

ANOKH SINGH v. PUNJAB STATE ELECTION COMMISSION, 1119
CHANDIGARH (*Satish Kumar Mittal, J.*)

Before Satish Kumar Mittal and Jaswant Singh, JJ.

ANOKH SINGH,—Petitioner

versus

**PUNJAB STATE ELECTION COMMISSION, CHANDIGARH,—
Respondent**

C.W.P. No. 7727 of 2008

5th December, 2008

Constitution of India, 1950—Art. 226—Punjab State Election Commission Act, 1994—S. 11—Punjab Panchayati Raj Act, 1994—S. 208—Circular dated 30th April, 2008 issued by State Election Commission—Election of Gram Panchayat—Whether Lambardars are holding office of profit under State Government—Held, yes—Circular debaring Lambardars from contesting election to Panchayat Samities and Zila Parishad held to be valid.

Held, that the State Legislature though competent to remove any disqualification in respect of the election of a Member of a Panchayat has not exempted the office of Lambardar from the operation of the provisions of clause (g) of Section 11 of the State Election Commission Act. Merely because the office of Lambardar has been kept in the Schedule which is deemed to be not holding an office of profit under the aforesaid provisions of Punjab State Legislature (Prevention of Disqualifications) Act, 1952, it cannot be said that a Lambardar is also exempted from the disqualifications prescribed under clause (g) of Section 11 of the State Election Commission Act. The office of Lambardar is an office of profit under the State Government. Thus, in view of clause (g) of Section 11 of the State Election Commission Act, a Lambardar is disqualified for being chosen as a member of a Panchayat. To this extent, the Circular dated 30th April, 2008 is held to be valid.

(Para 19)

Constitution of India, 1950—Art. 226—Punjab State Election Commission Act, 1994—S. 37—Punjab Panchayati Raj Act, 1994—S. 208—Circular dated 30th April, 2008 issued by State Election

Commission—Election of Gram Panchayat—Whether Anganwari Workers are holding office of profit under State Government and they are disqualified for being chosen as, and for being, a member of a Panchayat—Held, no—Anganwari Workers merely volunteers and rendering certain services to weaker sections, children and old ladies—No possibility of misusing office and taking advantage of same in election—Government of India issuing Circular clarifying that Anganwari Workers can contest election of local bodies and Panchayats—Circular debaring Anganwari Workers from contesting election to Panchayat Samities and Zila Parishad quashed.

Held, that the Anganwari Workers are appointed on temporary basis under a Scheme floated by the Central Government known as ICDS. The said scheme is not of permanent nature. Under the Scheme the Anganwari Workers are volunteers taken from amongst local inhabitants. The entire financial burden of the said Scheme is borne out by the Central Government. They can be removed from service by the concerned CDPO for not performing their duties properly. They do not hold any post under the State Government. They are not being governed by any service rules formulated by the State Government. They are not holding the office under the State Government.

(Para 27)

Further held, that the disqualification provided in clause (g) of Section 11 of the State Election Commission Act is incorporated in order to eliminate the risk of conflict between the duties and interest amongst the members of the Panchayat and to ensure that the Gram Panchayat does not contain persons who have received benefits from the executive, and further that a person, if holding an office of profit, may not use the said office to his advantage in the election of the Panchayat. Therefore, this object must be borne in mind. In our opinion, to lay down that the office of Anganwari Worker is an office of profit, by the circular issued by the State Election Commission, does not have any nexus with the object sought to be achieved, namely, the elimination of possibility of misuse of the position. The Anganwari Workers are merely volunteers and they are rendering certain services to the weaker sections, children and old ladies in the village. There is no possibility

of misusing their office and taking advantage of the same in the election. Keeping in view their nature of duties and their appointments, the Government of India, Ministry of Human Resources Development, Department of Women and Child Development has issued a Circular dated January 2, 1996 clarifying that the Anganwari Workers can contest the election of local bodies and Panchayats.

(Para 28)

Further held, that the Anganwari Workers working in the State of Punjab under a Scheme floated by the Central known as ICDS are not holding an office of profit under the State government. Therefore, in view of clause (g) of Section 11 of the State Election Commission Act read with Section 208 of the Panchayati Raj Act, they are not disqualified for being chosen as a Member of a Panchayat. Hence, writ petitions are allowed and the circular issued by the State Election Commission pertaining to the Anganwari Workers is hereby quashed.

