
(2008) 09 MP CK 0028
In the Madhya Pradesh High Court
Case No : W.A. No. 1434 of 2006

Satyarath Prakash Agrawal	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 19B
Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2009) ILR (MP) 923 : (2008) 4 MPLJ 485

Hon'ble Judges : R.S. Garg, J; R.K. Gupta, J

Bench : Division Bench

Advocate : Naman Nagrath, for the Appellant; R.N. Singh, Advocate General for Respondent No. 1, Kishore Shrivastava with Shekhar Sharma for Respondent Nos. 2 and 3 and Rajendra Tiwari with T.K. Khadka As amicus-curie, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

The present appeal has been preferred u/s 2(1) of M.P. Uchha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005

against the judgment dated 12-12-2006 passed by the learned Single Judge in W.P. No. 5319/2004. The present appellant filed a petition praying for a writ of Quo-warranto against the respondent No. 3, who was elected on the office of Mayor of the Municipal Corporation, Bhopal, on the ground that the respondent No. 3 is disqualified to hold the post of Mayor, therefore, respondent No. 3 be asked to vacate the office of the Mayor.

The present appellant is a voter of Ward No. 39 Chandbad Ward, Municipal Corporation, Bhopal. The respondent No. 3 earlier was elected as a Councillor of Municipal Corporation, Bhopal and thereafter was elected as the Chairman of the Municipal Council, Bhopal. While the respondent No. 3 was holding the office of

Chairman, the State Government issued a show cause notice to him u/s 19-B of the M.P. Municipal Corporation Act, 1956 (for brevity "Act") The respondent No. 3 filed his reply to the said show cause notice and thereafter the State Government passed an order on 17th March, 2004 (Annexure-P-3) removing him from the office.

The respondent No. 3 filed a petition before this Court challenging the legality and validity of the said order by which the respondent No. 3 was removed from the office of Mayor. The said petition was registered as W.P. No. 1320/2004. The aforesaid petition after the election of the respondent No. 3 on the post of Mayor was withdrawn on 11-1-2005. Subsequently a review application was filed by the respondent No. 3 which was registered as MCC No. 54/2000 and this Court by an order dated 21-4-2005 recalled the order of withdrawal of the said petition and the petition was restored to its original status, which is still pending. During the pendency of the said petition the present appellant filed a petition before this Court seeking a writ of Quo-warranto.

There are further undisputed facts that against the election of the respondent No. 3 to the post of Mayor an election petition has also been filed which is still pending. The said election petition has been filed u/s 441 of the M.P. Municipal Corporation Act, 1956.

Before the learned Single Judge it was submitted on behalf of the present appellant that since the respondent No. 3 was removed u/s 19-B of the Act from the post of Mayor, therefore he incurred disqualification to contest the election either for the office of Councillor or for the office of Mayor. Considering the language of the section 17 and the disqualification as prescribed u/s 17(1)(b) of the "Act" the learned Single Judge held that the respondent No. 3 did not suffer with the disqualification and accordingly the learned Single Judge dismissed the petition. Learned Single Judge arrived at a conclusion that the State Government while passing the order of removal u/s 19-B of the Act, since has not passed any order under sub-section (2) of section 19-B of the Act, therefore the respondent No. 3 did not suffer with any disqualification u/s 17(1)(b) of the Act and accordingly the petition has been dismissed. The present appeal has been preferred to challenge the order passed by the learned Single Judge.

On behalf of the respondent No. 3 a preliminary objection was raised that the petition before the learned Single Judge was not maintainable. It is contended that the election petition has already been filed under the provisions of the Act which is still pending therefore for the purposes of setting aside the election of the respondent No. 3 no petition under Article 226 of the Constitution is maintainable. On behalf of the writ-appellant it was submitted that by virtue of Article 329 of the Constitution of India though similar bar has been created and the Apex Court in series of its judgments has held that the aforesaid bar only applies during the process of election i.e. from the date the election was notified and the said bar terminates after the result of the election is declared.

Counsel appearing on behalf of the writ-appellant relied upon the judgment passed by the Apex Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and submitted that after the election is over the bar created in pursuance to Article 243ZG which is analogous to the bar created under Article 329(b) will have no application. It was also contended that for the purposes of issuing a writ of quo-warranto the powers of the High Court under Article 226 of the Constitution of India are not restricted to issue a writ of Quo-warranto particularly when the election result has already been declared.

It is submitted on behalf of the appellant that it is a case where the elected person i.e. respondent No. 3 is disqualified to hold the office therefore he should not be permitted to hold the office particularly in the light of the Article 243(v) which reads as under:

243-v. Disqualifications for membership.-- (1) That a person shall be disqualified for being chosen as, and for being, a member of a Municipality:

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the State concerned.

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age if he has attained the age of 21 years.

