and 171. Under Sub-clause (e) of Clause (3) of Article 171, the extent of nomination is one sixth i. e. more than 16 per cent of the total strength of the House.

17. Under Article 371(2) the Governor of Nagaland is empowered to continue the original Council in the manner he likes and it is he who carries on the administration of the Council.

18. Taking these features into account it does not appear to us to be correct that making of a provision for nomination by the State Government in place of co-option can be said to have destroyed the basic structure of the Constitution or of the Adhiniyam. In fact, before the Ordinance was promulgated, there were various provisions in the Adhiniyam which provided for ex officio membership of Kshettra Samiti and Zila Parishad in the composition of the bodies, namely, Kshettra Samitis and Zila Parishads. There were provisions of co-opting members as well. Since these persons were either ex officio members or co-opted, there was no question of their becoming the members of the bodies, mentioned above, by process of direct election.

19. u/s 6 (1) (i) (ii) (iv) and (v), all Pradhans, Presidents of the Town Area Committee, five representatives of the co-operative societies, all members of the House of the People and State Legislative Assemblies, whose constituency

includes any part of the Khand, and all members of the Council of the State and the State Legislative Council were likewise entitled to become the members of the Kshetra Samitis. Section 18 of the Adhiniyam, which deals with composition of Zila Parishad, also provides for automatic inclusion of various categories of office bearers mentioned therein. Under Clause (v) of Section 18 (1) of the Adhiniyam, the State Government has the power to nominate three members engaged in social, cultural, literary or professional activities. It is, therefore, not correct to say that the provision of nomination is altogether a new one substantially altering the character of the Zila Parishads and Kshetra Samitis. Of course, there is a difference between the provision of co-option to be found earlier to the amending Ordinance and the nomination which has been now provided for by Section 2. Co-option is a concurrent choice by the members of the Co-operation of a person to fill up a vacancy. This also as already stated above, is not a case of direct election as the choice of the voters or the electors about the person to be co-opted in the Kshetra Samiti or Zila Parishad is not taken.

20. The provision of nomination now made confers power on the State Government to make the nomination in accordance with Sub-section (2) of Section 2. There is not much of difference between co-option and nomination so far as the electors are concerned. In either event, the electors are kept away and are not given any choice in the Government, but one cannot lose sight of the fact that it is the Cabinet consisting of the representatives of the people which makes the choice. The cabinet is responsible or answerable to the Legislative Assembly and the Legislative Council. This being the fact, it cannot be said that the right of making nominations conferred on the State Government is not conferred on a body which is democratically elected. Hence, the nomination of the members to be made u/s 2 (2) does not destroy the democratic character of the Zila Parishads and Kshetra Samitis.

21. The next submission of the learned counsel for the petitioner was that the action of promulgation of the Ordinance is malicious and has been done with a view to usurp the larger number of seats in the Legislative Council. The submission made about mala fides or the action being malicious has to be considered in the light whether promulgation of the Ordinance was the colourable exercise of power. Mala fides and bona fides are irrelevant if it was within the legislative competence of the Governor. Mala fides cannot be a ground for determining the competency. In *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, the doctrine of colourable legislation has been considered. The Supreme Court held (at p. 379) :

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact particular law. If the legislature is competent to pass a particular law, motives which impelled it to act are really irrelevant."

22. Article 245 of the Constitution distributes the legislative powers between the Union and the States. List II or the State List comprises 61 items or entries over which the State Legislature has the exclusive power of legislation. While considering the question of legislative competence, one has to have regard to these entries and find out whether the legislation made falls within this list. In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, Krishna Iyer, J. observed (at p. 2286).

"In the jurisprudence of power colourable exercise of or fraud on legislative power or more frightfully, fraud on the Constitution, are expressions which merely mean that the legislature is incompetent to enact a particular law, although the label of competency is stuck on it and then it is colourable legislation....."

23. A Full Bench of the Kerala High Court in *N. Srinivasan v. State of Kerala* AIR 1968 Kant 158 was called upon to consider the question of mala fides with reference to Article 213. It was held that consideration of charge of mala fides even in true sense, much less in special sense, does not lie in courts against the exercise of legislative power, and that the Governor while making the law under Article 213(1) is as much a legislative body as the legislature itself.