(Para 29)

J.S. Toor, Advocate, *for the petitioner.*

N.D.S. Mann, Additional Advocate General, Punjab, *for the respondent.*

(2) C.W.P. No. 8264 of 2008

Dharminder Singh, Advocate, for B.S. Sewak, *Advocate, for the petitioners.*

N.D.S. Mann, Additional Advocate General, Punjab, *for respondents No. 1 and 2.*

(3) C.W.P. No. 8270 of 2008

Surinder Garg, Advocate, *for the petitioners.*

N.D.S. Mann, Additional Advocate General, Punjab, *for the respondents.*

(4) C.W.P. No. 8279 of 2008

Vikas Bahl, Advocate, *for the petitioner.*

N.D.S. Mann, Additional Advocate General, Punjab, *for respondents No. 1 and 2.*

(5) C.W.P. No. 8310 of 2008

Dharminder Singh, Advocate, for B.S. Sewak, Advocate, *for the petitioners.*

N.D.S. Mann, Additional Advocate General, Punjab, *for respondents No. 1 and 2.*

(6) C.W.P. No. 11724 of 2008

K.S. Boparai, Advocate, *for the petitioner.*

N.D.S. Mann, Additional Advocate General, Punjab, *for respondents No. 1 to 4.*

Vikas Singh, Advocate, *for respondent No. 5.*

SATISH KUMAR MITTAL, J.

(1) “Whether Lambardars and Anganwari Workers, who were intending to contest the election of Panches of the Gram Panchayat, which was to be held on May 26, 2008, are holding the ‘office of profit’ under the State Government and as such they are disqualified for being chosen as, and for being, a member of a Panchayat,” is the question which is to be considered in these writ petitions.

(2) Section 37 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as ‘the State Election Commission Act’) provides that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of this Act. Section 208 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as ‘the Panchayati Raj Act’) provides for various disqualifications for being chosen as a member of a panchayat. Clause (g) sub-section (1) of Section 208 of the Panchayati Raj Act provides that a person shall be disqualified for being chosen as, and for being a member of a panchayat if, he is a **whole-time salaried** employee of any local authority, Statutory Corporation or Board or a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government. Section 11 of the State Election Commission Act also provides various disqualifications for membership of a Panchayat or a Municipality

Clause (g) of Section 11 provides that a person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, if he holds an office of profit under the Government of India or any State Government.

(3) Both the aforesaid Acts, i.e., Panchayati Raj Act and the State Election Commission Act, came into being in view of 73rd and 76th amendment of the Constitution of India to strengthen the self governments of the Local Bodies. By those amendment, various Articles were inserted in Part IX of the Constitution. Article 243F of the Constitution deals with the disqualifications for a member of a Panchayat, which is reproduced as under :—

“243F. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat—

(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 twenty-one 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 Panchayat 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.”

(4) When the Punjab Government decided to hold the general election of the Panchayats in the month of May, 2008, many District electoral Officers-cum-Deputy Commissioners in the State of Punjab sought clarification from the State Election Commission whether the Lambardars and Anganwari Workers are eligible to contest the election

of the Panchayati Raj Institutions like Panchayat and Municipality. The State Election Commission,—*vide* its Memo dated 30th April, 2008 (Annexure P1) clarified that Lambardars and Anganwari Workers hold the office of profit under the State Government, therefore, they are not qualified to contest the election of Members, Panchayats. Feeling aggrieved against the said clarification, the petitioners, who are working as Lambardars and Anganwari Workers at different places in State of Punjab, have filed CWP Nos. 7727, 8264, 8270, 8279 and 8310 of 2008 with a prayer for quashing the memo dated 30th April, 2008 (Annexure P1) which debars the Lambardars and Anganwari Workers from contesting the elections to the Panchayat Samitis and Zila Parishads in the State of Punjab. CWP No. 11724 of 2008 has been filed by the petitioner for issuing direction to respondents No. 1 to 4 not to permit respondent No. 5 the Anganwari Worker, to participate in the election of Sarpanch of Gram Panchayat of Village Ghaloti. We will deal with these petitions in two different heads.

Writ Petition filed by the Lambardar : (CWP No. 7727 of 2008)

