
join duty and since he was not permitted to do so, he shall be presumed to have the knowledge of dismissal from service. Even if the order was not served on him, he ought to have found the reason due to which he was not permitted to join the duty. As has been seen earlier, the plaintiff, after not having been permitted to join duty, made representations to the higher authorities but no such document has been produced in evidence. In these circumstances, the order of the learned Sub Judge as well as the order of learned Appellate Court are found to be correct and need no interference. The learned Sub Judge has rightly held that the period after April 30, 1959 till the date of decree shall be considered as the period of leave of the kind due to the plaintiff. The plea, raised by learned counsel for the plaintiff that the plaintiff was illegally refused permission to join duty, has not force in the absence of any material on record to show that he did report for duty. Neither any specific date or month has been mentioned in the pleadings nor the name of the officers who refused permission to the plaintiff to join duty has been given.

(16) In the result, the plaintiff's appeal is found to have no force and is dismissed.

J.S.T.

Before R.S. Mongia, Sat Pal and S.S. Sudhalkar, JJ

LAL CHAND,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

CWP 1160 of 1995

28th May, 1998

Constitution of India, 1950—Arts. 226, 227, 243-O, 243-ZG and 368—Election to Panchayats/Municipalities—Judicial Review—Basic structure—Bar contained in Art. 243-O, 243-ZG does not effect High Court's power under Arts, 226/227—Expression "notwithstanding anything in the Constitution" used in Arts. 243-O and 243-ZG has to be read down as not ousting the jurisdiction of the High Court to entertain a petition challenging an election.

Held that since the power of judicial review under Articles 226/227 of the Constitution has been held by the Apex Court as an essential feature of the Constitution which can neither be tinkered with nor eroded, we are of the opinion that the words "Notwithstanding anything in this Constitution" will have to be read down to mean as "Notwithstanding anything in this Constitution subject, however, to Article 243-O and clause (b) of Article 243-ZG will be read to mean as follows "No election to any Panchayat/Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature to a State but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution.

(Para 24)

Further held; that despite the bar imposed under Article 243-O and 243-ZG of the Constitution of India, the election of the Panchayat/Municipality can be challenged directly before the High Court under Article 226/227 of the Constitution of India otherwise the Articles would be against the basic structure of the Constitution (i.e. judicial review by the High Court/Supreme Court). The High Court, However, keeping in view the facts and circumstances of the case may relegate the petitioner to the remedy available before the Election Tribunal.

(Para 27)

Ravi Sodhi, Advocate, *for the Petitioners*

S.P. Singh, Advocate.

Gulshan Sharma, Advocate.

M.M. Kumar, Advocate.

K.S. Ahluwalia, Addl. A.G. Punjab.

Anil Rathee, Advocate, *for the respondents.*

JUDGMENT

Sat Pal J,

(1) This judgment may also be read in C.W.P. Nos 1160 of 1995, 1177 of 1995, 1185 of 1995, 1186 of 1995, 1193 of 1995, 17772 of 1994, 17352 of 1997 17390 of 1997, 17420 of 1997, 17816 of 1997, 17888 of 1997, 17931 of 1997, 17932 of 1997, 17950 of 1997 17971 of 1997, 17976 of 1997, 17999 of 1997 and 18003 of 1997.

(2) In Writ Petition Nos 1160 of 1995, 1177 of 1995, 1185 of 1995 and 1193 of 1995, the challenge is to the election of a member of Gram Panchayat in the State of Haryana which were held under the provisions of Haryana Panchayati Raj Act, 1994 read with Haryana Panchayati Raj Rules, 1994 (hereinafter referred to as the Haryana Act and the Haryana Rules respectively). C.W.P. No. 17772 of 1994 pertains to the election to the Gram Panchayat in the State of Punjab held under the Punjab Panchayati Raj Act read with Punjab Panchayati Rules and the Provisions of Punjab State Election Commission Act, 1994, (hereinafter referred to as the Punjab Act, Punjab Rules and the Election Commission Act respectively). C.W.P. No. 1186 of 1995 relates to the elections of a Municipal Committee in Haryana under the provisions of the Haryana Municipal Act and the rules made therein.

