

(2017) 02 MP CK 0206
In the Madhya Pradesh High Court
Case No : 61 of 2017

Onkarlal S/o. Chunnilal Kulami & others. Vs Rameshwar S/o. Onkarlal Kulami?(Deceased) through L.Rs. Motiya Bai?& othe .

Date of Decision : 22-02-2017

Acts Referred:

Constitution of India, Article 226, Article 329(b), Article 243-O, Article 243-K, Article 243-O(b) - Power of High Courts t

Citation : (2017) 02 MP CK 0206

Hon'ble Judges : Sheel Nagu & S.A. Dharmadhikari

Bench : Single Bench

Advocate : N.K. Gupta, S.D. Singh, Vishal Mishra, M.P.S. Raghuvarshi

Judgement

1. This intra court appeal filed under Section 2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 03.01.2017 passed by learned Single Judge in WP No.1622/2015 by which the petition in question assailing the declaration of the appellant herein (respondent No. 5 in WP) as President of Janpad Panchayat (for brevity "JP") has been allowed by setting aside the said election as having been held in violation of Rule 21 of the M.P. Panchayat (Upsarpanch, President and Vice President Nirvachan Niyam, 1995) ("Rules 1995" for brevity) and directing for conduction of election afresh to the said office.

2. With the consent of parties, learned counsel for the rival parties are heard on the question of admission and for final disposal.

3. The bare facts giving rise to the present appeal are enumerated below in chronological manner :-

Date Event

02.03.2015 Collector Shivpuri directs holding of meeting of 24 newly elected members of Pohri for holding election to the Office of President and Vice President for which date of 09.03.2015 is notified.

09.03.2015

Meeting for election to the office of President and Vice President is held by Presiding Officer, who framed the following election programme and conducted the election as follows:-

ELECTION PROGRAMME NOTIFIED (OFFICE OF PRESIDENT)

11:00 am to 12:00 noon Filing of nominations.

12:00 noon to 12:15 pm Scrutiny of nominations.

12:15pm to 12:45 pm Withdrawal of nominations.

1:15 pm to 2:00 pm Voting

Immediately after 2:00 pm counting and voting and declaration of result

All the 24 elected members were alleged to be present in this meeting when it began.

ELECTION PROGRAMME NOTIFIED (OFFICE OF VICE PRESIDENT)

2:30 pm to 3:30 pm Filing of nominations

3:30 pm to 3:45 pm Scrutiny of nominations

3:45 pm to 4:15 pm Withdrawal of nominations

4:45 pm to 5:30 pm Voting

Immediately after 5:30 Declaration of result

The appellant for office of President filed two nomination forms one at 11:00 am and other at 11:18 am. Whereas the petitioner / respondent No.6 herein filed one nomination form at 11:50 am for the office of president.

Immediately after filing of nominations, when some members were coming into the meeting hall violence broke loose between the rival groups outside and inside the hall, which disrupted the election process. The said disruption was complained by the Presiding Officer to be caused primarily by Pradhuman Verma (appellant herein / respondent No.5 in W.P.), Arvind Dhakad, Lakhpat Dhakad, Suresh Dhakad, Naresh Dhakad, Raghuveer Dhakad and 30-40 other persons. It was further complained that furniture in the meeting hall as well as vehicles standing outside were damaged. It was further complained that these unscrupulous elements took away one nomination form.

On the call of Presiding Officer the SP, SDM Shivpuri and police force rushed to the scene. Due to disruption the Presiding Officer adjourned the election process

At 02:30pm (Vide P-4)

The Presiding Officer G.S.Baghel lodged FIR bearing Crime No. 55/2015 alleging offences punishable u/Ss 147, 148, 149, 336, 427 and 186 IPC read with 127 of

Representation of Peoples Act against the above said six persons and 30-40 other unnamed persons.

At 02:30 pm The presiding Officer recommenced the election process which had been adjourned due to violence and rioting directed for announcement by loudspeaker in the town of Pohri that for the office of President the voting shall be held from 3:00 pm to 3:30 pm on 09.03.2015

2:30pm to 3:00 pm

Announcement by loudspeaker was made in the city of Pohri as aforesaid.

3:00 pm to 3:30 pm

Voting amongst the 11 members present were held but in the absence of the remaining 13 members of the JP.