(b) if he is so disqualified by or under any law made by the legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1) the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Counsel appearing on behalf of the appellant relied upon the judgment passed by the Apex Court in K. Venkatachalam Vs. A Swamickan and Another, and referred to paragraphs 25, 26, 27 and 28 which are reproduced as under:

25. In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a member from that constituency. How could a person who is not an elector from that constituency could represent the constituency? He lacked the basic qualification under clause (c) of Article 173 of the Constitution read with section 5 of the Act which mandated that a person to be elected from an Assembly constituency has to be elector of that constituency. The appellant in the present case is certainly disqualified for being a member of the Legislative Assembly of Tamil Nadu. His election however, was not challenged by filing an election petition u/s 81 of the Act. Appellant knows he is disqualified. Yet he sits and votes as a member of the Legislative Assembly. He is liable to penalty of five hundred rupees in respect of each day on which he so sits or votes and that penalty is recoverable as debt due

to the State. There has not been any adjudication under the Act and there is no other provision of the Constitution as to how penalty so incurred by the appellant has to be recovered as a debt due to the State. Appellant is liable to penalty nevertheless as he knows he is not qualified for membership of the Legislative Assembly and yet he acts contrary to law.

The question that arises for consideration is if in such circumstances High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. On the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as Venkatachalam s/o Pethu, taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the Constitution.

In view of the judgment of this Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, , it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?

We are, therefore, of the view that the High Court rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislative Assembly with consequent restraint order on him from functioning as a member of the Legislative Assembly. The net effect is that the appellant ceases to be a member of the Tamil Nadu Legislative Assembly. Period of the Legislative Assembly is long since over. Otherwise we would have directed respondent No. 2, who is Secretary to Tamil Nadu Legislative Assembly, to intimate to Election Commission that Lalgudi Assembly Constituency seat has fallen vacant and for the Election Commission to take necessary steps to hold fresh election from that Assembly Constituency. Normally in a case like the Election Commission should

invariably be made a party.

Learned Counsel appearing on behalf of the respondent No. 3 relied upon the judgments passed by the Apex Court in Jaspal Singh Arora Vs. State of M.P. and Others, , Gurdeep Singh Dhillon vs. Satpal and others, 2006 (10) SCC 616 and lastly in State of H.P. and others vs. Surinder Singh Banolta, 2006 (12) SCC 484. The Apex Court in Jaspal Singh Arora (supra) and Gurdeep Singh Dhillon (supra) has held that in view of the bar created under Article 243ZG of the Constitution of India the High Court cannot set aside the election by interfering in exercise of its jurisdiction under Article 226 of the Constitution of India and the election can be challenged only by way of an election petition and the competent forum can set aside the election on the grounds provided under the Act.

Explaining the aforesaid judgments counsel for the appellant submitted that at first instance it is to be seen that the judgments which have been relied upon by the learned counsel for the respondent No. 3 particularly two judgments rendered in the cases of Jaspal Singh Arora (supra) and Gurdeep Singh Dhillon (supra) do not directly deal with the jurisdiction and power of the High Court to issue a writ of Quo-warranto against a person who is disqualified under the law. Though the Apex Court in the aforesaid two judgments has held that no election of the office bearer or the municipality cannot be called in question except by way of an election petition, in view of the bar created under Article 243ZG of the Constitution of India. The judgments of the Apex Court as aforesaid do not deal directly with the powers of the High Court to issue a writ of Quo-warranto under Article 226 of the Constitution of India.

On the basis of the aforesaid the question in the present case is that despite the bar created under Article 243ZG of the Constitution of India wherein it is provided that no election shall be called in question otherwise than by way of an election petition, whether the bar as such would also apply to the High Court exercising the powers of issuing a writ of Quo-warranto under Article 226 of the Constitution of India even after the election is over?

Such question has directly been considered by the Apex Court in the case of K. Venkatachalam (supra) wherein the Apex Court has considered the question with reference to the bar created under the Constitution of India. The Apex Court came to the conclusion that the powers of the High Court is not taken away particularly after the election is over and a person who is elected, is found disqualified under the statute to hold the office in question.

The judgment passed by the Apex Court and relied upon by the respondent No. 3 in State of Himachal Pradesh (supra) also has no application in the present case, because the Apex Court was not considering the jurisdiction and power of the High Court under Article 226 of the Constitution of India to issue a writ of Quo-warranto. The facts of the aforesaid case were that a complaint was made by a person to the Deputy Commissioner Distt Shimla alleging that the returned candidate was disqualified as he was an encroacher within the meaning of

sections 4 and 7 of H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971. The Deputy Commissioner took cognizance of the said complaint and declared that the returned candidate was disqualified from being chosen as a member of Zila Parishad. The said order was challenged in the High Court on the ground that when a remedy of election petition was provided then the question as such could not have been decided by the Deputy Commissioner and the High Court therefore set aside the order passed by the Deputy Commissioner. The matter went to the Apex Court against the order passed by the Division Bench of Himachal Pradesh High Court. While considering the facts and circumstances of the case the Apex Court held that when an election petition was already pending against the returned candidate and even though he was disqualified then Deputy Commissioner on any complaint could not take cognizance and hold that the returned candidate was disqualified.

The facts of the present case are entirely different, we have already held earlier that the aforesaid judgment do not directly deal with the question with reference to the powers of High Court under Article 226 of the Constitution of India to issue writ of Quo-warranto, the said judgment in fact is in relation to the exercise of power by the Deputy Commissioner to declare a candidate to be disqualified to hold the office. Thus the said judgment so relied upon by the learned counsel for the respondent No. 3 has no application to the present case. The said judgment i.e. State of H.P. (supra) in fact is not for the proposition as held by the Apex Court held that when the election petition is already pending against the election of a returned candidate then it would not be appropriate for the High Court to interfere in its writ jurisdiction.

