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**(1972) 03 MP CK 0021**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 28 of 1972**

Rameshchandra

APPELLANT

Vs

G.N. Tandon and Others

RESPONDENT

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**Date of Decision : 31-03-1972**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Indore University Act, 1963 — Section 19(1)

**Citation : AIR 1974 MP 1 : (1973) 18 MPLJ 819**

**Hon'ble Judges : S.R. Vyas, J;S.P. Bahrgava, J**

**Bench : Division Bench**

**Advocate : Jethumalani and Kohli, for the Appellant; R.G. Waghmare, (for Nos. 1 and 2), S.C. Bagdia, K.K. Sethi, V.S. Kokje, S.M. Jhavar, V.S. Samvatsar and S.L. Garg, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.P. Bhargava, J.

The facts leading to the presentation of this petition by Rameshchandra Bahoti may be briefly stated thus. The petitioner is admittedly a registered graduate of the University of Indore. He passed his M. Com. Degree Examination in the year 1967. In that very year, Shri Vaishnav Arts & Commerce College. Indore, also called as Shri Vaishnav College of Commerce, was started at Indore in the month of August. The petitioner received a letter (Annexure A) from the Joint Secretary of the said College in which it was requested that he may at his convenience and according to his aptitude deliver some lectures to the students of that college. By his reply dated 3rd August, 1967 (also marked Annexure A) the petitioner accepted the said offer in these words:

"It is really very kind of you to extend an invitation for delivering a few lectures to the students. I shall be happy to do so subject to the limitations of time and according to my convenience."

2-3. Annexure R-2 filed with the return on behalf of respondents 1 and 2, the Registrar of the University of Indore and the University of Indore, shows that the petitioner is the senior-most Honorary Lecturer in the said College and he has been teaching the subject of Business Administration from the month of August 1967 in the Shri Vaishnav College of Commerce, Indore. The particulars regarding seniority of members of the staff given in Annexure R-2 clearly mention the petitioner as "Honorary Lecturer". Under the Indore University Registered Graduates (Elections to the Court) Ordinance, 1965 (hereinafter called the Ordinance) Registrar of the University conducts the said elections. The programme of elections to the court of the University was duly published under Clause 5 of the Ordinance and is Annexure B on record. In accordance with the said programme, the petitioner who was desirous of contesting the election to the University Court as a representative to be elected by the Registered Graduates of the University from among themselves under Clause (21) to Section 19(1) of the Indore University Act, 1963 (hereinafter called the Act) submitted his nomination paper duly proposed and seconded as required by the relevant provisions of the Ordinance. The nomination papers submitted by the various candidates were scrutinized by the first respondent on 28-2-1972. The nomination papers of respondents Nos. 3 to 25 were accepted but the nomination paper of the petitioner as also the nomination papers of respondents 26 to 28 were rejected. Thus, respondents 3 to 25 remained as the contesting candidates at the said election.

The nomination paper of the petitioner was rejected by the first respondent on the basis of the explanation to Section 19 (1) of the Act. The said Explanation reads thus:

"No employee of any University or any College within the State shall be eligible to be a member under items (xviii) to (xxii)."

The reasons given by the Registrar for rejecting the nomination paper were conveyed to the petitioner vide Annexure C.

After reproducing the Explanation quoted above, the first respondent stated the following reasons for rejecting the nomination paper of the petitioner :

"Since your name has been shown as the senior-most Lecturer in the list of teaching staff of the Vaishnava College submitted by the Principal of the College vide his letter No. 285/71 of the 8th September, 1971. you, therefore, are in the category of the employee though it is mentioned against your name that you are an Honorary Lecturer. All Lecturers are employees of the College concerned, so far as the teaching and disciplinary control over them by the Principal is exercised. Your form, therefore has been rejected u/s 11 (1) (a) of the Ordinance No. 1 of University of Indore read with the explanation to Section 19 (1) of the Act."

It is averred in the petition that the order made by the first respondent is vitiated by an error apparent on the face of the record; that the first mechanically

assumed that merely because the petitioner's name has been shown as a senior-most lecturer in the list of the teaching staff of Shri Vaishnav College of Commerce, the petitioner is ipso facto the employee of the said college; that the relationship of employer and employee does not subsist between the management of the said college and the petitioner who voluntarily, without reward, chose to deliver some lectures to the students of the college; that in the absence of any binding contract no such relationship arises and that the receipt of consideration is an essential requirement to the said relationship. On these allegations, the petitioner has prayed for the issuance of a writ of certiorari or any other writ, direction or order under Articles 226 and 227 of the Constitution. He has prayed that the impugned order dated 1st March, 1972 may be quashed.