3:30 pm The votes were counted and the result was declared that appellant / respondent in WP has secured all 11 votes as against zero votes secured by the petitioner / respondent No.6 herein . Accordingly, the appellant was declared elected as President.

3:45 pm to 5:15 pm The election programme for electing the Vice President was announced by the Presiding Officer starting from filing of nominations till voting and declaration of result.

4:45 pm Shri Arvind Dhakad was declared as Vice President unopposed.

4. The challenge in the instant lis is confined to the election to the office of President for which petitioner had filed nomination form and not for the office of Vice President. Election procedure in regard to office of Vice President has also been mentioned in the table supra for the purpose of meeting out the contention of the learned counsel for the appellant that writ court has misdirected itself by declaring the entire proceedings dated 09.03.2015 as unlawful thereby setaside the election to the office of Vice President of Janpad Panchayat which was never challenged. This aspect would be dealt with by this Court in the latter part of this judgment. 4.1 The principal and peripheral issues which fall for consideration are as follows :-

PRINCIPAL ISSUE

(i) Whether in the face of the constitutional bar under Article 243-O of the Constitution of India, the writ Court was justified in invoking the writ jurisdiction under Article 226 of the Constitution of India to interfere with the election ?

PERIPHERAL ISSUE

(i) Whether the writ Court should have relegated the petitioner to avail the statutory remedy of election petition?

(ii) Whether the writ court erred in setting aside the entire resolution dt.

09.03.2015 thereby annulling the election to the office of Vice President which was never assailed / adjudicated?

4.2 Before answering the above said questions, it would be apt to observe that the constitutional bar under Article 243-O (b) is para materia to the constitutional bar contained in Article 329 (b) with the only difference that the former relates to elections to Panchayats while the latter to the Parliament and Legislative Assemblies.

4.3 For convenience and ready reference this Court reproduces the relevant constitutional and statutory provisions which have bearing to the issue involved herein as follows :-

Article 243-O of Constitution of India,

Bar to interference by courts in electoral mattersNotwithstanding anything in this Constitution-

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

(b) No election to any Panchayat shall be called in

question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Section 25 of M.P. Panchayat Raj Avm Gram Swaraj Adhiniyam, 1993 :-

Election of President and Vice President of Janpad Panchayat.

"(1) After every election of Panchayats the State Election Commission shall immediately hold the elections of President and Vice President of Janpad Panchayats, in such a manner as may be prescribed.

(2) (i) Office of President of Janpad Panchyat shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

and the number of offices of President reserved for the Scheduled Castes and the Scheduled Tribes in the district shall bear as nearly as may be, the same proportion to the total number of such offices in the district as the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, bears to the total population of the district:

Provided that for the purpose of computing the number of offices of President of Janpad Panchayat to be reserved for Scheduled Tribes in the district other than the Scheduled Area forming part of that district, the total population of the Scheduled Areas falling within the district and the population of Scheduled Tribes therein should be excluded:

Provided further that not less than half of the total number of offices of President of Janpad Panchayat subject to a minimum of one shall be reserved for women:

Provided also that the offices under this section shall be reserved by the prescribed authority in the Janpad Panchayat within the district by rotation in the prescribed manner:

Provided also, that Janpad Panchayat where there is no reservation of seats for the Scheduled Castes or Scheduled Tribes as the case may be, shall be excluded for reservation of offices of President belonging to such castes or, such tribes, as the case may be.

(ii) Where the total population of Scheduled Castes and Scheduled Tribes in the district is less than fifty percent twenty percent of seats of President of Janpad Panchayats within the district shall be reserved for other backward classes.

(3) Subject to the provisions of sub-sections (2)

and (4) the President and Vice President of the Janpad Panchayat shall be elected by and from amongst the elected members thereof.

(4) If the President of Janpad Panchayat does not belong to the Scheduled Castes, Scheduled Tribes or other Backward Classes the Vice- President shall be elected from amongst the members belonging to such castes or tribes or classes.

(5) If a President or Vice-President of Janpad Panchayat become a member of either house of Parliament or a member of the State Legislative Assembly or a Chairman or Vice-Chairman of Cooperative Society, he shall be deemed to have vacated his office as President or Vice-President as the case may be, with effect from the date of his becoming such member or Chairman or Vice-Chairman, and a casual vacancy shall be deemed to have occurred in such office for the purposes of section 38."