The matter as such has been considered by the Division Bench of this Court in W.A. No. 87/2006 decided on 15-11-2006, Atar Lal Verma vs. Suresh Choudhary and others. The Division Bench of this Court considered the bar created by virtue of Article 243O in relation to exercise of the powers by the High Court to issue a writ of Quo-warranto with regard to the election in respect of the panchayats, and the Division Bench ultimately arrived at a conclusion that the bar as such shall not apply to the High Court exercising the powers under Article 226 of the Constitution of India in the exceptional cases. The relevant paragraph 10 and 11 of the aforesaid judgments are as under:

10. The question which arises for decision is whether the aforesaid provisions under Article 243O of the Constitution and section 122 of the Act bar the jurisdiction of the High Court under Article 226 of the Constitution. This question came up for decision before the Supreme Court in Harnek Singh Vs. Charanjit Singh and Others, and the Supreme Court held that the provisions in Article 243O of the Constitution by itself may not per se bar judicial review under Article 226 which is the basic structure of the Constitution but ordinarily such jurisdiction would not be exercised, Paragraph 16 of the said judgment of the Supreme Court as reported in SCC at page 338 is quoted hereinbelow:--

Article 243O of the Constitution mandates that all election disputes must be

determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

It will be clear from the aforesaid judgment of the Supreme Court that there may be some cases where a writ petition under Article 226 of the Constitution would be maintained by the High Court despite the mandate in Article 243O of the Constitution that election disputes in respect of Panchayats must be determined only by a petition under the Act made by the State Legislature to the Election Tribunal constituted by the Act made by the State Legislature.

The next question is whether this is one such exceptional case where the writ petition should have been entertained by the learned Single Judge of the High Court. Paragraph 27 of the judgment of the Supreme Court in K. Venkatachala (supra), on which the learned Single Judge has relied on for entertaining the writ petition and allowing the same is quoted hereinbelow:

27. In view of the judgment of this Court in the case of Election Commission of India vs. Saka Venkata Rao it may be that action under Article 192 could not be taken as the qualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under Article 226 of the Constitution can be exercised when there is any act which is against any provision and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one the bar of Article 329(b) will not come into play when the case falls under Articles 191 and 193 and the whole of the election process is over. Consider the case where the person elected is not a citizen to sit and vote in the legislature Assembly and not exercise jurisdiction under Article 226 of the Constitution of India?

It will be clear from the aforesaid judgment of the Supreme Court that the High Court can exercise power under Article 226 of the Constitution of India where there is any act which is against any provision of law and is violative of Constitutional provisions and when recourse cannot be had to the provisions of the Act for appropriate relief. As we have discussed above, because of the order passed by the Sub-Divisional Officer under sub-section (1) of section 40 of the Act, the appellant was disqualified for a period of six years to be elected under the Act. The said order was in force when the appellant was declared elected as a member of the Zila Panchayat in January, 2005. This was clearly in violation of the provisions of the Act. The order passed by the Sub-Divisional Officer under sub-section (1) of section 40 of the Act could not be set aside by the Election tribunal constituted u/s 122 of the Act. Moreover, the disqualification of the appellant was by automatic operation of sub-section (2) of section 40 of the Act and was a statutory consequence of the order that was passed under sub-section (1) of section 40 of the Act and did not call for any decision also under

subsection (3) of section 36 of the Act. This was thus a clear case where the provisions of the Act have been violated in declaring the appellant as elected to the office of Member of the Zila Panchayat and the appellant could not possibly be allowed to usurp the office of the Member of Zila Panchayat, contrary to the provisions of the Act. In our view, therefore, the learned single Judge had the jurisdiction and has properly exercised the jurisdiction under Article 226 of the Constitution to issue a writ of quo-warranto and declare that the appellant was disqualified to hold the office of the Member of Zila Panchayat and to direct the competent authority to hold fresh election for the office of Member of Zila Panchayat for which the appellant had been elected.

We are in full agreement With aforesaid ratio of the judgment passed by the Division Bench.

It is informed to us on behalf of the learned counsel appearing for the appellant, Shri Naman Nagrath, that the SLP against the aforesaid judgment passed by the Division Bench has also been dismissed.

On the basis of the aforesaid, the question in the present case is that whether there is an absolute bar created in pursuance to Article 243ZG or 243O of the Constitution of India with regard to the matters of election of the office bearer of the Municipality or of the Panchayat to issue a writ of Quo-warranto against a disqualified person? If the disqualification is so per se and apparent on the face of it, then in view of the judgment passed in K. Venkatachalam (supra) this Court shall have power to issue a writ of Quo-warranto. The Apex Court in paragraph 27 of the said judgment, which has already been reproduced earlier has held that Article 226 of the Constitution is couched in widest possible terms and unless there is clear bar to the jurisdiction of the High Court its power under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. It is also considered in the said judgment that the bar under Article 329(b) of the Constitution of India shall not apply after when the election is over. The bar as such only applies during the process of the election i.e. from the date of issuance of notification till the results are declared.

Applying the aforesaid ratio we must hold that the bar which has been created under Article 243ZG would only mean that during the process of the election the High Court should stay its hand by not exercising the powers under Article 226 of the Constitution of India to avoid delay in compelling the process of the election. But such a bar has no application after the election is already over and the result has been declared and particularly when a writ of Quo-warranto is sought against the returned candidate on the ground, that he is disqualified. The bar as such will not come into play when a returned candidate is disqualified under the statute and a writ of quo-warranto is asked for.