In the reply filed by respondents 1 and 2, i.e., the Registrar, University of Indore, and the University of Indore, the Annexure A filed by the petitioner has not been admitted. It has been contended that the circumstances under which the services of the petitioner were engaged by the Vaishnav College of Commerce are wholly irrelevant for the purposes of this petition. It has been urged that the Principal of Shri Vaishnav College of Commerce fixed the periods for the teachers employed in the college and accordingly the petitioner was also assigned periods under the orders and directions of the Principal and the petitioner has been taking classes as per time-table fixed by the Principal. It is denied that the petitioner is not subject to the control and discipline of the College management and it has been urged that "the petitioner who is in the college employment is in the category of teacher and he cannot claim discrimination." It has been contended that by his very employment as a teacher he is under legal obligation to deliver lectures in the periods fixed by the Principal and in such manner as he likes and that he is under no obligation to deliver them is not only false but inconsistent with the functions of the college. It was further pleaded that the University of Indore is not aware of the terms and conditions under which the petitioner himself got engaged or employed by the college and it is not the concern of the University on what terms and conditions the petitioner has been engaged. It has also been urged that the petitioners' waiver to receive any salary or wages, honorarium or other pecuniary considerations which do not in any manner detract from his being a teacher and his category is that of an employee of the college. It has also been contended that the designation of the petitioner as Honorary Lecturer also does not in any manner improve his capacity. It has been urged that the petitioner having obtained the benefit of having experience of teaching in the said college as a teacher and further having obtained seniority in the said college on his teaching experience is an employee of the college which would promote him to the post of Assistant Professor, Professor and Principal. It has also been urged that he was appointed a Valuer in Applied Economics and Planning Paper No. I of B. Com. Part III Examination held in the month of September-October 1971 and he accepted the said offer and employment of the University as a Valuer. He was also paid remuneration for the work of valuing the answer books of the students. It has been asserted that due to these facts he is very much an

employee not only of the college but also of the University being engaged in the activities of the college and University. It has also been pleaded that as the petitioner has an alternative remedy, the writ petition cannot be entertained and no relief should be given to the petitioner. Respondent No. 9 has filed his return supporting the stand taken by the University. Some of the other respondents did not contest this petition.

On the arguments advanced by the learned counsel for the parties, the following questions arise for determination:--

Whether the petitioner is an employee within the meaning of Explanation u/s 19 (1) of the Act?

Whether there are any disputed questions of facts in this case which disentitle the petitioner to relief prayed for in this petition?

Whether the relief should be refused to the petitioner in view of the provisions made under Clauses 50 and 52 of the Ordinance No. 1?

Point No. 1: Neither the Act nor the Ordinance gives any definition of the word "employee". The word "employee" cannot be read as a term of art in the absence of any definition. The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained (see page 76, Maxwell on Interpretation of Statutes, 12th Edition).

In *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, their Lordships of the Supreme Court held that-

"It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid. In interpreting a statute the Court cannot ignore its aim and object."

In *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, it was observed that it is a recognised principle of construction that the general words and phrases, however, wide and comprehensive they may be in their literal sense, must usually be construed as "being limited as to the actual objects of the Act."

In *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, their Lordships of the Supreme Court stated that the concept of employment involves three

ingredients : (1) employer, (2) employee, and (3) the contract of employment. The employer is one who employs i. e. one who engages the services of other person. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agreed to serve the employer subject to his control and supervision. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done. As laid down in, Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, the prima facie test for the determination of the relationship between the master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work or to borrow the words of Lord Uthwatt in Mersey Dock and Harbour Board v. Coggins and Griffiths (Liverpool) Ltd. (1947) AC 1 :

"The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

It is true that the definition given in the different statutes may not be very helpful for determining this question. However, it can safely be stated that in the various definitions a person has nowhere been defined as a workman who has not been hired for salary, reward, wages or compensation.

Clerk and Lindsell in their book on Torts at page 203 have stated that a great variety of different tests for the existence of the relationship of master and servant has been suggested, but the only proposition that can be put forward with confidence on the subject is that no single test capable of general application in all cases has yet emerged. In principle, no doubt, the matter is one of the interpretation of the contract between the employer and the employed person. If the relationship rests upon a written document only the question is primarily one of law on the construction of the document (see Performing Right Society v. Mitchell (1924) 1 KB 762 . Otherwise the question must be answered in the ordinary way by implication.