Rule 21 of the M.P. Panchayat (Upsarpanch, President and Vice President) Nirvachan Niyam, 1995 :- Adjournment of election in emergency -

"(1) If at a meeting, the proceedings of election are interrupted or obstructed by any riot or open violence or any sufficient cause, the Presiding Officer shall announce an adjournment of election to a date later and where the election is so adjourned by Presiding Officer, he shall forthwith inform the District Collector and Competent Authority.

(2) Where an Election is adjourned under sub-rule (1), the District Collector shall immediately report the circumstance to the Director, Panchayat and Social Justice and Madhya Pradesh State Election Commission.

(3) In every such case as aforesaid, the Competent Authority shall fix a new date for fresh election and the provisions of chapter IV mutatis apply to the fresh election taken under this rule."

Rule 21 of the M.P. Panchayats (Election Petitions, Corrupt Practices and

Disqualification for Membership) Rules, 1995 is as follows:-

21. Grounds for declaring election to be void -(1) Subject to the provisions of sub-rule (2) if the specified officer is of opinion-

(a) that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen

to fill the seat under the Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination paper has been improperly rejected; or

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

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person acting with the consent of the candidate or his agent; or

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

(iv) by any non-compliance with the provisions of the Act or of any rules or orders made thereunder;

the specified officer shall declare the election of the returned candidate to be void.

(2) If in the opinion of the prescribed authority a returned candidate has been guilty by an agent of any corrupt practice, but the prescribed authority is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the instructions and without the consent of the candidate.

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agent.

then the prescribed authority may decide that the election of the returned candidate is not void.

5. Submissions of appellant :- The appellant has raised following submissions :-

(i) The first submission is that the Writ Court ought not to have entertained the

election dispute under Article 226 of the Constitution of India and should have relegated the petitioner to avail the remedy of election petition which is statutorily provided

under Section 122 of 1993 Adhiniyam and Rules framed thereunder.

(ii) The second argument is that Writ Court erred in quashing the entire proceeding dated 09.03.2015 which included the election to the office of Vice President which was never put to challenge.

(iii) That since there was no announcement for adjournment of the meeting dated 09.03.2015 the question of invoking power under Section 21(1) for postponing the meeting for another day did not arise thereby excluding the application of Rule 21 of the 1995 Rules.

(iv) That due intimation of convening of adjourned meeting for voting to be held at 3:00 pm on the same day for voting for office of President was given to all concerned by making announcement by loudspeaker in the town of Pohri thereby obviating the need to adjourn election to another date for holding fresh election.

(v) That disputed questions of fact of meeting having been obstructed by riot or open violence or not cannot be adjudicated in a writ petition and instead requires trial by way of election petition.

(vi) The appellant further contended that assuming without admitting that Rule 21 of 1995 Rules was breached, even then remedy of election petition was available by raising one of the grounds under Rule 21(1) (d)(iv) of Election Petition Rules 1995 of non-compliance of any provision of the Act of 1993 or any Rule or Order made thereunder.

(vii) In support, learned counsel for the appellant has placed reliance on (N.P. Ponnuswami Vs. Returning Officer Namakkal Constituency Namakkal, Salem Distt. & Ors.) AIR 1952 SC 64; (State Election Commission, M.P. Vs. Ras Bihari Raghuvanshi and Ors.)1995 JLJ 651;(Manda Jaganath VS. K.S. Rathnam & Ors.) 2004 (7) SCC 492;

(Gurdeep Singh Dhillon Vs. Satpal and Ors.) (2006) 10 SCC 616; (Kallo Adiwasi Vs. State Election Commission) 2015 (4) MPLJ 687; (Akhilesh Pandey Vs. State of M.P.) 2015(4) MPLJ 234; (Chandra Prakash Sharma Vs. State Election Commission & Ors.) 2015(2) MPLJ 232; (Shrigopal Gupta Vs. State of M.P. & Ors.) 2016 (1) MPLJ 402.