(3) In the written statement filed on behalf of the respondents in all these writ petitions, a preliminary objection has been taken that no writ petition is maintainable to challenge the elections to the Gram Panchayat or to the Municipal Committee in view of the bar to interference by Courts in electoral matters created by Article 243-O and Article 243-ZG of the Constitution of India. The aforesaid articles read as under :—

“243-O. Bar to interference by Courts in electoral matters.—Notwithstanding anything in this Constitution,—(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

243-ZG. Bar to interference by Courts in electoral matters.—Notwithstanding anything in this Constitution,—

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

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- (b) no election to any Municipal shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

(4) It was also pleaded in the written statement that so far as any election to the Gram Panchayat in the State is concerned, the same cannot be called in question except by an election petition in view of the provisions of Section 74 of the election Commission Act. Section 75 of the said Act further lays down that only the election Tribunal having jurisdiction was having the power to adjudicate upon an election petition. Section 89 of the said Act provides various grounds for declaring the election invalid.

(5) During the pendency of the above writ petition, the petitioner in C.W.P. No. 1160 of 1995 filed an application seeking permission of the Court to challenge the vires of Article 243-O of the Constitution of India. It was also contended that there were only two grounds mentioned in the Haryana Act, on which the election of a returned candidate can be challenged and these grounds were, corrupt practices committed by the returned candidate and the wrong counting of votes. It was further contended that there cannot be any complete bar under the Constitution or in any act to oust the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. It was submitted that judicial review was the basic structure of our Constitution and an integral part of our Constitutional System. Even the Constitution cannot be amended to tinker with or to erode the basic structure of the Constitution. It was contended that Article 243-O and 243-ZG erode and tinker with the basic structure of the Constitution i.e. the judicial review under article 226 of the Constitution of India.

(6) After hearing the learned counsel for the parties, the learned Judges of the Division Bench were of the view that the issues in this writ petition were of significant importance and were likely to arise again and again and need to be settled authoritatively one way or the other. Consequently, the above mentioned writ petitions were referred to a Full Bench to decide the following questions:

- (1) Whether Articles 243-O and 243-ZG of the Constitution of India are ultra vires on the ground that these are against the basic structure of the constitution of India

inasmuch as the jurisdiction of the High Court of judicial review under Article 226 of the Constitution of India has been taken away regarding the election disputes of Gram Panchayats/Zila Parishads/Municipal Committees.

- (2) What are the grounds on which an election of a returned candidate to a Gram Panchayat/Zila Parishad can be challenged under the Haryana panchayati Raj Act and the relevant rules.

(7) In C.W.P. No. 17352, 17390, 17420, 17816, 17,888, 17931, 17932, 17950, 17971, 17976, 17999 and 18003 of 1997, the challenge was to the reservation of seats for the office of Sarpanch in favour of scheduled castes inter-alia on the ground that it is in contravention of the provision of Section 12 of the Punjab Panchayati Raj Act, 1994 and the rules framed thereunder. The first objection was that since the election process had commenced, this court should not interfere to stall the said process and allow the same to be concluded. The other objection was that in view of the Constitutional Bar contained in Article 243-O of the Constitution, this court cannot examine the validity of any law relating to the delimitation of the constituencies or the allotment of seats of such constituencies nor can it interfere in the electoral matters. These writ petitions came up for hearing before a division bench comprising N.K. Sodhi and S.C. Malte, JJ, on 24th December, 1997. The learned Judges held that the first objection did not survive as the State Government,—vide notification No. SO 119/PA 9./94/H 209/-97, dated 5th September, 1997 had postponed the Gram Panchayat Election in the State and the earlier notification requiring the elections to be held in the State had been rescinded.

(8) With regard to the 2nd objection, it was observed that the challenge made on behalf of the petitioner appeared to be covered by the provisions of Article 243-O and therefore, the same could not be accepted. It was however, further observed that the petitioners had contended that Article 243-O of the Constitution violates the basic structure inasmuch as it takes away the power of judicial review from this court which it otherwise possesses under Article 226 of the Constitution. It was further observed that since the constitutional validity of Article 243-O is under challenge in the case of *Lal Chand* (supra) and the same is pending decision, these cases we also listed for hearing along with *Lal Chand*'s case. That is how we are seized of the matter.