One of the most frequently cited statements is that of Lord Thankerton in Short v. Henderson (1946) 62 TLR 427 when the learned Lord stated that there were four indicia of a contract of service, namely, (1) the master's power of selection of his servant, (2) the payment of wages or other remuneration, (3) the master's right to control the method of doing the work, and (4) the master's right of suspension or dismissal. If the master's right to control the method of doing the work is proved, it has been repeatedly held to be the decisive element in the relationship. In the same book, at page 204, the learned authors have observed:

"Even today the test of the right to control the method of doing the work is still frequently referred to and it probably remains useful where relatively simple forms of employment are in issue. If, by a contract of employment entered into

between them, one person really does acquire the right to control the method of working of the other, then the contract will be a contract of service and the employed person a servant."

Though even on this point it is recognised that one person may have the right to control the method of working of another without thereby becoming his master as is the case between the superior and subordinate servants of the same master. In such a case no contract exists between superior and subordinate servants,

The inadequacy of the test of control was most forcibly brought out in a series of cases concerning negligent hospital treatment in which hospital authorities have been held liable for the negligence of their medical staff. The traditional view on this aspect was that hospital authorities could not be liable vicariously for the negligence of the members of their medical staff, whether professionally qualified or not, if the negligence occurred in the course of an operation or treatment calling for the exercise of medical skill and knowledge (see *Hillyer v. St. Bartholomew's Hospital* (1909) 2 KB 820). The reason for the view was that such persons as surgeons, house surgeons and anaesthetists were employed to exercise their professions according to their own discretion, without being bound to obey the directions of the hospital authority. However, recently a different view has prevailed and such professionally qualified persons as radiographers, house surgeons, whole-time assistant medical officers and probably staff anaesthetists have been held to be servants of the hospital authority for the purposes of vicarious liability. (See the same book at pages 128-129, Note 212). However, in our opinion, the tests which have been laid down for determining the vicarious liability in recent cases cannot automatically be applied to a case where the question is very different, namely, of a right pertaining to franchise or contesting a seat.

There is no doubt that in the instant case the management of the college wrote to the petitioner and asked, him to indicate his willingness as to whether he will be willing to deliver some lectures to the classes and the petitioner in his reply agreed that at his leisure and convenience he would do so. However, it is clear that no remuneration was either offered by the management or demanded by the petitioner. In fact, no other conditions are stated to have been negotiated or agreed between the petitioner and the college.

The result of contract is to create a contractual obligation by virtue of which the contract is enforceable in law. The term "obligation" includes every duty enforceable in law. It implies a right in another person to which it is correlated and it restricts the freedom of the obligee with reference to definite acts and forbearance. In order that it may be enforced by Court of Law it must be a legal obligation and not merely moral, social or religious. It may be that good sense between the parties concerned was the only rule of guidance. However, we have no hesitation that if the management of the college decided at any time to refuse to take work from the petitioner he had no other option but to stop the work. On

the other hand, if the petitioner at any time decided not to comply with the timetable or other requirements laid down by the management it could have no right to enforce the same against him. The condition of sticking to a particular timetable can only be held to be conditions necessary for the proper functioning of the college but nothing more.

In the case of *Gould v. Minister of National Insurance* (1951) 1 All ER 368, the management had selected the artist and had even paid him remuneration which was called to be his salary in the agreement and in certain circumstances the management had reserved the right to cancel the contract. It was held that those conditions were simply conditions necessary to the proper working of the theatre and the contract was not held to be a contract of service for the reason that there was no control imposed over the artist about the method in which he was to perform his act. It was lastly stressed in that case that performing of the act by the artist depended entirely on his skill, personality and artistry and that was a matter with which the contract did not give the management any right to interfere.

On consideration of the circumstances of this case, we are of the view that the petitioner cannot be held to be an "employee" of the college within the meaning of the Explanation to Section 19 (1) of the Act.