6. Submission of respondent No.5 / petitioner in WP:- Defending the impugned order of the Writ Court, it is submitted by respondent No.5 / petitioner that the attending facts and circumstances reveal clear case of riot and open violence having disrupted the meeting of 09.03.2015 thereby leaving no option before Presiding Officer but to adjourn the meeting for another date for fresh elections to be notified in terms of Rule 21(3). It is submitted that one of the nomination form was taken away. Entire meeting is urged to have been disrupted and the

process of election became reduced to a farce. It is further submitted that the open violence and rioting is further evident from the calling of police force and lodging of FIR of the incident by the Presiding Officer. In sum and substance, respondent No.5 / petitioner in WP submits that the Writ Court rightly invoked the power under Article 226 to further the cause of democracy and prevent mobocracy to prevail. In support, the respondent No.1 / petitioner has placed reliance on (K. Venkatachalam VS. A. Swamickan and Anr.) AIR 99 SC 1723; (Manda Jaganath Vs. K.S. Rathnam and ors.) 2004 (7) SCC 492; (Ghanshyam Tiwari and Anr. Vs. State of M.P. & Ors.)2010 (3) MPLJ 407.

7. FINDINGS:- The inherent and plenary powers exercised by the High Court under Article 226 are wide enough to accept exclusion of jurisdiction on only two counts. The first being the appellate and discretionary jurisdiction of the Supreme Court and the second being the self imposed restrictions. This power of judicial review is for achieving the

ultimate goal of rendering justice and preventing perpetration of injustice and therefore has been consciously given the widest possible amplitude, scope, ambit and sweep under Article 226 of the Constitution of India. This has been succinctly described by the Apex Court in the case of (M.V. Elisabeth and Ors Vs. Harwan Investment and Trading Pvt. Ltd. And Anr.) 1993 Supp (2) SCC 433. To further emphasize the nature of this power the following statement of law from Halsbury's Laws of England, 4th edn. Vol. 10, para 713 deserves to be quoted as under :-

"Prima facie, no matter deemed to be beyond jurisdiction of superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court."

7.1 The power of judicial review under Article 226 is concomitant of the basic structure of Constitution. This court is supported in its view by various decisions of the Apex Court including the case of Election Commission of India Thr. Secretary Vs. Ashok Kumar and Ors. 2000 (8) SCC 216.

7.2 Thus, there is no quarrel as to the legal position that unless expressly excluded the plenary power of judicial review under Article 226 is all pervasive. However, in the present case the question is not about the nature of the power of judicial review of the High Court but about the extent to which the same can be applied to interfere in election matters in the face of bar contained in Article 243(O) of the Constitution of India and the statutory remedy of election petition.

7.3 This issue is no more res integra in view of the decision of Apex Court in the case of Ashok Kumar (supra) which has aptly laid down certain principles and precautions to be exercised while invoking the power of judicial review in election matters. The said decision in the case of Ashok Kumar (supra) has considered all the earlier decisions on the point including the case of N.P. Ponnuswami (supra) Constitutional Bench decision in the case of (Mohindra Singh Gill Vs. Chief

Election Commissioner) AIR 1978 SC 85, (Election Commission of India Vs. State of Haryana) AIR 1984 SC 1406;

(Lakshmi Charam Sen Vs.A.K.M. Hassan Uzzaman) AIR 1985 SC 1233; (Digvijay Mote Vs. Union of India) (1993) 4 SCC 175; (Anurag Narain Singh Vs. State of U.P.) (1996) 6 SCC 303; & (S.Subrahmanyam Vs. K. Ramanjaneyullu) (1998) 8 SCC 703.

8. After analyzing the above said decisions, the Constitution Bench of the Apex Court in the case of Ashok Kumar (supra) culled out the following guiding principles for exercise of judicial review in the face of Constitutional bar contained in Article 329(b) (which is para materia to Article 243(O) involved herein). These guidelines are mentioned in para 32 of the said judgment of Ashok Kumar, which is reproduced below :- "1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the wellsettled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no

attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end.

Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

Besides the above guiding principles, extract of para 29 of the said decision in the case of Ashok Kumar is further worthy of reproduction as follows :-

"29.The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination."

9. For convenience and ready reference, this Court in terms of the law laid down by the Apex Court delineates below the limited grounds available to High Court under Article 226 to exercise the power of judicial review to interfere in election matters, as follows :- (i) Judicial review is permissible where the same does not retard , interrupt, protract or stall the election proceedings.

(ii) The power of judicial review can be exercised to correct, smoothen, remove obstacles to preserve the vital piece of evidence which may be destroyed due to elapse of time and to further the process of election.