The power of the High Court under Article 226 of the Constitution of India to

issue a writ of "Quo-warranto" in fact is a remedy where the High Court inquires into the legality of the claim of a party to a public office where the petitioners' grievances are that such party is not entitled to the office in question. So far as the writ of "Certiorari" is concerned, the High Court issues writ of "Certiorari" whenever any person or body of person having legal authority to determine questions affecting the rights of citizens, having the duty to act judicially, acts in excess of his or its legal authority, "Certiorari" may be issued to remove the proceedings from such person or body to the Writ Court and to quash a decision that goes beyond jurisdiction. This is the classical concept of Certiorari.

On the basis of the juristic difference between a writ of "Certiorari" and "Quo-warranto", this Court cannot issue a writ of "Certiorari" against the respondent No. 3 but certainly is entitled to issue a writ of "Quo-warranto" against the respondent No. 3 who is said to be not entitled, because of the disqualification, to hold the office in question. In the present case while issuing a writ of "Quo-warranto", this Court is not making any inquiry in relation to any illegality attaching to the election of party candidate/respondent No. 3. However for the purposes of issuing a writ of "Quo-warranto" necessarily the inquiry has to be made whether a person is legally qualified to hold the office in question?

In view of the aforesaid, we are of the view that the bar as such in the present case will not apply against the High Court to exercise its extra ordinary power of issuing a writ of Quo-warranto, in case it is found that the returned candidate is disqualified to hold the office to which he is elected. It is also to be viewed that when a returned candidate is disqualified and even though an election petition is filed but the election petition is not being decided for a considerable long period then for the purposes of not permitting the illegality to perpetuate the immediate relief which a party can seek against a disqualified person would be by a writ of Quo-warranto, because the High Court shall not permit a disqualified person to occupy the office. In the present case after the election has taken place a notification in favour of respondent was issued on 20-11-2004 that he is declared elected, therefore, about a period of more than two years and eight months have expired, no progress has been reported by the respondent No. 3 to this Court with, respect to the election petition. The total term of the "Mayor" and the "Councillor" is for a period of 5 years as per section 20 of the Act. The elections were held on 20th November, 2004 and about a period of 2 years and eight months have elapsed and the respondent No. 3 has completed more than ? of his term and only short term is left. Under the circumstances it cannot be said that the High Court under Article 226 of the Constitution of India should not exercise its power to issue a writ of Quo-warranto.

On the basis of the aforesaid facts, we find that in view of the compelling circumstances there can't be a bar against this Court for exercising powers under Article 226 of the Constitution of India in entertaining the petition to consider the issue for the purposes of issuing a writ of "Quo-warranto", in case it is held that he is disqualified. Even otherwise a serious question of interpretation

of law cannot be left at mercy of an Election Tribunal of limited jurisdiction.

For the reasons aforesaid, we reject the preliminary objection raised on behalf of the respondent No. 3.

The next question arises in the present case is whether the respondent No. 3 is disqualified? For due appreciation of this question we requested learned Senior Advocate Shri Rajendra Tiwari to assist the Court on the interpretation, of section 17(1)(b) and 19-B of the Act to ascertain the true meaning and scope of the aforesaid sections which are relatable to the disqualification of the respondent No. 3 who is a returned candidate.

The learned Single Judge held that the respondent No. 3 was not disqualified, the reason for holding the same is that since the State Government has not passed any order under sub-section (2) of section 19-B to disqualify the respondent No. 3 from contesting the election for the next term after his removal from the office of the chairman, therefore, the respondent No. 3 was qualified to contest the election of the Mayor.

On behalf of the present appellant it was submitted that the reasons given by the learned Single Judge are opposed to harmonious reading of the two provisions of the "Act", relating to the disqualification of a candidate for the post of Councillor and the Mayor after the removal. It is contended on behalf of the present appellant that the removal under sub-section (1) of section 19-B is of a permanent character and so far as the power to declare him disqualified to contest the election is concerned under sub-section (2) of section 19-B is less rigorous in comparison to sub-section (1) of section 19-B. On this basis it is contended by him that even though no order under sub-section (2) of section 19-B has been passed by the State Government yet because of the removal of the respondent No. 3 under sub-section (1) of section 19-B until he is relieved of such disqualification by the State Government in exercise of its powers u/s 17-(1) (b), the respondent No. 3 was disqualified to contest the election for the post of Mayor. It is contended by him that powers vested with the State Government under sub-section (2) of section 19-B to disqualify a person who is removed under sub-section (1) of section 19-B is restricted to "next term" only.

On behalf of the State Government the learned Advocate General Shri R.N. Singh submitted that a mere removal from the office in question u/s 19-B(1) may amount to a disqualification, until the person who is removed by the State Government, from his office in exercise of powers under sub-section (2) of the section 19-B, is so disqualified to contest the election for the next term, by passing an order under sub-section (2) of section 19-B. The returned candidate would be disqualified for the purposes of section 17(1)(b) of the Act. He submitted that the language of section 17(1)(b) which relates to the general disqualification itself indicates that no person shall be eligible to hold the office of the Councillor and Mayor removed u/s 19-B of the Act unless the State Government relieves him from the disqualification "arising out of such removal."

He further submitted that the "next terms" would be the maximum term u/s 19-B(2) and since the State Government has not passed the order to disqualify the respondent No. 3 from contesting the election for the next term then in the absence an order as such the respondent No. 3 is disqualified forever.