(9) We propose to deal with first question only as the second question had already been answered by a Full Bench of this court in the case of *Smt. Anju vs. Addl. Civil Judge (Sr. Division, Pehowa)*, CWP No. 15310 of 1996 decided on 12th March, 1998. In this case it was held by the Full Bench that the election of a returned candidate cannot be allowed to be challenged on any of the grounds other than those specified in Section 176 of the Haryana Panchayati Raj Act, 1994. That is to say that the grounds on which the election can be challenged are:

- (a) That the returned candidate committed corrupt practices within the meaning of sub-section(5);
- (b) That some irregularities or illegalities were committed during the course of counting, on which plea the court may order scrutiny and recounting of votes and declaring the candidate who is found to have largest number of valid votes in his favour to be duly elected.

(10) Mr. Ravi Sodhi, learned counsel appearing on behalf of the petitioners in C.W.P. No. 1160 of 1995 submitted that under Article 38 of the Constitution, the State was required to secure political justice and political justice could not be secured if the power of judicial review under Article 226 of the Constitution is eroded. He submitted that even the Constitution cannot be amended to erode the basic structure of the Constitution and it is now well settled that judicial review is the basic structure of the Constitution. In support of his submissions, the learned counsel placed reliance on three judgments of the Supreme Court in *Kesavananda Bharti and others v. State of Kerala and others* (1) *Minerva Mills Limited v. Union of India* (2). *L.Chandra Kumar v. Union of India* (3). Comparing Article 329 of the Constitution with Article 243-O of the Constitution of India, the learned counsel submitted that the similarity between the said two Articles was only of form and not of content. he submitted that Article 329 deals with elections to the Parliament and Election Tribunal to adjudicate the election petitions is of the rank of a Judge of the High Court whereas Article 243-O deals with the elections to the Panchayat and with regard to elections to the Panchayat, the Civil Court is the Tribunal. The learned counsel, therefore, contended that the Tribunal provided

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- (1) AIR 1973 S.C. 1461
 - (2) AIR 1980 S.C. 1789
 - (3) JT 1997 (3) S.C. 589

for election to the Parliament was, high powered in comparison to the Tribunal provided for election to the Panchayats.

(11) The learned counsel further submitted that in case the Court came to the conclusion that Article 243-O was *intra vires*, then Article 243-O should be read down to mean that the bar of interference by courts is the ordinary jurisdiction of the courts and not the extra ordinary jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 136 of the Constitution. In this connection, the learned counsel referred to and relied upon a Full Bench judgment of the Andhra Pradesh High Court in *S. Fakrudin and others v. The Govt. of Andhra Pradesh and others* (4). In this case it was held by the Full Bench of the Andhra Pradesh High Court that it would not be necessary to pronounce that Article 243-O was unconstitutional as it does not take away the power of the High Court under Article 226 of the Constitution to examine the validity of any law relating to the elections including delimitation of constituencies or the allotment of the seats to such constituencies made or purported to be made under Article 243-K of the Constitution.

(12) Mr. S.P. Singh, learned counsel appearing on behalf of some writ petitioners, submitted that under Article 243-O(a) the validity of any law relating to the delimitation of constituencies or the allotment of the seats to such constituencies cannot be called in question in any court and "any court" means and includes the High Court and the Supreme Court. He therefore, contended that the said Article was contrary to the basic structure of the Constitution as there cannot be any complete bar under the Constitution or any Act to oust the jurisdiction of judicial review of the High Court under Article 26 of the Constitution. The learned counsel further submitted that under sub clause (b) of Article 243-O, no election to any Panchayat can be called in question except by an election petition presented to such authority and in such manner as is provided for by any law made by the Legislature of a State. He submitted that election to Panchayats in Haryana was governed by the Haryana Act. Under the provisions of the said Act, election to the Panchayat can be challenged only on two grounds mentioned in Section 176 of the Act. He, therefore, contended that even clause (b) of Article 243-O was *ultra vires*.

(13) Mr. Gulshan Sharma, learned counsel appearing on behalf of some of the petitioners, submitted that even under sub

clause (a) of Article 243-O of the Constitution, the writ petition under Article 226 of the Constitution was maintainable on the ground that before the delimitation, no objections were invited and no hearing was given. In support of his submission, the learned counsel placed reliance on a judgment of the Supreme Court in *State of UP v. Pradhan Sandh Samiti*, (5).