(iii) The power of judicial review can be exercised when the process of election is so vitiated that it becomes abhorrent to the fundamentals of democracy and is a farce which if allowed to continue and allowed to be challenged by the time consuming process of election petition would shake the confidence of people in democracy.

10. Testing the facts herein on the anvil of the law as explained above, it is revealed that there is unimpeachable evidence as regards rioting and open violence immediately after the filing of nominations for election to the office of President, but before the voting could take place. The Presiding Officer himself lodged FIR at 2:30 pm alleging formation of unlawful assembly, causing hurt by act endangering life or personal safety of others, causing damage by mischief of amount more than Rs. 50/- and obstructing public servant in discharge of public function. 10.1 The Presiding Officer in the minutes of the said meeting dated 09.03.2015 recorded that there was wide spread damage done to the property by the mob. The minutes further disclose that the mob took away one nomination paper which led to the Presiding Officer calling for help of police force. The minutes further reveal that on arrival of the Superintendent of Police and the SDM, Shivpuri the situation was brought back to normalcy at about 2:30

pm, whereafter the Presiding Officer recommenced the interrupted and adjourned proceedings of election by adopting a novel mode of announcing the holding of adjourned process of voting which could not be held earlier on account of disruption. This announcement was made by loudspeaker in the town of Pohri. The provision of Rule 21(3) of the 1995 Rules (supra) provides that whenever adjournment takes place owing to open violence and rioting the next date for fresh election shall be fixed for which Chapter IV of the 1995 Rules shall be followed. Chapter IV of the 1995 Rules includes Rule 12 which is reproduced thus :-

"12. Notice of meeting - (1) The Competent Authority shall issue a notice to all the Panchas including the Sarpanch in the case of Gram Panchayat and all in the case of Janpad Panchayat and Zila Panchayat entitled to take part in election proceedings in Form I.

(2) A copy of such notice shall be exhibited on the notice Board of the Panchayat Office.

(3) The notice shall be dispatched atleast five days before the date of meeting at their permanent addresses and shall contain the date, time, place and purpose for calling meeting.

(4) The notice shall be deemed to be given if it delivered to the Panchas or member in person or sent by registered post

to his address."

10.2 Thus, the mode of announcement through loudspeaker is a mode which is alien to the mode prescribed for intimation for calling the meeting to elect the President.

10.3 Pausing here for a moment, the failure of the Presiding Officer to adjourn the meeting to another undisclosed date in terms of Rule 21(1) of 1995 Rules, despite existence of open violence and rioting, is beyond comprehension. The proceedings dated 09.03.2015 clearly indicate that the Presiding Officer instead of following the law was moving on the dictates of some extraneous consideration with the misdirected burning desire of some how completing the election process on 09.03.2015 itself. In doing so, the Presiding Officer not only violated the mandatory rules under 1995 Rules but also permitted hooliganism and mobocracy to take over, thereby creating a scenario where instead of holding election afresh on a later date in terms of Rule 21 (1) and (3) of 1995 Rules, the appellant herein was declared elected of having secured all the 11 votes. Interestingly only 11 members were present and all casted their votes in favour of the appellant. It appears that only those eleven (11) members were allowed to participate in voting, who were supporters of the appellant while the detractors (the supporters of petitioner) were designedly kept at bay.

10.4 The object of prescribing certain procedure for holding different stages of election is to ensure that the voters are duly informed of the date, time and

venue of the different stages of election thereby affording the voters a free, fair and impartial atmosphere to peacefully participate in the election process with the ultimate object of enabling a democratically elected body to come into the existence.

10.5 The Presiding Officer seems to have acted with great haste and with ulterior motive which is evident from the fact that instead of adjourning the disrupted proceedings of election to an undisclosed date in terms of Rule 21 (1) of 1995 Rules, the said officer completed the election process post-haste which is ample proof of the fact that

Presiding Officer was influenced by extraneous consideration with the sole motive of declaring the appellant herein as returned candidate.

11. The factum of open violence and rioting are so palpable on the record that they do not require any fact finding inquiry or trial to be established. It is the considered view of this Court that given the attending circumstances, this is a fit case where the power of judicial review under Article 226 ought to have been exercised. In such a situation, the exercise of power of judicial review cannot lead to disruption, stalling or postponing or vitiating the election, but infact it furthers the concept of free and fair election to ensure a democratically elected person to come to power. If the plenary power of judicial review had not been exercised by the writ court, the injustice committed by the Presiding Officer would have perpetrated allowing an undemocratically election person to hold the office of President, JP.