(5) It is the case of the petitioner that he was appointed as Lambardar by the Collector under the provisions of the Punjab Land Revenue Act, 1887. He is fully eligible to contest the election of the Members of Gram Panchayat, being more than 25 years of age, but because of his having been working as Lambardar, he has been debarred from contesting the election of the Members of Gram Panchayat. It is further the case of the petitioner that the office of Lambardar is not an office of profit under the State Government, therefore, he is not disqualified to contest the election of Members, panchayat. The remuneration of Lambardar has been prescribed under rule 21 of the Punjab Land Revenue Rules (hereinafter referred to as 'the Rules'). Clause (3) of the Rules provides that a headman shall receive a portion of the village officer's cess equal to ten per cent of the land revenue for the time being assessed on the estate or portion of the estate in which he holds office whether the assessment is leviable or not. It is also the case of the petitioner that Punjab Government has abolish the land revenue, therefore, the Lambardar has stopped collecting the revenue from the land owners. As such, under the aforesaid rule, the remuneration, which was being paid to the lambardar, has come to an end. However,

without amending the aforesaid rule, the State Government is paying the honorarium to the lambardars which cannot be treated as remuneration to the Lambardars, which makes this office as an office of profit. It is further the case of the petitioner that Lambardar of the village is not a whole-time salaried employee of the State Government. He is being paid honorarium only @ Rs. 500 per month. Therefore, the office of Lambardar cannot be treated as office of profit under the State Government which disqualifies Lambardar to contest the election of a Member, Panchayat.

(6) It has been argued on behalf of the petitioner that clause (1) of Article 243F of the Constitution provides that a person shall be disqualified for being chosen as a member of a Panchayat if, he is so disqualified for the purposes of elections to the Legislature of the State. The learned counsel contends that Article 191 of the Constitution provides for disqualifications for membership to the Legislature of the State. It provides that a person shall be disqualified for being chosen as a member of the Legislative Assembly or Legislative Council of a State, if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. He submitted that the Punjab State Legislature (Prevention of Disqualifications) Act, 1952 provides that a person shall not be disqualified from being chosen as a member of the Punjab State Legislature by reason only of the fact that he holds any of the offices of profit mentioned in Section 2 of the Act. Office of Lambardar is mentioned in Section 2(a) of the Act and it is one of the offices of profit, holding of which does not invite disqualification, because this office has been protected under the aforesaid Act. Therefore, the learned counsel submits that even if it is taken that the office of Lambardar is an office of profit under the State Government, the petitioner is not disqualified to contest the election of member of a Panchayat.

(7) It has also been argued on behalf of the petitioner that since the petitioner was intending to contest the election of members of a panchayat, therefore, only those disqualifications will be attracted in his case, which have been prescribed under Section 208 of the Panchayati Raj Act. Under clause (g) of Section 208(1) only that person shall be

disqualified for being chosen as a member of a Panchayat, if he is a whole-time salaried employee of any Local Authority, Statutory Corporation or Board or a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government. Counsel for the petitioner contends that since the petitioner is not the whole-time salaried employee of the State Government, therefore, he cannot be deemed to be disqualified for being chosen as a member of a Panchayat. Learned counsel submitted that the provisions of Section 11 of the State Election Commission Act, which provide that a person holding an office of profit under the Government of India or State Government, shall be disqualified for being chosen as member of a Panchayat, will not be attracted in case of the petitioner.

(8) Learned counsel for the petitioners submitted that by receiving the honorarium as sanctioned by the State Government, it cannot be said that the Lambardar held the office of profit under the State Government, particularly when the said honorarium is not being paid regularly. Learned counsel while relying upon various decisions submitted that in the facts and circumstances of the case, a Lambardar cannot be said to be disqualified for being chosen as a member of Panchayat, therefore, the impugned Circular dated 30th April, 2008 issued by the State Election Commission is liable to be quashed.

(9) On the other hand, learned counsel for the respondent submitted that a Lambardar is being appointed by the Collector under Rules 14 and 15 of the Rules after inviting applications from the residents of the village for which the Lambardar is to be appointed. Rule 15 of the rules lays down criteria which is to be considered at the time of appointment of a Lambardar. He further points out that Rule 16 provides the grounds on which a Lambardar can be dismissed by the Collector. Learned counsel further submitted that under the Punjab Land Revenue Act, any aggrieved person against the order of appointment of a Lambardar, can file an appeal before the Commissioner and thereafter revision before the Financial Commissioner. Learned counsel further pointed out that every Lambardar is being paid Rs. 500 per month as honorarium. In this regard, he has placed on record a copy

of the Circular dated 9th October, 2006 issued by the Government of Punjab, Department of Revenue and Rehabilitation to all the Deputy Commissioners in the State of Punjab sanctioning the grant of honorarium @ Rs. 500 per month to each of the village Headman (Lambardar) in the State. It is stated that now this amount has been increased from Rs. 500 to Rs. 900. Learned counsel for the respondent-State further submitted that since Lambardars in the State of Punjab are being appointed by the State Government, therefore, can be dismissed by the Government. He submitted that Lamardars are being paid remuneration by the State Government and they are also functioning under the control of the Government. Therefore, they are holding the office of profit under the Government of Punjab and, thus, are disqualified to contest the election of Members of Panchayats in view of the disqualifications laid down under Section 11 of the State Election Commission Act.