24. The law, stated above, is settled and is not required to be further dealt with. Therefore, the validity of a statute or ordinance has to be tested only with regard to the legislative competence and the limitation imposed by Part III of the Constitution and other constitutional provisions.

25. Attacking the competence of the Governor to promulgate the impugned Ordinance containing Section 2, learned counsel for the petitioner made two submissions. The first was that the amendment made conflicts with Article 171(3) of the Constitution. The second submission was that the Ordinance is ultra vires Section 27 read with Schedule IV of the Representation of the People Act, 1950. We do not find any substance in this argument of the legislative competence. Sri S. S. Bhatnagar, learned counsel appearing for the respondents justified the legislation under items 5 and 32 of List II of the Constitution. Entry 5 is as under.

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and local authorities for the purpose of local self government or village administration."

26. The contention raised on behalf of the respondents was that Ordinance 26 of 1981 did not have anything to do with Article 171 of the Constitution. It does not even remotely touch or attack the said Article. Entry 5, according to the learned counsel, was very wide in terms and the State Legislature had the power to make the provisions relating to "the constitution and powers of the local authorities."

27. The amended provision, if seen from a proper angle, would be found to be covered by these expressions. The Ordinance has simply brought about a change in the composition of the Kshet-tra Samiti. We are in agreement with the argument of the respondents", learned counsel. Entry 5 is very wide in terms. Under that Entry it is permissible for the State Legislature to make provisions for nomination in the bodies i. e. Kshettra Samitis and Zila Partshads, When the State Legislature has this power to constitute local bodies, it can make such provisions as it thinks fit and proper in that regard. It was for the State Legislature to choose the manner or method in accordance with which the Kshettra Samiti was to be constituted. Neither it is proper nor desirable for this Court to indulge in criticism of any act done in a sphere which is wholly foreign to its wisdom. Each body of the Government is independent of the other within its sphere. Each is acquainted with the special knowledge of complicated questions which is denied to the other. The Court has no power to go into the question of wisdom and to hold it to be invalid because it does not tally with its own. In National Coal Development Corporation Ltd. Vs. Manmohan Mathur, . It has been held that if a statute is within the legislative competence, its wisdom, propriety, reasonableness or expediency of passing it is wholly foreign to judicial review. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot remain institution of opinions upon points of rights, reason, expediency etc.

28. In Bajal Basappa v. Keshava (AIR 1968 karn 198) the question was whether the State Legislature could disqualify the lepers from participating at the election of the Municipal Council. The Court struck down the provision on the ground of the same being contrary to the Constitution, It, however, upheld the right of the State Legislature to prescribe the qualifications and disqualifications for being a voter at an election of a local institution.

29. The validity of this provision had been challenged before a Division Bench of this Court in Writ petition No. 116 of 1982 Ram Asra Verma v. State of U. P. (decided on 15-1-1982). The Division Bench rejected the contention finding that the impugned provision was in respect of local bodies covered by Entry 5 of List II of the Seventh Schedule to the Constitution.

30. Article 171(3) of the Constitution lays down the composition of the Legislative Council. Sub-clause (a) of Article 171(3) reads as under.

"(3) of the total number of members of the Legislative Council of a State.

(a) as nearly as may be, one third 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."

31. Pursuant to Article 171(3)(a), the Parliament enacted Representation of the People Act, 1950. The relevant provision of that Act is Section 27 (2). It specifies the local bodies which would constitute the electorates in this behalf. In the Fourth Schedule made u/s 27 (2) for Uttar Pradesh, details of the local bodies

have been given. This Schedule has been amended from time to time. By Act No. 20 of 1960, in place of "district boards" the words "Zila Parishads including Antrim Zila Parishads", were substituted. Similarly, by Act No. II of 1963 Kshettra Samitis were substituted and Entries 11 and 12, as they stood at the time of the enactment, were deleted. Section 27 (2) only speaks of the local bodies and not about their character, as nominated or elected.