12. Looked at the lis from different angle, this court finds that the circumstances prevailing during holding of meeting on 09.03.2015 were such that the same interrupted and obstructed the process of election to the extent that meeting had to be temporarily adjourned by the Presiding Officer. This fact of temporary adjournment itself is an indication of open violence and riot having taken place. In such a situation the only option available to the Presiding Officer was to adjourn the election to a later date under Rule 21(1) of 1995 Rules and not to merely temporarily adjourn the process of election. There is no provision in the 1995 Rules or Act of 1993 which empowers the Presiding Officer to temporarily adjourn the process of election which has once begun and reached the stage of filing of nomination with only voting and declaration left to be completed. In this factual background, it can very well be said that there was no disputed questions of fact about factum of open violence or rioting since same these facts got vindicated by the Presiding Offier calling the police force and lodging an FIR as mentioned above. 12.1 In a somewhat similar circumstances the Apex Court in Harnek Singh Vs. Charanjit Singh and Ors, (2005) 8 SCC 383

was faced with factual scenario that election to the office of Chairperson / President of a Janpad Panchayat was held in which both the rival candidates secured equal votes but before the Presiding Officer could go in for draw of lots in terms of the rules, commotion took place disrupting the proceedings. The High

Court entertaining the petition under Section 226 set aside the election. However when the matter reached the Apex Court the decision of the High Court was upturned.

12.2 The Apex Court after referring to the decision of Ashok Kumar (supra) and also other decisions declared the interference in the election by the High Court under Article 226 to be unjustified on the ground of bar contained in Article 243(O). In the said decision before the Apex Court the election process does not appear to have come to an end as the said judgment of the Apex Court does not indicate that the draw of lots was held and result was declared in favour of any one candidate. Thus, the factual scenario before the Apex Court was that the election process was still underway and had not been concluded. The distinguishable feature in the case at hand is that the election process to fill up the office of President, JP was concluded by declaring the appellant to be returned candidate. In view of said distinguishing feature, the decision of the Apex Court in Harnek Singh (supra) may not be of much assistance to the appellant. However it is worthy of mention that in the case of Harnek Singh (supra) the Apex Court referred its earlier verdict in Ashok Kumar (supra) with approval.

12.3 Pertinently this Court is obliged to deal with the aspect of not relegating the petitioner to avail the remedy of election petition, and instead, approving the shortcut mode of judicial review adopted by the writ court.

12.4 In the earlier part of this judgment this Court found with the aid of Ashok Kumar's case of Apex Court, that Art. 329 / Art. 243-O(b) does not close all doors on a litigant seeking recourse to judicial review

under Art. 226 to assail an election.

12.5 Art. 226, by its very nature and the object it seeks to achieve is wide enough to include within its sweep all contingencies abhorrent to law, good conscience, fair play, reasonableness, natural justice, basic human rights and to all those concepts which constitute the basic structure in our Constitution.

12.6 The democratic nature of our republic is undoubtedly one of the ingredients of basic structure. Whereas elections which are conducted in a free and fair manner form the foundation of democracy.

12.7 Any election process which is vitiated by violence and riot cannot be termed as free and fair. Such vitiated process of election strikes at the very root of democracy by allowing occupation of elected offices by persons / candidates who assume power by force rather than mandate of people thereby endangering democracy.

12.8 The question that now arises is whether in the attending facts herein where open violence and riot was complained of by the Presiding Officer, should the writ court have turned a Nelson's eye toward the obvious by closing the doors of justice under Article 226 and relegated the petitioner to avail remedy of election

petition, thereby allowing an unlawfully elected appellant to wield power sans peoples mandate.

12.9 Before answering the above question, another question needs to be posed. The other question is that how can the writ court presume existence of open violence or rioting in the meeting dated 09.03.2015 without conduction of fact finding enquiry in shape of election trial.

12.10 True it is that factum of open violence / riot can be established to the hilt by way of a trial as prescribed, but when records in shape of minutes of the 09.03.2015 meeting, the FIR lodged by P.O. and the other circumstances are glaring along with the undischarged statutory obligation of P.O. to have adjourned the meeting sine die under Rule 21 (1) it becomes imperative for the Superior Court to exercise the power of judicial review to eschew miscarriage of justice

and prevent hijacking of democracy by unscrupulous means.