(10) Learned counsel further argued that the disqualifications enumerated in Section 11 of the State Election Commission Act will prevail over the disqualifications mentioned in Section 208 of the Panchayati Raj Act, in view of the overriding effect of the provisions of the State Election Commission Act as provided under Section 142 of the said Act. In support of his contention, learned counsel for the respondent relied upon the decision of the Supreme Court in **Som Lal versus Vijay Laxmi and others** (Appeal [Civil] 5104 of 2006 decided on 14th March, 2008). Therefore, the Lambardar, who is holding an office of profit under the State Government, is disqualified to be chosen as a member of a Panchayat in view of Clause (g) of Section 11 of the State Election Commission Act.

(11) Learned counsel further pointed out that Clause (a) of Article 243F of the Constitution will not be attracted in this case in view of Clause (b) of the said Article because the disqualification of a person to be chosen as a Member of a Panchayat has been prescribed under an Act by the said legislation, i.e, State Election Commission Act. Even if Clause (a) of Article 243F provides a disqualification for being chosen as a Member of a Panchayat, Clause (b) provides the additional disqualification. If a person is not disqualified to be chosen as a Member of a Panchayat under Clause (a), he may be disqualified to

be chosen as such, if he is so disqualified under any law enacted by the State Legislation. Learned counsel further submitted that the provisions of Punjab State Legislature (Prevention of Disqualifications) Act, 1952, wherein it has been provided that the office of Lambardar shall not be deemed to be one of the office of profit, holding of which invite disqualification, will not be attracted in the present case, in view of the overriding effect given to the State Election Commission Act under Section 142 of the said Act. Thus, the learned counsel submits that the Election Commission, who is having superintending control of the entire elections to the Panchayats in view of Section 210 of the Panchayati Raj Act, is fully empowered to pass the impugned order clarifying whether the Lambardars are disqualified to be chosen as Members of Panchayats.

(12) Firstly it is to be decided whether the disqualification prescribed under Section 208 of the Panchayati Raj Act or the disqualification prescribed under Section 11 of the State Election Commission Act, are applicable in case of the petitioner. There is a difference between the disqualifications prescribed under these two provisions. Under clause (g) of Section 208 of the Panchayati Raj Act, a person is disqualified for being chosen as a Member of a Panchayat, if he is a whole-time salaried employee of the State Government. Under clause (g) of Section 11 of the State Election Commission Act, a person is so disqualified if he holds an office of profit under the State Government. It is the contention of the learned counsel for the petitioner that the petitioner being not a whole-time salaried employee of the State Government, is not disqualified to contest the election of Panch. This contention of the learned counsel cannot be accepted. The **Supreme Court in Som Lal's case** (*supra*) has dealt with this controversy and has held that the disqualifications prescribed under Section 11 of the State election Commission Act shall prevail over the disqualifications prescribed under Section 208 of the Panchayati Raj Act in view of Sections 142 and 143 of the State Election Commission Act. It has been held that the disqualifications mentioned in Section 208 which are consistent with Section 11 of the State Election Commission Act can only survive and not other disqualifications. It has been further held

that Section 142 of the State Election Commission Act clearly contemplates that the earlier laws which are inconsistent with the Act shall stand repealed and it is saved to the limited extent as provided under Section 143 of the said Act.

(13) Thus, in view of the disqualifications prescribed under clause (g) of Section 11 of the State Election Commission Act, it is to be seen whether the Lambardar of a village appointed by the official of the Government under the provisions of the Punjab Land revenue Act and who is also getting monthly remuneration of Rs. 900, is holding the office of profit under the State Government, and as such, he is disqualified for being chosen as a Member of a Panchayat.

(14) The word 'office of profit' have neither been defined in the Constitution nor in the State Election Commission Act nor in the General Clauses Act. In **Ravanna Subanna versus G.S.. Kaggeerappa (1)**, the Supreme Court explained the words 'office of profit' under the government occurring in the Mysore Legislature (Prevention of Disqualifications) Act, 1951. The plain meaning of the expression seems to be that an office must be held under government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain, if there is really a gain. Its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. In that case, a person, who was holding the office of Chairman, Taluka Development Committee, was held to be not holding an office of profit under the government. A fee of Rs. 6, which the non-official Chairman was entitled to draw for each sitting of the Committee, he attended, was held to be not a payment by way of remuneration or profit, but as a consolidated fee for the out-of-pocket expenses which he incurred for attending the meetings of the Committee. It was held that Taluka Development Committee was manned exclusively by non-officials.