From the facts of this case it is clear that the petitioner is working only in an honorary capacity. We may therefore now examine the question as to whether working in such a capacity he can be treated to be an employee within the meaning of the Explanation. The word "honorary" as applied to some office means "attached to or growing out of some honour or dignity or honourable office." It may also import an obligation or duty growing out of honour or trust as distinguished from legal accountability or servile duty (see *Corpus Juris Secundum*, Vol. 41, page 325). It also means working without profit, fee or reward and in consideration of honour conferred thereby. Where no salary or fees is affixed to the office, it is supposed to be accepted merely for the public good. It also excludes the idea that the public office held honorarily must have continuance. It can make no difference whether there be one act or a series of acts to be done, whether the office expires as soon as one act is done or is to be held for years or during good behaviour (See *Corpus Juris Secundum*, Vol 30, page 457). The word "honorary" as applied to public office and other positions of responsibility or trust means either that the office or title is bestowed upon the incumbent as a mark of honour or compliment, without intending to charge him with the active discharge of the duties of the place, or else that he has to receive no salary or other compensation in money, the honour conferred by the incumbency of the office being the only reward.

We may now consider the aim and object of the provisions contained in the explanation to Section 19 (1) of the, Act. The only purpose of excluding employees from being members of the University Court is to avoid any possible conflict of the members of the Court with their duty. It is one of the functions of

the Court u/s 21 (2) (xiii) to lay down scales of salaries and conditions of employment of the members of the staff in constituent colleges and other recognised institutions and to ensure the observance of the same through the Executive Council. If paid or salaried employees were made eligible for election to the Court, it is plain that there may be a conflict between their power and duties. For avoiding this conflict, in our opinion, the rule contained in Explanation to Section 19 (1) of the Act was enacted.

It was contended that even while working as a honorary lecturer the petitioner had in 1971 accepted (vide Annexures R-2 and R-3) an appointment offered by the University for examiner-ship and that on this ground also the petitioner is to be treated as an employee of the University. This contention deserves to be summarily rejected. Acceptance of such an offer of a casual nature does not make the person accenting it an employee of the University. The offer was only for a limited purpose and for a specific period. It was not suggested that the aforesaid casual ap- pointment continued on the date when the nomination paper was filed and rejected by the Registrar, We cannot in these circumstances accept the contention that merely because the petitioner had agreed to be appointed as an examiner in the year 1971 he must for all time to come be treated as a University employee.

The learned counsel for the respondents 1 and 2 stressed the difference in language used in explanation to Section 19 (1) and the proviso to Section 22 of the Act and contended that as the words "salaried employee" had been employed in the proviso to Section 22 and only word "employee" was used in the Explanation, it was evident that the enacting authority intended to include and connote even the unsalaried employees within the explanation. Apparently the argument is attractive but we see no force in this submission. In the first place, we may point that the aforesaid two provi-sions were not introduced in the Act at the same time. The provision in Section 22 using the words "salaried employees" admittedly was introduced at a much later point of time. As the two provisions did not exist in the Act at the same time it would be erroneous to read them in juxtaposition to fix the difference in their meaning (see Tolaram Relumal and Another Vs. The State of Bombay, ).

In fact, it can be asserted with some force that as in the proviso to Section 22 only salaried employee has been excluded and the word used in the Explanation is simply an employee it must have been in the contemplation of the enacting authority that non-salaried person (if he could be called an employee at all) was not excluded from taking part in the election. We are actually inclined to the view that what was not very clearly said when the word employee was used, it has been more specifically said when the words "salaried employee" were used in the proviso. We therefore take the view that the word "employee" as used in explanation to Section 19 (4) and the words "salaried em-ployee" as used in the proviso to Section 22 have the same connotation and meaning.

Learned Counsel for the respondents relied on the decision reported in Elaya

Pillai v. K. Parthasarathy (1953) 8 ELR 20 (Mad) where it has been held that the village Munsif who is employed in a State does not cease to be an employee within the meaning of Section 123(8) of the Representation of the People Act, 1951, when he was on leave without pay and was not actually performing his duties. It is apparent that the point for consideration in that case was entirely different that the village Munsif continued in service of the State though he was on leave cannot be doubted as a contract of service does not terminate by any Government servant going on leave without pay.

The other case relied upon by the learned counsel for the respondents in Deorao Laxman Anande Vs. Keshav Laxman Borkar, In that case their Lordships were concerned with the question as to what was meant by "an office of profit" and it was held that it was not necessary that the holder of the office should actually make a profit out of it. In other words if there was any potentiality of making any profit then even if no profits were made, the holder was holding an office of profit. This decision also has no application at all to the present case.