32. Learned counsel for the Petitioner referred to Article 328 and Entry 37 of List II of the Constitution and submitted on the basis of these provisions that the power to make law in respect of the Legislature of the State has been conferred on the Parliament and, therefore, Section 2 of the Ordinance 26 of 1981 being not a provision having been made by the President, is ultra vires. A look at these provisions would indicate that under Article 328, the State Legislature can make a provision on the subject covered by this Article which does not conflict with any enactment made by Parliament. Similar is the interpretation of Entry 37 of List II. That entry confers power on the State Legislature to make laws in respect of election to the legislature of the State subject to the provisions of any law made by Parliament. In Article 328 as well as entry 37, the relevant words to be noted are "Subject to." The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning is "conditional upon". It is, therefore, clear that even a State Legislature can make a law regarding election to the legislature of the House, but the same should not be in conflict with the provisions of law already made by Parliament.

33. However, the thing to be considered here is as to whether Section 2 of Ordinance 26 of 1981 is an enactment in respect of election to the legislature. If that is not so the argument of the learned counsel for the petitioner would not apply to the present case. To us, it appears that the Ordinance 26 of 1981 does not legislate on the subject of election to the legislature of the State. It is an amendment made in the Adhiniyam of 1961, the amendment of which squarely falls under Entry No. 5 of List II, It is also wrong to suggest that by making a provision of nomination by the State instead of co-option, any change in the electorate entitled to vote for election for the Legislative Council has been brought about. Article 171(3)(a) and Section 27 (2) concern only with the representation of the local bodies in the Legislative Council. None of the two provisions concern themselves about the constitution of these bodies. Therefore, the submission of the learned counsel that by providing for nomination instead of co-option Article 171(3)(a) or Section 27 (2) were hit, is unfounded. It is within the competence of the State Legislature to make any law with regard to the matters falling in Entry 5 of List II, and that is what has been done in the present case.

34. In *Bajal Basappa v. Keshava* AIR 1968 karn 198 (supra) the Mysore High Court accepted that the State Legislature had the power to change qualifications of the electorate for the purposes of electing the members of the Municipal council. The ratio of the case would support the respondents' learned counsel in

his submission that making of any changes in the manner or method of constituting a local body would not contravene either Article 171(3)(a) of the Constitution or Section 27(2) of the Representation of the People Act. At this place, it may be noted that it is not the intention of the legislature that the electorates within the meaning of Article 171(3)(a) should be those who have been elected directly by the citizens of this country. Wherever the Parliament had such an intention, a specific provision to that effect was made. For that purpose, a reference may be made to Article 80(a) of the Constitution. We have already found above that the making of provision of nomination instead of co-option in the Adhiniyam was within the competence of the State Legislature. If that was so, it logically follows that electorates who would be entitled to participate in electing their members in the Legislative Council would be covered by Article 171(3)(a) of the Constitution. What it requires is only the representation of the local bodies by the Members constituting it and not as to how does a person become a member of the same.

35. In *Sarju Prasad Pandey and Others Vs. State of U.P. and Others*, a Division Bench of this Court was faced with a similar controversy. It negated the contention of the petitioner and found that Item 5 of List II of the Seventh schedule enables the State Legislature to legislate in respect of local government including local self government, that is to say, the constitution and power of municipal corporation, improvement trusts, district boards and other local authorities. The relevant observations of the Division Bench are being quoted below (at P. 578).

"The same is the case with the Constitution. We know for definite that various local bodies in this State at one time consisted of elected as well as nominated members. The Municipalities Act of this State still empowers the Government to constitute a Board of elected and nominated members. Improvement Trusts in this State consists of a majority of nominated members, although the expression "Improvement Trust" is mentioned in Item 5 of List II Various Acts dealing with the local bodies in this State have always included a provision for suspending and removing members and presidents and for dissolving and superseding the local bodies as well as for appointment of a person to carry on the administration of the dissolved or superseded local bodies for the time being."