(15) Learned counsel for the petitioner while relying upon the aforesaid judgment has argued that what a Lambardar is receiving as a remuneration, which is Rs. 900 per month, is actually reimbursement for his out-of-pocket expenses. This contention of the learned counsel

cannot be accepted. The Supreme Court in **Shivamurthy Swami versus Veerabhadrappa Veerappa (2)**, has laid down the following tests to find out whether the office of profit is an office under a Government and whether it is an office of profit :—

- (1) Whether the Government makes the appointment ;
- (2) Whether the Government has the right to remove or dismiss the holder ;
- (3) Whether the Government pays the remuneration ;
- (4) What are the functions of the holder ? Does he perform them for the government ; and
- (5) Does the Government exercise any control over the performance of those functions ?

(16) In that case, the question was whether a member of Koppal Taluk Development Board as well as the member of the District Development Council of Raichur are the offices of profit under the State government. Both these offices were the ex-officio offices where a person became ex-officio member of these bodies by virtue of his being elected as a member of the Mysore Legislative Council. In these facts, it was held that it cannot be said that the person was holding those offices under the government. The Government neither appointed him nor could remove him. The allowances paid for the members of the taluk Development board and District Development Board are intended to meet their out-of-pocket expenses. The same was held to be compensatory allowance. The said judgment does not support the case of the petitioner. In the instant case, the Lambardars are being appointed by the official of the Government and they can be removed by the official of the Government. Their appointments are under the statute and are in overall control of the Government. They are also receiving monthly honorarium which cannot be said to be compensatory in nature. The facts of this case are fully covered by the aforesaid tests laid down for finding out whether the office of profit is an office under a Government.

(17) In **Shibu Soren versus Dayanand Sahay (3)**, it was held that the question whether a person holds an office of profit, is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions. It was further held that a strict and narrow construction may not be adopted which may have the effect of shutting off many prominent and other eligible persons to contest the elections, but at the same time in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points. In that case the office of Chairman of the Interim Jharkhand Area Autonomous Council was held to be an office of profit. It was held that the word 'profit' for the purpose of Article 102(1)(a) or Article 191 connotes an idea of pecuniary gain, though neither the label under which it is paid nor the quantum of the amount may always be material to determine the issue. In that case the Chairman was receiving an amount of Rs. 1750 per month as honorarium. It was held that such an honorarium was in the nature of giving some pecuniary gain to the holder of the office and was not intended to compensate him for his out-of-pocket expenses.

(18) Similarly, the Supreme Court in **Jaya Bachan versus Union of India and others (4)**, has held that an office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". The nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. The payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. It has been held that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled

(3) AIR 2001 S.C. 2583

(4) (2006) 5 S.C.C. 266

to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments.

(19) The contention raised by the learned counsel for the petitioner that even if it is held that the office of Lambardar is an office of profit under the State government, then in view of clause (1) of Article 243F of the Constitution read with Section 2(a) of the Punjab State Legislature (Prevention of Disqualifications) Act, 1952, the petitioner shall not be deemed to be disqualified from being chosen as a member of a Panchayat as the office of Lambardar is one of the offices of profit, holding of which does not attract disqualification. This contention of the learned counsel cannot be accepted. It is true that holding an office of profit under the Government of India or Government of any State would be disqualification only if that office is not declared by the parliament by law not to disqualify its holder. In exercise of this power, the parliament under Article 102 of the Constitution has exempted some offices from operation of the disqualification. Similarly under Article 191, State Legislatures have passed several enactments exempting some offices from operation of this disqualification. Articles 102 and 191 both, by explanation, have clarified that a person shall not be deemed to hold an office of profit under Government of India or the Government of any State specified in the First Schedule. It is true that as far as the disqualification prescribed for the election of Members of the State Legislative Assembly is concerned, the State of Punjab while enacting Punjab State Legislature (Prevention of Disqualifications) Act, 1952 has exempted the office of Lambardar to be treated as an office of profit under the State Government, but the said exemption will not be available to the petitioner to contest the election of Member of a Panchayat. The said provision will only be attracted in case of election of State Legislative Assembly of one State. In our opinion, the State Legislature though competent to remove any disqualification in respect of the election of a Member of a Panchayat, has not exempted the office of lambardar from the operation of the provisions of clause (g) of Section 11 of the State Election Commission Act. Merely because the office of Lambardar has been kept in the Schedule, which is deemed to be not holding an office of profit under the aforesaid provisions of