(14) Mr. M.M. Kumar, learned counsel appearing on behalf of the petitioners while reiterating the submissions made by Mr. Sodhi, submitted that even in the case of *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency and others*, (6) decided by a Constitution Bench of the Supreme Court, the question as to what powers of the High Court under Article 226 and 227 and of the Supreme Court under Article 136 of the Constitution may be, was left open:

(15) Mr. Ahluwalia, learned Additional Advocate General Punjab, appearing on behalf of the State of Punjab, fairly conceded that the power of judicial review cannot be taken away by any Act of Parliament or even by amending the Constitution of India. He, however, submitted that the power of judicial review can be exercised only if there was an illegality or procedural irregularity. He further submitted that the right to dispute an election was not a fundamental right but was created by the statute and as such, the same was subject to statutory limitations. He submitted that it was a statutory proceeding, to which neither the common law nor the principles of equity would apply. He, therefore, contended that since the procedure to challenge the election has been provided for, the aggrieved person will have to avail himself the remedy provided in the statute and cannot approach the High Court under Article 226 of the Constitution of India in the first instance. In support of his submission, the learned counsel placed reliance on a judgment of the Supreme Court in *Joyti Basu and others v. Devi Goshal etc.* (7). Mr. Rathee, learned counsel appearing on behalf of the State of Haryana, reiterated the submissions made by Mr. Ahluwalia.

(16) We have carefully considered the submissions made by the learned counsel for the parties and have perused the record. Article 243-O of the Constitution of India and Article 243-ZG are

(5) AIR 1995 S.C. 1512

(6) AIR 1952 S.C. 64

(7) AIR 1982 S.C. 983

in the same parameters except that Article 243-O creates bar to interference by Courts in respect of elections to Panchayat whereas Article 243-ZG creates bar to interference by Courts in respect of elections to municipalities.

(17) The question with regard to sub-clause (a) of Article 243-O of the Constitution of India came up for hearing before the Hon'ble Supreme Court in the case *State of U.P. v. Pradhan Sangh Kshetra Samiti* (8). In this case, it was held by the Apex Court that neither delimitation of the Panchayat area nor of the constituency in the said areas and the allotment of seats to the constituencies, could be challenged nor the Court could entertain such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. It was further observed that even this challenge could not be entertained after the notification for holding elections was issued. The relevant portion from this judgment is reproduced herein below :—

“What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the Constituencies and also be allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari v. Delimitation Commission* (1967) I SCR 400: (AIR 1967 SC 669). In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This court held that the impugned notification was a law relating to the delimitation of the Constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation

(8) AIR 1995 S.C. 1512.

Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any Court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by the Parliament itself which only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and Section 2(kk) of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994.”

(18) Thus, the question with regard to sub-clause (b) of Article 243-O has already been answered by the Apex Court in the terms mentioned herein above and does not require any further consideration. Since sub-clause (a) of Article 243-ZG is in the same terms as of Article 243-O, the question posed with regard to sub-clause (a) of Article 243-ZG is also answered by the above judgment.

(19) Before dealing with clause (b) of Article 243-O and clause (b) of Article 243-ZG, it will be relevant to refer to these provisions of the Constitution which read as under:—

“243-O. Bar to interference by Courts in electoral matters—
Notwithstanding anything in this Constitution—

(a) xx xx xx xx xx

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- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

"243-ZG. Bar to interference by Court in electoral matters—
Notwithstanding anything in this Constitution—

- (a) xx xx xx xx xx
- (b) no election to any Municipality shall be called in question except by an election petition to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

(20) A bare reading of sub-clause (b) of Article 243-O and sub-clause (b) of Article 243-ZG would show that election to any Panchayat or Municipality cannot be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State. Under the Election Commission Act, 1994, Election Tribunal in Punjab comprises of an IAS, or PCS or Class I officer of the State Government. Under Section 176 of the Haryana Act, the Election Tribunal is the Civil Court having ordinary jurisdiction in the area where the election has been held and under Rule 77 of the Haryana Municipal Corporation Election Rules, 1994, the Election Tribunal comprises of Subordinate Judges of the Ist Class belonging to the State Judicial Service or persons who may have retired from the State Judicial Service as a District Judge. For a ready reference, the above mentioned provisions are reproduced herein below:—

"S.73 of the Punjab State Election Commission Act,

1994 (1) There shall be constituted by the State Government in consultation with the Election Commission, for each district or part thereof, an Election Tribunal at the district or sub-divisional headquarters.