36. The above observations of the Division Bench have approved the provisions for nomination of members of the local bodies. We have noted above that the Constitution itself contemplates government function being performed with the help of nominated persons, vide Articles 331, 333 and 337(d) and Clause (2) of the Sixth Schedule. Hence it cannot be said that the amended provision runs counter to the spirit of the Constitution.

37. In *Puranlal Lakhanpal Vs. The President of India and Others*, the petition filed before the Supreme Court challenged the constitutionality of a provision in the Constitution (Application to Jammu and Kashmir) Order 1954, made by the President under Article 370(1) of the Constitution. In pursuance of this Act the

President nominated six members to the House of the people. The petitioners challenge was that as he had a right to stand as a candidate for one of the seats of the House, the power of nomination conferred upon the President was invalid. Supreme Court repelled the argument holding (at pp. 1520 & 1521).

"Now the only way the legislature can make a recommendation for this purpose is by voting. Therefore, in effect, the provision made by the President is that the six seats to the House of the People from the State of Jammu and Kashmir will be filled by indirect election and not direct election. The element of election still remains in the matter of filling these seats, though it has been made indirect. In these circumstances, it may not be possible to say that there has been a radical alteration in Article 81 by the modification effected by the Order."

This judgment also supports the case of the respondents.

38. Submission was also made by the petitioners' counsel that Ordinance 26 of 1981 takes away the right of the members elected to make co-option as provided for earlier. According to the learned counsel taking away of the power of co-option has resulted in depriving the members of a valuable right. The submission made has no substance. The right to contest in election is not a vested right. In *Ismail Vs. Rajasthan State and Others*, it was held by a Division Bench as under (at p. 99).

A right to stand for election for membership of a certain body is not a fundamental right of every citizen of India. He gets that right only if it is provided in a certain statute and he is eligible to stand for election according to that statute."

39. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, it was said, amongst others that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

40. We are in respectful agreement with the view taken by the Rajasthan High Court and are bound by the decision of the Supreme Court. We find in agreement with these decisions that the right of representation to person is merely a creature of the statute and is not a fundamental right. It is neither a common law right nor a natural inherent right. If an institution is created by the Act, one has to look to that Act for the purposes of finding out the rights conferred upon him.

41. The last submission made by the learned counsel for the petitioner was that as Kshettra Samitis and Zila parishads stand superseded, no person could be nominated by the State Government in exercise of the power conferred by Section 2 of Ordinance 26 of 1981. Section 6 of the Adhiniyam deals with the composition of Kshettra Samitis, whereas Section 17 provides for establishment and incorporation of Zila Parishads. From a perusal of this provision and Section 5 of the Adhiniyam, relied upon by the learned counsel for the petitioner, it would

be found that the right to nominate can be exercised by the State Government irrespective of fact that the Kshettra Samitis stand superseded at present. u/s 5 of the Adhiniyam, the State Government is entitled to issue a notification indicating the names of each Kshettra Samiti. The submission of the petitioner's learned counsel, therefore, that the State Could exercise the power of nomination only after the elections of the Kshettra Samitis and Zila Parishads have taken place and those bodies are constituted, cannot be accepted. The power of nomination does not depend upon the elections of the bodies, referred to above. Even at present, when the Kshettra Samitis stand superseded it is within the powers of the State Government to make nomination in terms of the Section 2 of the Ordinance.

42. The only other argument that remains to be referred to is about the invalidity of U. P. Co-operative Societies (Amendment) Ordinance, 1981. By this Ordinance, the legislature has amended Section 29 of the U. P. Co-operative Societies Act, Counsel urged that Section 28 was also amended with a mala fide view. We have already discussed this matter in detail while dealing with the validity of Section 2 of Ordinance 26 of 1981. We need not repeat the same observations for rejecting this submission. This Ordinance is also within the legislative competence of the State Legislature having been made under Entry 32 of List II of the Seventh Schedule. As a result, it would follow that even if some changes in Section 29 have been made permitting the State Government to nominate a Board for the co-operative societies, which had been superseded, the provision, being well within the legislative competence cannot be declared to be ultra vires.

43. For the reasons given above, we dismiss the writ petition summarily.