Punjab State Legislature (Prevention of Disqualifications) Act, 1952, it cannot be said that a Lambardar is also exempted from the disqualifications prescribed under clause(g) of Section 11 of the State Election Commission Act. Firstly, as per clause (b) of Article 243F of the Constitution, the State Legislature by an enactment may prescribe a disqualification for being chosen as a member of Panchayat. The disqualification under clause (b) of Article 243F(1) shall be in addition to clause(a) of the said Article. Undisputedly, under clause (b) of Article 243F, the State Legislature has enacted the State Election Commission Act which prescribes that a person shall be disqualified to be chosen as a Member of Panchayat if he holds the office of profit under the State Government. Therefore, the contention of the learned counsel for the petitioner that under clause (a) of Article 243F, the office of Lambardar cannot be treated as an office of profit, as such, the Lambardar cannot be debarred from contesting the election of member of a Panchayat, cannot be accepted. Secondly, the exemption granted to the office of Lambardar to be treated as an office of profit under the provisions of Punjab State Legislature (Prevention of Disqualifications) Act, 1952, will not override the disqualifications prescribed under clause (g) of Section 11 of the State Election Commission Act, in view of the judgment of the Supreme Court in **Som Lal's case** (*supra*). The provisions of State Election Commission Act will have overriding effect on other existing law. Therefore, in view of the said analogy, the provisions of Punjab State Legislature (Prevention of Disqualifications) Act, 1952 will have no effect and will not remove the disqualifications prescribed under clause (g) of Section 11 of the State Election Commission Act. Thus, keeping in view the aforesaid legal position, we are of the opinion that the office of Lambardar is an office of profit under the State Government. Thus, in view of clause (g) of Section 11 of the State Election Commission Act, a Lambardar is disqualified for being chosen as a member of a Panchayat. To this extent, the Circular dated 30th April, 2008 is held to be valid. Hence, CWP No. 7727 of 2008 is dismissed.

Writ petitions with regard to Anganwari Workers

(20) CWP No. 11724 of 2008 has been filed by the petitioner for issuing direction of respondents No. 1 to 4 not to permit respondent

No. 5 the Anganwari Worker, to participate in the election of sarpanch of Gram Panchayat of Village Ghaloti.

(21) CWP Nos. 8264, 8270, 8279 and 8310 of 2008 have been filed by various Anganwari Workers, who are working in the State of Punjab, for quashing of the Circular dated 30th April, 2008. It is the case of the petitioners (except petitioner of CWP No. 11724 of 2008) that they were appointed as Anganwari Workers under a Scheme floated by the Central Government known as Integrated Child Development Service (ICDS) Programme. Under the said Scheme, the Anganwari Workers are volunteers taken from amongst the local inhabitants. Their appointments are not regular, but they are being paid a fixed sum as honorarium. Under the Scheme, the financial burden incurred is to be shared by the State Government as well as Central Government. The Anganwari Workers are getting monthly honorarium of Rs. 1450. It is the case of the petitioners that the said honorarium received by the Anganwari Workers is in fact a compensation for out-of-pocket expenses. Therefore, the office of Anganwari Workers is not an office of profit either under the Central Government or under the State Government.

(22) Learned counsel for the petitioners (except CWP No. 11724 of 2008) referred to a Circular dated January 2, 1996 issued by the Government of India, Ministry of Human Resources Development, department of Women and Child Development, in which it has been mentioned that Anganwari Workers and Helpers working under Integrated Child Development Services Scheme are voluntary workers and are getting an honorarium. Further more, it has been mentioned that since they are not Government employees, therefore, they can contest the election of local bodies/Panchayat elections. Learned counsel also referred to a Circular dated May 30, 2006 issued by the West Bengal State Election Commission, which provides that Anganwari Workers, who are merely receiving an honorarium from Government, are not Government servants and, thus, cannot be said to hold any office of profit under the Government. Therefore, they are eligible to contest the election of the Local Bodies. Learned counsel has also referred to a similar Circular issued by the State Election Commission, Andhra Pradesh.

(23) Learned counsel for the petitioners has further relied upon a decision of the Supreme Court in **State of Karnataka and others versus Ameerbi and others (5)**, wherein it has been held that the posts of Anganwari Workers are not statutory posts. They have been created in terms of the Scheme and, thus, Anganwari Workers are not holding the civil post as they do not carry on any function of the State. Their posts are not created by the Central government or the State. No recruitment rules are followed in their appointment. Learned counsel also referred to the observations made by the Supreme Court in the said judgment in para 31 where it has been observed that Anganwari Workers are undisputedly free to contest an election being not holders of civil post, whereas a holder of civil post may not be entitled to contest the election.