12.11 Could the writ Court have stood as a silent spectator to the obvious illegality and taken the convenient and safe course of dismissing the petition by relegating the petitioner to avail remedy of election petition. When an illegality does not merely pertain to infringement of personal rights but strikes at the very root of democratic polity, the writ Court under Article 226 is obliged to rise to the occasion to prevent perpetration of illegality and nefarious forces to prevail, instead of leaving the hapless litigant to tread the long drawn path of filing and prosecuting an election petition which may often consume years to be decided. In the meantime the apparently unlawfully elected office bearer continues to pollute the pristine stream of democracy enjoying all the privileges of the office with no or negligible mandate of people (voters).

12.12 The answer to all the aforesaid questions lies in Article 226 which uses the expression ".....and for any other purpose." This expression reveals the plenary nature of power. The Constitution makers consciously used this expression so as to prevent any illegality to escape the scrutiny of the High Court notwithstanding any constitutional [Art. 243-O(b)] or statutory (election petition) bar from coming in way of exercise of power of judicial review. However the High Court ought to be circumspect while exercising this power when statutory remedy is available. This does not mean that the High Court should close the doors of justice to the litigant. The High Court is only required to be cautious and careful while considering the issue raised and not balk away. If the circumstances disclose apparent illegality to have polluted the election process turning it to be an eyewash it would be prudent to exercise the power of judicial review in larger public interest by ignoring the unavailed statutory remedy of election petition.

12.13 This kind of an approach in larger public interest while dealing with elections, is necessary in the fast degrading moral standards where contesting elections at any level of governance is being treated by more and more as a business venture rather than

selfless public service. To catch up with the changing times the exceptions to the power of judicial review need to be proportionately liberalized so that unscrupulous elements do not take shelter behind and thrive due to the meandering and time consuming judicial process.

12.14 Thus relegating the appellant to the remedy of election petition would not have been justified in the given facts and circumstances. Moreso, dismissal of the petition and asking the petitioner to avail the remedy of filing of election petition would have led to a scenario where an election infested with violence, rioting and hooliganism would have prevailed thereby eroding the very foundation of the democratic setup recognized by the Constitution.

12.15 Every office filled by election is required to be preceded by democratic process of free and fair election. If the election process itself is polluted by violence, rioting and hooliganism then the election is a mere farce. The concept of democratic republic is recognized by the Constitution as part of basic structure which is required to be zealously protected and preserved to ensure prevalence of rule of law. Any nefarious attempt making inroads into the pristine nature of democratic republic deserves to be nipped in the bud for which the most suitable and efficacious remedy is the power of judicial review. As such, this court unhesitatingly holds that the learned Single Judge has rightly invoked its writ jurisdiction to prevent democracy from turning into mobocracy.

13. The other submission of learned counsel for the appellant in regard to quashment of the entire proceedings dated 09.03.2015 leading to setting aside of the election of the Vice President also which was not under challenge, is concerned, this Court finds substance in the said argument.

14. Indisputably the petitioner had filed nomination for the office of President and not for the office of Vice President and therefore, the entire pleadings, submissions, arguments and adjudication which took place before the Writ Court where in relation to the process of election to the office of President only. Accordingly, this Court holds that the

impugned order of the writ Court so far as it quashes the election to the office of Vice-President of Janpad Panchayat Pohri deserves to be interfered with.

15. From the above conspectus of facts, submission and analysis of law, the present appeal stands disposed of in the following terms :- (i) Impugned order of the Writ Court dated 03.01.2017 passed in WP No. 1622/2015 to the extent it declares the proceedings dated 09.03.2015 as illegal in respect of office of President, Janpad Panchayat Pohri (Distt. Shivpuri), M.P. is upheld.

(ii) Impugned order of the Writ Court dated 03.01.2017 passed in WP No. 1622/2015 to the extent it declares the proceedings dated 09.03.2015 as illegal in respect of office of Vice President, Janpad Panchayat Pohri (Distt. Shivpuri), M.P. is set aside.

(iii) The interim order passed by this Court on 17.01.2017 postponing holding of

election process afresh to the office of President, Janpad Panchayat, Pohri (Distt. Shivpuri), M.P., is vacated and the official respondents are free to hold election to the said office in accordance with law. No cost.