The last decision cited in this connection was AIR 1953 172 (Nagpur) . In that case the question for consideration was whether the respondents were liable for contravention of the provisions of Section 66 (1) (b) of the Factories Act which provided that no woman shall be employed in a factory except between the hours of 6 A. M. and 7 P. M. This clause was stated to have been contravened by the wives and other relations of the factory workers. In this context their Lordships held that the word "employed" does not only connote employed on wages but also being occupied or engaged in some form of activity. Their Lordships took that view in consonance with the spirit of the Factories Act which strictly inhibits employment of women after 7 P. M. and before 6 A. M. We do not see as to how this interpretation can be of any help in the present case.

Point No. 2:-- This point need not detain us long. We have reproduced the material portion of the order of the first respondent rejecting the nomination paper of the petitioner in paragraph 4 of this order. The sole ground on the basis of which his nomination paper was rejected was that he was a lecturer and lecturers are "employees" of the college concerned so far as teaching and disciplinary control over them by the Principal is exercised. The question of fact that he was an honorary lecturer has clearly been admitted in the impugned order itself though the respondents 1 and 2 and respondent No. 9 have in their returns not admitted Annexure A which according to the petitioner contained the entire offer and acceptance on the basis of which the petitioner commenced to deliver lectures. Not a word has been said in these returns as to how any monetary benefit either in cash or kind was obtained by the petitioner from the college in pursuance of or as direct consequence of his acceptance dated 3-9-1967. We have already dealt with the question that the mere acceptance of the employment of a valuer in an examination even if it were held to be an employment in the real sense of the word does not in any manner affect the position of the petitioner not being an "employee" at the time of filing of the

nomination paper because admittedly long before the nomination paper was filed the said appointment had spent itself and had come to an end. We are further of the view that the mere incidental fact by virtue of delivering series of lectures the petitioner would gain experience and may have better claims to be appointed to a superior post in future does not in any manner constitute "consideration" in the sense in which this word is understood in the law of contract. The necessary facts therefore which have been asserted by the petitioner in support of the petition cannot be held to be disputed facts and in fact the only point for consideration is as to whether in the circumstances of this case on the basis of the offer and acceptance on record the correctness of which was accepted by the Registrar at the time of rejecting the nomination paper by accepting this fact that the petitioner's name was mentioned in the list of the college employees as an honorary lecturer much before the present dispute arose the petitioner was an employee within the Explanation to Section 19(1).

We are unable to agree with the view pressed on behalf of the learned counsel for respondents 1 and 2 that two views were possible to be taken about the meaning of the word "employee" as used in that Explanation and as the Registrar accepted one of the two possible meanings, his action could not be called into question in a writ petition. The correct legal position is that if the order of the Registrar suffers from an error apparent on the face of the record, it would not only be proper but necessary for us to interfere in case we are unable to persuade ourselves that there is another equally efficacious and beneficial legal remedy provided in the Act or the Ordinance. It is significant that the Registrar did not as a fact find that the relationship of employer and employee existed between the college and the petitioner. There are no facts found in the rejection order on the basis of which it could be said that he held that some kind of consideration whether in cash or kind was paid to the petitioner or the petitioner was entitled to any such consideration under the offer made to him and accepted by him. We are clearly of the view that the word "employee" as used in the Explanation does not cover the case of a person who has merely agreed to deliver a few lectures at his leisure and convenience without any obligation being imposed on the college to pay him any remuneration for the delivery of these lectures. In other words, the word "employee" in Explanation to Section 19 (1) has been used in its general and popular sense alone where it means a person who performs services for another for hire, salary or wages. The term as used in the Explanation only takes within its scope the relationship of employer and employee and can have no application to the precarious relationship existing in the present case in spite of there being a clear provision in Clause (xiii) of Section 21 of the Act to lay down scales of salaries and conditions of employment of members of the staff in constituent colleges and other recognised institutions and to ensure the observance of the same through the Executive Council. The said clause is not attracted in the present case. Thus, in our opinion, there are no disputed facts on the basis of which it would be reasonable or proper to deny him the remedy in this petition.

Point No. 3:-- The learned counsel for the respondents contended that the remedy provided by Clause 50 of the Ordinance was an adequate remedy and as the rejection of nomination paper was during the process of election, Clause 50 cannot be said to provide any embargo on the election petition as it did not contain any words of limitation and any interference at this stage would hold up the completing of election which is not envisaged in the Act and therefore the election process should not be arrested by exercising the extraordinary jurisdiction of this Court in the writ petition. Relying on the Full Bench decision of this Court in *Malam Singh Vs. The Collector, Sehore, M.P. and Others*, it has been urged that as other remedy is available, it would not be proper for this Court to exercise its jurisdiction under Articles 226 and 227 of Constitution for interfering with the order rejecting petitioner's nomination paper in the election process. It has further been stressed that there are no circumstances of very exceptional nature in the present case which would entitle the petitioner to invoke the special jurisdiction of this Court in a writ petition.