(24) On the other hand, the respondent-State and counsel for the petitioner in CWP No. 11724 of 2008 have taken the plea that Anganwari Workers are appointed by the Child Development Programme Officer (for short 'CDPO') on the recommendations of the concerned Gram Panchayat. They can be removed from service by the CDPO for not performing their duties properly. It has been further pleaded that Anganwari Workers are getting Rs. 1400 as monthly honorarium and they are performing functions for the Government and the Government exercises full control over the performance of their functions. He submits that there exists relationship of employer and employee between the Anganwari Workers and the Government, therefore, the office held by them is an 'office of profit' under the State Government. Therefore, the State Election Commission was wholly justified in issuing the Circular to the effect that the office of Anganwari Workers is an office of profit which constitutes a disqualification under clause (g) of Section 11 of the State Election Commission Act.

(25) After hearing the learned counsel for the parties on this issue, we came to the conclusion that the Anganwari Workers are appointed under a Scheme floated by the Central Government known as ICDS. The said Scheme is not of permanent nature. Under the Scheme the Anganwari Workers are volunteers taken from amongst local

inhabitants. The entire financial burden of the said Scheme is borne out by the Central Government. These Anganwari Workers are appointed by the CDPO on the recommendations of the concerned Gram Panchayat. They can be removed from service by the concerned CDPO for not performing their duties properly. These Workers are not appointed on regular basis. Their appointment is purely temporary. They are not being paid the salary under a pay scale, but are being paid a fixed monthly honorarium, i.e., Rs. 1486. The Anganwari Workers do not carry on any functions of the State. They do not hold post under a statute. These Anganwari Workers do not discharge any functions of the Government. They are only helpers which provide help to the weaker sections, children and women in the village in their social and educational upliftment and they can take care of nutrition and also look after the pregnant women and old ladies in the village. Actually they perform those functions which were required by them to be performed under the said Scheme.

(26) To determine whether the office of Anganwari Workers is an office of profit under the State Government, two factors are relevant : (a) whether the office of an Anganwari Worker is an office under the State Government ; and (b) whether it is an office of profit. To determine that the office of an Anganwari Worker is an office under the State Government, it has to be seen whether the Government makes the appointment; whether the Government has a right to remove or dismiss the holder ; whether the Government pays the remuneration ; whether the holder of the post discharge the governmental functions. The amount of remuneration carries with this office may be a relevant ingredient to hold this office as an office of profit, but that factor itself will not be sufficient to hold that the office of Anganwari Worker is an office of profit under the Government. In **Satrucharla Chandrasekhar Raju versus Vyricherla Pradeep Kumar Dev and another (6)**, a question came up for consideration before the Supreme Court whether a teacher of a school run by the Integrated Tribal Development Agency (for short 'ITDA') and appointed by its Project Officer, who was also the District Collector, holds an office of profit under the government, hence he was disqualified to contest the election of the Legislative Assembly in terms

of section 7(b) of the Representation of the People Act and Articles 102(1) and 191(1)(a) of the Constitution of India. In that case, the Supreme Court, after taking into consideration various factors, has held that such an office was not an office of profit under the Government and as such holder of such office was not disqualified. In that case, a majority of the members of governing body of the ITDA were the officers holding posts in the government by virtue of which they became the ex-officio members of the governing body. All the educational institutions in the ITDA were brought under unified control of the Education Department. The Government accorded sanction for creation of the posts and funds for meeting the expenditure. The Project Officer of the ITDA, who is also the District Collector, alone appoints teachers and has also power to remove them. The entire expenditure of the said Agency was met by the Government. The Government sanctioned the posts and fixed their pay scales. Even the disciplinary action was being taken in accordance with the A.P. Civil Services Rules. In spite of all these facts, the Supreme Court has held that the Government may have some control over ITDA, but it was the teacher who were appointed by the Project Officer of ITDA, may be that officer was District Collector, but it cannot be said that the power to appoint or to remove teachers was with the Government. The whole scheme is a project set up by the Government meant for the welfare of the tribals. It was held that the Government may have control over the appointing authority but has no direct control over the teachers, who are directly under the control of the Project Officer. By taking a practical view of the substance of those factors into consideration, it was held that a teacher of the said Agency cannot be said to be holding an office of profit under the Government. In that case, it was further held by the Supreme Court as under :—

“The Government is undertaking several projects and activities including commercial activities through the corporations and local bodies exercising some control over such corporations or bodies. In that view of the matter they may come within the meaning of the “State” as envisaged in Article 12 but that may not be a decision factor in deciding the issue. Section 10 of the

Representation of the People Act as well as Article 58(2) of the Constitution of India do indicate that all persons employed in such undertakings, corporations or local bodies cannot be deemed to suffer disqualification for contesting the elections except to the extent indicated therein. The incorporation of a body corporate and entrusting the functions to it by the Government may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Sometimes, the form may be that of a body corporate independent of the Government, but in substance, it may just be the alter ego of the Government itself.”