Shri Rajendra Tiwari, Senior Advocate with Shri T.K. Khadka accepting our request addressed on the question with regard to the interpretation of section 17(1)(b) and section 19-B. According to him, mere removal u/s 19-B(1) of the Act shall not incur any disqualification. He further submitted that the action u/s 19-B would be completed only when an order under sub-section (2) of section 19-B is also passed to disqualify an incumbent from contesting the election for the next term. He further contended that the disqualification which is prescribed u/s 17(1)(b) of the Act would only relate if after removal an incumbent is disqualified to contest the election for the office of Councillor or Mayor by passing an order under subsection (2) of section 19-B for the next term of the Act. He further contended that mere removal by itself, until the incumbent is disqualified by passing an order u/s 19-B sub-section (2), would not be a disqualification, failing which the language as used in section 17(1)(b) wherein it is mentioned that unless he is relieved by the State Government from such disqualification as imported in this part of the section would run in to a head on collision.

Before we appreciate the rival submissions of the parties it would be appropriate to refer here an important fact which may be necessary for determination of the case. In the present case the respondent after his removal has not contested the election for the remaining term but has contested the election for the "next term".

For the purposes of appreciating the submissions made by the learned counsel for the parties it would be appropriate to refer hereinbelow the relevant provisions enumerated in different sections of the Act which are to be interpreted:

17. General disqualification for becoming a Councillor : (1).....No person shall be a Councillor or Mayor, who -- (b) has been removed from office u/s 18, 19-B or sub-section (3) of section 23 unless he has been relived by Government from the disqualification arising on account of such removal from office".....

Removal of Councillors -- (1) The Divisional Commissioner may, at any time, remove any elected Councillor --]

(a) if his continuance as a Councillor is not, in the opinion of the Divisional Commissioner, desirable in the interests of the public or the Corporation; or

"(a-1) if it is found that he does not belong to the reserved category for which the seat was reserved; or

(c) if the Corporation has, by a resolution supported by at least two-thirds of the total number of Councillors; recommend that a Concillor is not fit to continue as a Councillor on account of misconduct in the discharge of his duties or disgraceful conduct and should therefore be removed.

(2) The Divisional Commissioner may, while ordering the removal under sub-section (3) of section 23 or this section, also order that such Councillor, shall not be eligible to become a Councillor of a Corporation for a period which shall be specified in the order and which shall not exceed five years.

Provided that no resolution recommending the removal of any Councillor shall be passed by the Corporation nor any such order of removal shall be passed by the Divisional Commissioner unless such Councillor has been given a reasonable opportunity of showing cause why a recommendation should not be made for his removal or why he should not be removed from his office

19-B Removal of Mayor or Speaker or Chairman of a Committee (1) The State Government may, at any time, remove a Mayor or a Speaker or Chairman of any Committee, if his continuance as a Mayor or Speaker or Chairman of any Committee as the case may be, is not, in the opinion of the State Government, desirable in public interest or in the interest of the Corporation or if it is found that he is incapable of performing his duties or is working against the provisions of this Act or the rules made thereunder

"(2) As a result of the order of removal of Speaker or Chairman of any Committee, as the case may be, under sub-section (1), it shall be deemed that such Speaker or the Chairman of any Committee, as the case may be, has been removed from the office of Councillor also. At the time of passing order under sub-section (1), the State Government may also pass such order that the Mayor or Speaker or Chairman of any Committee, as the case may be, shall be disqualified to hold of the office of Mayor or Speaker or Councillor, as the case may be, for the next term. Provided that no such order under this section shall be passed unless a reasonable opportunity of being heard is given.

In the present case the counsel for the parties as well Shri Rajendra Tiwari, Senior Advocate submitted that while interpreting the provisions rule of harmonious construction is to be applied. Further while interpreting the clauses relating to the disqualification strict interpretation has to adhered. While applying the rule of harmonious construction every effort has to be made by the Courts to give effect to every word of the statute for the purposes of interpretation to understand the real legislative intent. The legislative intent cannot be ignored while interpreting the provisions. The use of the additional words and rejection of the words has to be avoided.

The Courts can also supply words to clear the ambiguity. While applying the rule of harmonious construction and to get better and more logical meaning, the legislative intent has to be kept in mind. Courts can't enact law but have to interpret it in a manner that it can be applied universally. Counsel for the parties have cited various judgments in support of the aforesaid prepositions. It is not necessary for us to discuss all those judgments cited by the parties because we are of the opinion that the prepositions of law which have been laid down in various judgments by the Supreme Court are the principles of law which have to

be kept in mind by the Courts while interpreting the provisions of the statute.

On behalf of the petitioner it was submitted that section 19-B(1) creates a permanent disqualification. Replying to the aforesaid contentions on behalf of the respondents including the amicus curie, Shri Rajendra Tiwari it was submitted that there cannot be a permanent disqualification in a democratic set up. In this reference it is to be seen that right to contest the election is not fundamental right but is statutory right. A person is entitled to hold an office subject to the qualifications or disqualification as prescribed in the statute. If the statute provides for permanent disqualification then the person suffering it would be permanently disqualified. It is also to be noticed that in section 17(1)(b) the other clauses with reference to the disqualification which are contained in sub-section (2) of section 17 sub-clauses (h), (j), (k), (l) and (n) are referable which read as under:

(h) has been dismissed from Government or municipal service on account of misconduct involving moral turpitude;

(j) has not paid the amount of charge imposed upon him u/s 11 of the Madhya Pradesh Sthaniya Nidhi Sampariksha Adhiniyam, 1973 (No. 43 of 1973) within the time specified in section 15 of the said Adhiniyam; or

(k) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislative Assembly of the State.