(2) The State Government shall, by Notification in the official gazette, appoint an IAS or PCS or Class I Officer of the State Government having adequate administrative, legal or magisterial experience, as the presiding officer of an Election Tribunal.

S.176 of the Haryana Panchayati Raj Act.

176. (1) Determination of validity of election enquiry by judge and procedure. If the validity of any election of a member of a Gram Panchayat Samiti or Zila Parishad or Up-Sarpanch, Sarpanch of Gram Panchayat, Chairman or Vice Chairman. President or Vice President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the Civil Court having ordinary jurisdiction in the area which the election has been or should have been held, for the determination of such questions.”

xxx xxxxx xxxx xxxx”

Rule 77, of the Haryana Corporation Election Rules 1994.

“77. Appointment of Tribunal.—(1) The Government shall appoint a Tribunal to hold an enquiry in accordance with the provisions of these rules.

(2) In the case of man tribunal, the appointment shall be made from amongst :

(a) Subordinate Judges of the Ist Class belonging to the State Judicial Service; or

(b) persons who may have retired from the State Judicial Service as a District Judge.

(3) In the case of multi Member Tribunal at least one member shall be appointed from amongst the category of persons mentioned in sub-rule (2) and the remaining members of the Tribunal may be appointed from amongst advocates duly enrolled as such under the Advocates Act, 1961, who may have served at the bar of the State High Court for a minimum period of ten years. The member appointed under sub-rule (2) shall be designated as the Chairman of the Tribunal.

xxx xxxxx xxxx xx”

(21) It has, therefore, been contended by the learned counsel appearing on behalf of the States of Punjab and Haryana that right

to dispute an election is neither a fundamental right nor a common right and since this right has been created under the Statute, a person could challenge the election only before the Election Tribunal and not even before the High Court under Article 226 of the Constitution of India. From Article 243-O and Article 243-ZG it will be seen that in these Articles, there is a non-obstante clause "Notwithstanding anything in this Constitution". The learned counsel of the State have, therefore, contended that in spite of Article 226 of the Constitution, the High Court had no jurisdiction to entertain the writ petition in view of the bar imposed under clause (b) of Article 243-O and 243-ZG. It has also been contended that the aggrieved person will have to avail himself of the remedy provided in the Statute and cannot approach the High Court in the first instance under Article 226 of the Constitution of India.

(22) We, however, do not find any merit in the contention raised by the learned counsel for the State. In this connection, reference may be made to a 13 Judge bench judgment of the Supreme Court in the case of *Kesavananda Bharti* (supra). In this case by a majority of 7 against 6, the Supreme Court held that Article 368 of the Constitution does not enable Parliament to alter the basic structure or frame work of the Constitution. The majority also opined that the basic structure of the Constitution could not be altered by any Constitution amendment and it was held in unambiguous terms that one of the basic features is the existence of the Constitutional system of judicial review. This view was followed by a Constitution Bench of the Supreme Court in the case of *Minerva Mills* (supra).

(23) In the case of *L. Chandra Kumar* (supra), a seven Judge Bench of Supreme Court has held that the jurisdiction conferred upon the High Courts under Articles 226/227 of the Constitution and upon the Supreme Court under Article 32 of the Constitution cannot be ousted. The relevant portion from the said judgment is reproduced hereunder:—

"The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under

Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless continue to act like Courts of first instance in respect of the areas of law for which they have been constituted.”

(24) Since the power of judicial review under Article 226/227 of the Constitution has been held by the Apex Court as an essential feature of the Constitution which can neither be tinkered with nor eroded, we are of the opinion that the words “Notwithstanding anything in this Constitution” will have to be read down to mean as “Notwithstanding anything in this Constitution subject, however, to Article 226/227 of the Constitution”. In view of this clause (b) of Article 243-O and clause (b) of Article 243-ZG will be read to mean as follows “No election to any Panchayat /Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature to a State but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution.