(27) In the instant case also, the Anganwari Workers are appointed on temporary basis under a Scheme floated by the Central Government known as ICDS. The said Scheme is not of permanent nature. Under the Scheme the Anganwari Workers are volunteers taken from amongst local inhabitants. The entire financial burden of the said Scheme is borne out by the Central Government. They can be removed from service by the concerned CDPO for not performing their duties properly. They do not hold any post under the State Government. They are not being governed by any service rules formulated by the State Government. They are not holding the office under the State Government. The Supreme Court in **State of Karnataka and others versus Ameerbi and others (7)**, has held that the persons working as Anganwari Workers do not hold civil post under the State Government. It was held that these posts were created under a scheme. These posts are not statutory posts. The Anganwari Workers do not carry any functions of the State. Their recruitment process is not being governed by any statute or rules formulated by the State Government. In that case, it was further held that since they are not holders of civil post under the Government, therefore, they can contest the election. Actually, they are working as

(7) (2007) 11 S.C.C. 681

volunteers to render certain services to the children, women and old ladies in the village. In that judgment, it was also held that their posts are not created. Recruitment rules ordinary applicable to the employees of the State are not applicable in their case. No process of selection for the purpose of their appointment within the constitutional scheme existed. The appointments made under a scheme and recruitment process restricted to certain class of ladies residing within the same village, and being carried out through a local committee would not render the incumbents thereof holders of civil post.

(28) The disqualification provided in clause (g) of Section 11 of the State Election Commission Act is incorporated in order to eliminate the risk of conflict between the duties and interest amongst the members of the Panchayat and to ensure that the Gram Panchayat does not contain persons who have received benefits from the executive, and further that a person, if holding an office of profit, may not use the said office to his advantage in the election of the Panchayat. Therefore, this object must be borne in mind. In our opinion, to lay down that the office of Anganwari Worker is an office of profit, by the Circular issued by the State Election Commission, does not have any nexus with the object sought to be achieved, namely, the elimination of possibility of misuse of the position. The Anganwari Workers are merely volunteers and they are rendering certain services to the weaker sections, children and old ladies in the village. There is no possibility of misusing their office and taking advantage of the same in the election. Keeping in view their nature of duties and their appointments, the Government of India, Ministry of Human Resources Development, Department of Women and Child Development has issued a Circular dated January 2, 1996 clarifying that the Anganwari Workers can contest the election of local bodies an Panchayats. Similarly, the West Bengal State Election Commission and Andhra Pradesh State Election Commission have clarified that Anganwari Workers, who merely receive honorarium from the Government, are eligible to contest the election and they cannot be said to be holding any office of profit under the Government.

(29) Keeping in view the aforesaid legal position, we are of the opinion that the Anganwari Workers working in the State of Punjab under a Scheme floated by the Central Government known as ICDS are not holding an office of profit under the State Government. Therefore, in view of clause (g) of Section 11 of the State Election Commission Act read with Section 208 of the Panchayati Raj Act, they are not disqualified for being chosen as a Member of a Panchayat. Hence, CWP Nos. 8264, 8270, 8279 and 8310 of 2008 are allowed and the Circular dated 30th April, 2008 issued by the State Election Commission pertaining to the Anganwari Workers is hereby quashed.

(30) However, CWP No. 11724 of 2008 for issuing direction to respondents No. 1 to 4 not to permit respondent No. 5 the Anganwari Workers, to participate in the election of sarpanch of Gram Panchayat of Village Ghaloti, is hereby dismissed.

R.N.R.

Before T.S. Thakur, C.J. & Surya Kant, J.

BALDEV SINGH AND OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. 12838 of 2006

10th December, 2008

Constitution of India, 1950—Art. 226—Haryana Control of Bricks Supplies Order, 1972—Cl. 21—East Punjab Control of Bricks Supplies Act, 1949—S. 3—PIL—Brick kiln—Installation of—Distance prescribed from village ‘abadi’ and school—Director, Food & Supplies granting exemption regarding condition of distance of brick kiln from village abadi & school while imposing certain conditions—Brick kiln failing to reduce SPM level to 1/5th or 1/6th of prescribed limit of 750—Brick kiln failing to honour and comply with conditions contained in licence—Petitions allowed directing District Magistrate to revoke licence granted to brick kiln.