Provided that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of twenty one years.

(l) has been convicted of an offence against women

(n) has been disqualified u/s 14-C.

The above are the permanent disqualification and to relieve from these disqualifications no powers have been vested with the State Government in favour of a person intending to contest the election. Categories of disqualification in our opinion may be as under:

(A) Periodical disqualification where the period of disqualification is prescribed and after expiry of the said period the disqualification automatically stands removed under clauses 17(1), (a)(i), (ii) and (a-i), which read as under:

General disqualification for becoming a [Councillor or Mayor (1) No person shall be a [Councillor or Mayor], who

[(a)(i) has been convicted of any offence, punishable u/s 153-A, or section 171-E or section 171 -F, or sub-section (2) or sub-section . (5) or section 505 of the Indian Penal Code, 1860 (No. 45 of 1860) or under the Protection of Civil Rights Act, 1955 (No. 22 of 1955) or u/s 125 of the Representation of the People Act, 1951 (No. 43 of 1951 or sections 3 and 4 of the Dowry Prohibition Act, 1961 (No. 28 of 1961) or section 10 or section 11 of the Madhya Pradesh Local Authorities

(Electoral Offences) Act, 1964 (No. 13 of 1964) unless a further period of six years has elapsed since his release after undergoing the sentence;

(ii) has been convicted by a Court in India:

(a) for an offence not falling under sub-clause (i) and sentenced to imprisonment for a period of not less than two years; or

(b) for contravention of any provisions of the Madhya, Pradesh Nagariya Kshetron Me Ke Bhoomihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (No. 15 of 1984) or of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs,

unless a further period of six years has elapsed since his release after undergoing the sentence.

(a-i) has, in proceedings for questioning the validity or regularity of an election or (nomination), been found to have been guilty of any corrupt practice, unless a period of five years has been elapsed since the date of the finding of the disqualification has been removed by the State Government u/s 441-G]

(B) A disqualification wherein the State Government has been empowered to relieve a person from such disqualification as provided under clause 17(b), (bb) which read as under:--

(b) has been removed from office u/s [18, 19-B or sub-section (3) of section 23] unless he has been relieved by Government from the disqualification arising on account of such removal from office, (bb) has been disqualified for further election or (nomination) as a (Councillor or Mayor) u/s 17-A unless he has been relieved by the Government from such disqualifications;

(C) A permanent disqualification. All these disqualifications are mentioned in para 34 of our judgment.

The question in the present case is as to how section 17(1)(b) with regard to the disqualification from becoming Councillor or Mayor, is to be applied. In this reference section 19-B(1) is relevant for our purposes provides that the State Government may at any time remove Mayor or Speaker or a Chairman of any Committee, if in the opinion of the State Government, it is desirable in public interest or in the interest of the corporation or if it is found that he is incapable of performing his duties or is working against the provisions of the said Rules made thereunder. This, in fact is the penal provision for not continuing a person in the office because of said eventualities. The proviso attached to section 19-B provides for giving a reasonable opportunity of being heard before passing of any order. Sub-section (2) of section 19-B further provides that the State Government may also pass an order to disqualify a person so removed u/s 19-B(1) for contesting the election for the "next term".

In view of the above, question is whether on the basis of the removal by the State Government in exercise of its powers u/s 19-B(1) the person so removed

whether is disqualified to contest the election? The language used by the legislature in section 17(1)(b) provides that "no person shall be the Councillor or Mayor who has been removed from his office u/s 19-B, unless he has been relieved by the Government from the disqualification arising on account of such removal from the office." Stressing upon the language used in section 17(1)(b) and it is contended by Shri Naman Nagrath, learned counsel for the petitioner that the removal u/s 19-B(1) by itself is a disqualification of a permanent character until the State Government by passing any order relieves such person from the disqualification arising on account of such removal from the office.

In the present case the admitted position is that the State Government has not passed any order in exercise of the powers vested in it under sub-section (2) of section 19-B of the Act. The proviso attached to section 19-B prescribes that no such order under "this section" shall be passed unless a reasonable opportunity of being heard is given. Thus, the proviso appended to section 19-B applies to the whole of the section which would mean that the State Government whether passes an order under sub-section (1) or (2) of section 19-B, an opportunity of hearing has to be given to the person against whom the action is proposed.

In view of the above it would be clear that before taking an action u/s 19-B(1) or (2) an opportunity is to be given in view of the proviso. However, it is important to note that in sub-section (1) of section 19-B the word "disqualification" is not to be found. Sub-section (2) of section 19-B provides that while passing an order of removal, the State Government may also pass an order to disqualify a person to hold the office for the "next term." Section 17(1)(b) states that no person shall be a Councillor or Mayor who has been removed from the office u/s 19-B but later part of the same directs that "unless he has been relieved by the Government from the disqualification arising on account of such removal from the office".

In view of the aforesaid, if the submission so made by the learned counsel for the writ appellant is to be accepted that removal by itself is a "disqualification" then there was no need for the legislature to further add in section 17(1)(b) that "unless he has been relieved by Government from the disqualification arising on account of such removal from the office".