Clause 50 of the Ordinance enacts that an election petition against any returned candidate or elector or his agent authorised in that behalf within fifteen days from the date of the publication of the result of the election in the *Madhya Pradesh Gazette*. The Kulpati's order on the petition shall be final,

The provision made in Clause 50 does not contain any negative provision as is to be found in Section 80 of the Representation of the People Act or in Article 329(b) of the Constitution or in Section 357 (1) of the M. P. Gram Panchayat Act. Article 329 of the Constitution begins with the opening words "Notwithstanding anything in this Constitution" and their Lordships of the Supreme Court held that these words were sufficient to exclude jurisdiction of the High Court under Arts. 226 & 227 to deal with any matter which may arise while the election was in progress. Their Lordships also interpreted Section 80 of the Representation of the People Act, 1951, in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . They emphasized that the right to vote or stand as a candidate for election is not a civil right but is a feature of the statute or special law and must be subject to the limitations imposed by it. In *Malam Singh Vs. The Collector, Sehore, M.P. and Others*, their Lordships held that the remedy of election petition provided by Section 357(1) was not less convenient beneficial and effectual but in spite of that it was observed in para. 12 that "there was no constitutional bar to the exercise of writ jurisdiction in respect of election to local bodies, such as, municipalities, panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of its discretion should always decline to invoke its jurisdiction in an election dispute, if the alternative remedy of an election petition is available." Their Lordships quoted from the decision in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, the following passage:

"..... though no legislature can impose limitations on these constitutional powers

it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

Clause 50 of the Ordinance deals with the election petition. It would be seen from the language of Clause 50 that it is not couched in negative language. Clause 50 has been enacted in a permissive manner without a negative injunction. The provision of Clause 50 departs from the usual provision "that no election shall be called into question except by an election petition." Further, while providing the remedy of election it is usually said that the election could be called in question on the ground of any nomination paper having been improperly rejected but Clause 50 does not expressly say so. On the other hand, in the very Ordinance which enacts Clause 50, under Clause 11 (3) it has been said that the decision of the Registrar shall be final and thus neither the provision in the Act enables the election to be challenged expressly on an antecedent order rejecting a nomination paper. Further, the remedy provided in Clause 50 cannot be held to be adequate or sufficient because there is no provision made either in Clause 50 or even when the matter is referred to the Kul-pati for interpretation of the Ordinance under Clause 52 that hearing would be granted or the Kulapati is required to make a speaking order. It is significant to note that even if the remedy under Clause 50 or Clause 52 is followed it may result in a valid non-speaking order which instead of providing any efficacious remedy to the petitioner may make his task more difficult in a writ petition as he would then be required to challenge a valid non-speaking order. Further it would be seen that the Full Bench decision does not say that the jurisdiction of the High Court under Articles 226 and 227 during the process of an election could not be invoked in any circumstances. It expressly provides that this jurisdiction could be invoked in "very exceptional circumstances." The exceptional circumstances can possibly refer only to those cases which would result in serious injustice to a party by the non-recognition of his apparent right to vote or contest in an election. Lastly it has to be borne in mind that the Court of University itself is an electoral college for the election of three persons elected by a single transferable vote by the Court from amongst its members, at least two of whom shall be from amongst the registered graduates elected to the Court under Clause (xxi) of Sub-section (1) of Section 19, according to the provision made in Section 22 (1) (iv) of the Act. It is apparent that if the process of election is allowed to continue and if it is held that the only remedy of the petitioner would be to resort to the remedy provided by Clause 50, he may have no opportunity at all even after his final success in such a petition to be elected to the Executive Council. This consideration had weighed with a Division Bench of this Court in *Vinodkumar v. K. L. Jain* 1965 MPLJ 375. In our opinion, all the considerations which weighed with their Lordships in interfering with the rejection of the nomination paper in that case are present (in this ?) case.

In the result, this writ petition is allowed. The impugned order dated 1-3-1972 of the first respondent rejecting the nomination paper of the petitioner is quashed.

Considering the circumstances of the case we do not make any order as to costs.  
The security amount shall be refunded to the petitioner.