(25) It is true that in terms of the judgment in the case of *L. Chandra Kumar* (supra) the Tribunals created under Article 323A and Article 323B of the Constitution continue to act Courts of first instance in respect of areas of law for which they have been constituted. But we have to keep in mind the observations of the Supreme Court in *L. Chandra Kumar* (supra) itself that the Tribunals created under Article 323A and Article 323B of the Constitution of India perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution of India and these Tribunals are possessed of the competence to test the Constitutional validity of statutory provisions and the rules. But the Tribunals created under the Haryana Act is the Civil Court having ordinary jurisdiction in the area in which the election has been held. The Tribunal under Section 77 of the Haryana Municipal Corporation Election Rules, 1994 comprises of Subordinate Judges of the 1st Class belonging to the State Judicial Service or persons who may have retired from the State Judicial Service as a District Judge and the Tribunal under section 73 of the Election Commission Act comprises of an IAS, PCS or a Class-I Officer fo the State

Government having adequate administrative, legal or magisterial experience and these Tribunals cannot be equated with the Tribunals created under Article 323A and Article 323B of the Constitution as they cannot perform the supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution of India. In this view of the matter, it cannot be held that the High Court has no jurisdiction under Articles 226/227 of the Constitution to entertain a writ petition with regard to challenge to the election to any Panchayat/Municipality in view of the bar imposed under clause (b) of Article 243-O and 243-ZG of the Constitution.

(26) We also do not find any merit in the contention raised by the learned counsel for the State that writ petition for challenging the election to Panchayat/Municipality was not maintainable in view of the law laid down by the Apex Court in the case of *N.P. Punnu Swami* (supra). In this connection, we may refer to para 19 of the said judgment where it was stated that question as to what the powers of the High Court under Articles 226/227 and of Supreme Court under Article 136 of the Constitution may be, is one that will have to be decided on a proper occasion. As stated hereinabove, the Supreme Court by a catena of judgments has now held that one of the basic features is the existence of the Constitutional system of judicial review and even Article 368 of the Constitution does not enable the Parliament to alter the basic feature of frame work of the Constitution.

(27) In view of the above discussion, we are of the considered view that despite the bar imposed under Article 243-O and 243-ZG of the Constitution of India, the election of the Panchayat/Municipality can be challenged directly before the High Court under Article 226/227 of the Constitution of India otherwise the Articles would be against the basic structure of the Constitution (i.e. judicial review by the High Court/Supreme Court). The High Court, however, keeping in view the facts and circumstances of the case may relegate the petitioner to the remedy available before the Election Tribunal.

(28) To sum up, our answers to the questions referred to the Full Bench are as follows :

1. The question with regard to clause (a) of Article 243-O and clause (a) Article 243-ZG of the Constitution stands

answered in the judgment of the Supreme Court in the case of *Pradhan Sangh Kshetra Samiti* (supra).

2. With regard to clause (b) of Article 243-O and clause (b) of Article 243-ZG of the Constitution, we hold that the words “notwithstanding anything in this Constitution” appearing in the aforesaid two Articles will be read down as “notwithstanding anything in this Constitution” subject however to Article 226/227 of the Constitution. Accordingly, clause (b) of Article 243-O and clause (b) of Article 243-ZG would be read to mean as follows :

“No election to any Panchayat/Municipality shall be called in question except an election petition presented to such an authority and in such manner as is provided for by or in any law made by the legislature of a State, but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution”.

3. The second question pertaining to grounds on which an election of a returned candidate to Gram Panchayat/Zila Parishad can be challenged under the Haryana Act and Haryana Rules, already stands answered in the Full Bench judgment of this Court in the case of *Smt. Anju vs. Addl. Civil Judge (Sr. Division, Pehowa, CWP No. 15310 of 1996* decided on 12th March, 1998.)

(29) The Registry is now directed to list these cases before the Motion Bench.

RNR.

Before K.S. Kumaran, J

MANJIT SINGH DHILLON,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents*

Crl. W.P. No. 1106 of 1997

23rd January, 1998

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—Order of detention passed earlier—