It is however not understood as to why the legislature will provide for giving an opportunity under sub-section (2), which according to the learned counsel for the writ appellant is less rigorous in comparison to sub-section (1), because he has submitted that under sub-section (1) of section 19-B removal is a permanent disqualification and under sub-section (2) the disqualification is only for the "next term". When the legislature has intended to provide an opportunity of hearing under sub-section (2) of section 19-B also in view of the proviso appended to section 19-B then it cannot be accepted that sub-section (2) of section 19-B is less rigorous to sub-section (1).

On the basis of the legislative intent behind sub-section (1) of section 19-B of the

Act we are of the view that sub-section (1) of section 19-B for purposes of removal of a person applies to the eventuality when the State Government forms the opinion that "continuance" of the person in the office has become undesirable in public interest or in the interest of Corporation or if it is found that he has become incapable of performing his duties or is working against the provisions of the Act. Before discontinuing/removing such person an opportunity of hearing is to be given. The result of his discontinuance would be that he is not permitted to complete his full term of five years in the office as enumerated u/s 20 of the Act. This itself is a penalty. Then under subsection (2) of section 19-B, if the State Government further intends to disqualify him from contesting the election for the "next term" then a further opportunity of hearing is to be given.

In the light of the aforesaid legislative intent behind section 19-B if the language applied u/s 17(1)(b) in relation to the disqualification, for becoming a Councillor or Mayor, is to be understood then it would be clear that a person, who has been removed from the office u/s 19-B, unless he has been relieved by the Government "from the disqualification arising on account of such removal from the office" he will not be eligible to hold the office of Councillor or the Mayor. The order passed under sub-section (2) of section 19-B uses the word "disqualification" and such disqualification would be applicable for the "next term" only. The disqualification for the next term is a further penalty as a consequence of removal from the office by virtue of the order passed by the State Government under sub-section (1) of section 19-B.

In view of the aforesaid, it cannot be said that there cannot be a permanent disqualification however in the present case we have to see whether the respondent is permanently disqualified to contest the election simply because he has been removed u/s 19-B(1) and order under sub-section (2) of section 19-B has not been passed.

The harmonious reading of both the provisions u/s 17(1)(b) and section 19-B would only mean that if in the opinion of the State Government the "continuation" of a person in the office is undesirable for the reasons stated in the said sub-section (1) then not only he is to be removed but the State Government may also pass an order to disqualify him under sub-section (2) of section 19-B from contesting the election for the next term. If any order u/s 19-B is passed then such disqualification which arises on account of his removal coupled with order u/s 19-B(2) would not entitle him to contest election for the next term unless the State Government relieves him from such disqualification. The said harmonious construction neither damages the language of section 17(1) (b) nor the language as such goes contrary to section 19-B.

It is to be seen from section 19-B that Mayor or Speaker or Chairman of a Committee can be removed if the State Government after hearing such persons records its satisfaction and opinion that continuance of such persons as Mayor or Speaker or Chairman of any Committee as the case may be, is not desirable in public interest or the interest of the Corporation or the State Government finds

that such person is incapable of performing his duties or that such person is working against the provisions of the Act or the Rules made thereunder. For removal of the person the State Government is entitled to exercise its powers u/s 19-B(1) of the M.P. Municipal Corporation Act, 1956. As observed earlier that removal in itself is a penalty u/s 19-B(2) provides that while removing such persons from the office the Government may also order that such Mayor or Speaker or Chairman of any committee shall be disqualified to hold such office for the next term. The powers conferred upon the Government u/s 19-B(2) are in addition to the powers conferred upon the Government u/s 19-B(1) of the Act. u/s 19-B(1) the Government is entitled to remove a person from the office but u/s 19-B(2), while removing the person the Government may also order that such person shall be disqualified to hold such office for the next term.

Sub-section (2) of section 19-B uses the word "may" and not "shall". Ordinarily when the word "may" is used the Courts would ordinarily presume that the requirement is not mandatory but the opinion of the Court would be otherwise if the word "shall" is used in the provision of law. In the matter of Liverpool Borough Bank vs. Turner, (1861) 30 LJ Ch 379 Lord Campbell said :

No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered.

The Supreme Court in the matter of State of U.P. Vs. Manbodhan Lal Srivastava, and number of other cases including the State of M.P. and Another Vs. Pradeep Kumar and Another, observed that:

the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

In the matter of The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, the Supreme Court observed as under:

the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the noncompliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered.

If object of the enactment would be defeated by holding the provision as directory it will be construed as mandatory, whereas if by holding the provision mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment the same will be construed as directive.

The language used in a provision is not to be ignored but while appreciating the language the prima facie inference of the intention of the legislature arising from the words "used" may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative constructions.

We are referring to the above four referred cases because section 19-B(2) uses the word "may". A juxtapose reading of section 19-B(1) and (2) would make it clear that while in exercise of the powers conferred upon the State Government the State can remove a person from the office u/s 19-B(1) but while exercising the powers conferred upon it under sub-section (2) of section 19-B in addition to the removal, the appropriate Government may order that such person shall be disqualified to hold such office for the next term. Subsection (2) of section 19-B says that while ordering the removal under subsection (1), the State Government may also order that such person shall be disqualified to hold such office for the next term. The use of the word "also" would clarify the intent of the State Government. The intention of the legislature would be that while removing a person from the office the Government may also impose a further penalty that such person shall be disqualified to hold such office for the next term.

Sub-section (2) would also show that the Government while exercising its powers can only direct that such Mayor or such Speaker or such Chairman of any Committee shall be disqualified to hold such office for the next term. The words "such" used before Mayor, Speaker or Chairman and before the office would clearly show that if the Government passes an order under sub-section (2) of section 19-B then such Mayor or such Speaker or such Chairman would stand disqualified to hold office of Mayor or office of Speaker or office of Chairman. The words such Mayor and such office are to be read in juxtapose to mean that on passing of an order under sub-section (2) of section 19-B such person i.e. Mayor, Speaker or Chairman would not be entitled to hold the office of Mayor in case he was removed from office of Mayor and would not be entitled to hold office of Speaker if he was removed from the office of Speaker and/or would not be entitled to hold office of the Chairman of any Committee if such person was removed from the office of the Chairman of any Committee.

A fair understanding of section 19-B(1) and 19-B(2) would make it clear that on forming of the opinion in exercise of the powers u/s 19-B(1) the Government can remove a person and if the Government is satisfied that removal would be sufficient penalty then the Government may not pass any further order u/s 19-B(2). However, in a case where the Government finds that a further penalty is to be imposed then after hearing such person the Government may also order or impose a further penalty in addition to removal against such person that he shall

stand disqualified to hold such office for the next term.

The use of the word "may" clearly shows that the Government has the discretion to pass an additional or further order u/s 19-B(2)" and is not obliged to pass an order u/s 19-B(2) in every case.

In light of the afore referred discussion now we shall again take up section 17(1)(b) of the Act which provides for general disqualification for becoming a Councillor. The relevant portion for our purpose would read :

No person shall be a Councillor or Mayor who has been removed from office u/s 18 (appears to be a misnomer for section 19) 19-B or sub-section (3) of section 23 unless he has been relieved by Government from the disqualification arising on account of such removal from office.

Clause (b) of section 17(1) is in two parts. The first part provides that no person shall be a Councillor or Mayor who has been removed from office u/s 18 (appears to be a misquote for section 19), 19-B or sub-section (3) of section 23. So far as this phrase used in section 17(1)(b) is concerned is to be read in juxtapose and in addition to section 19-B which provides for the disqualification. When a person is removed from office u/s 19-B then for purposes of section 19-B(1) he is simply removed but no disqualification is attached while in case where the Government disqualifies him for the next term u/s 19-B(2) then the disqualification is attached to the removal. If in this light the second part of section 17(1)(b) "unless he has been relieved by the Government from the disqualification arising on account of such removal from the office", is understood then it would clarify that the removal would become a disqualification when a complete order is passed u/s 19-B(1) and 19-B(2).

We have already observed that simple removal from the office would not tantamount to any disqualification but that would amount to penalty, a disqualification would be incurred by a person if in addition to an order u/s 19-B(1) an additional order is passed by the Government exercising its powers u/s 19-B(2). The phrase used in section 17(1)(b) is "unless he has been relieved by the Government from the disqualification arising on account of such removal from office". (Emphasis supplied).

A fair understanding of this phrase would mean that the disqualification must arise on account of such removal from the office. Section 19-B(1) refers to removal but section 19-B(2) refers to the disqualification which arises on account of such removal. A fair understanding of section 19-B and section 17(1)(b) would make it clear that if a person is simply removed from his office then the removal itself would be end of the matter but if the appropriate Government finds the case on hand to be a case for ordering disqualification against the incumbent then it can disqualify the person from contesting in the next term. If such disqualification is attached to the removal or such disqualification arises on account of such removal then only such person would not be entitled to contest the election for a Councillor or Mayor.

The words "unless" would ordinarily mean, if it be not that, if it be not the case that, if not, supposing not. It would a reservation or option to change one's mind provided a certain event happens, and would also amount to a conditional promise. If a certain event happens or comes into existence then the word unless would stand satisfied and the bar/ban would stand removed. In a case if the removal u/s 19-B(1) also leads to a disqualification u/s 19-B(2) then such person would not be entitled to contest the election unless the Government relieves him from the said disqualification. The power to relieve a person from the disqualification flows in favour of the State Government from section 17(1)(b) itself. We would be satisfied in observing that in case an order is passed u/s 19-B(1) and also 19-B(2) then such person if wants to contest the election then for removal of the disqualification he can always make an application to the Government u/s 17(1)(b) that he be relieved from the disqualification arising on account of his removal from the office u/s 19-B.

For the reasons stated aforesaid, we are of the opinion that in absence of an order of the Government u/s 19-B(2) the present respondent did not suffer any disqualification for contesting the election. It would also be necessary to say that if the Government had passed an order u/s 19-B(2) then the Government at best could disqualify the applicant from contesting the election to the office from which he was removed and the Government could not award any penalty leading to a situation where such person could not contest election for any other office. Before we part we must record our appreciation for senior Advocate Shri Rajendra Tiwari with Shri T.K. Khadka, Advocate, who on our request extended a great assistance to us. Consequently the writ appeal preferred by the writ petitioner also stands dismissed. No orders as to costs.

For the reasons stated aforesaid, we find no reason to interfere. The appeal deserves to and is accordingly dismissed.