Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

UMRAO SINGH and others,—*Appellants.*

versus.

MEHAR CHAND and others,—*Respondents.*

Letters Patent Appeal No. 991 of 1980.

September 1, 1981.

Constitution of India, 1950—Article 226—Punjab Gram Panchayat Act (IV of 1953) (as applicable to Haryana)—Sections 13-B and 13-C—Time prescribed by statute to avail of an alternative remedy—Such remedy allowed to become time-barred by the aggrieved party—Writ Petition under Article 226—Whether should be entertained by the High Court—Election Petition—Whether could call into question the entire election.

Held, that if a party does not avail of the alternative remedy within the period prescribed by the given statute, then the other party acquires a valuable right and the High Court would be depriving that party of that right by permitting the aggrieved party to invoke its extraordinary writ jurisdiction after the limitation for seeking the alternative remedy had expired as thereby such a party would have a period longer than the statute had intended for the redress of its grievance. More so, in regard to the challenge pertaining to election of a candidate judicial restraint bordering self-denial must be exhibited by the High Court in the exercise of the extraordinary writ jurisdiction. Thus, a petition under Article 226 of the Constitution of India should not be entertained in cases where the alternative remedy available has become time barred. (Para 10).

Held, that an election petition under section 13-B of the Punjab Gram Panchayat Act, 1952, as amended and applied in Haryana, calling in question the election of all the Panches elected at one time to a particular Panchayat is competent. Thus, the entire election can be called into question in an election petition. (Para 10).

Letters Patent Appeal under clause X of the Letters patent of the High Court against the judgement of Hon'ble Mr. Justice S. P. Goyal, dated 24th September, 1980, passed in Civil Writ Petition No. 4560 of 1980.

Gopi Chand, Advocate with Mani Ram, Advocate, *for the Appellant.*

G. C. Garg, Advocate, *for respondent Nos. 1 and 2.*

JUDGMENT

D. S. Tewatia, J.

(1) Challenge to the election of Panches, respondents 3 to 7 to the writ petition, met with success with the learned Single Judge

despite a threshold objection to the maintainability of the writ petition in view of the unavailing of the alternative remedy by the petitioners by way of election petition before the prescribed authority under the Punjab Gram Panchayat Act, 1952 (as adopted by the Haryana State,—*vide* Haryana Adaptation of Laws Orders, 1968, read with section 88 of the Punjab Reorganisation Act of 1956), hereinafter referred to as the Act. The attack against the judgment of the learned Single Judge in this Letters Patent Appeal is confined to this aspect only.

(2) Before concretising the rival assertions and resolving them, a few relevant facts, directly bearing upon the contentions advanced on behalf of the appellants deserve noticing at the very outset.

(3) The Haryana Government constituted Nangal Sabha under section 5 of the Act,—*vide* notification dated 15th April, 1977. In that notification, the strength of the executive committee of the Gram Sabha also known as Gram Panchayat, including the Panches and the Sarpanch, was fixed at 6-5 from the general quota and one from the reserved quota to be elected from amongst the members of the scheduled castes. Sub-section (1) of section 5 of the Act envisages election of woman-Panch and where none is elected, then it provides for co-option of one woman-Panch.

(4) From aspirants for Panchship, the returning officer, respondent No. 1 to the writ petition, received in all only eleven nomination-papers. Six of them, however, withdrew, with the result that five candidates remained in the field. Under the rules, then operative, there were two separate constituencies—one for the Sarpanch and the other a multi-member single constituency for the Panches. Each elector of the Gram Sabha was to cast two votes-one for the Sarpanch and the other for a Panch of his choice. Four candidates in the general category and one candidate in the scheduled caste reserve category receiving the highest votes in the respective category were to be declared elected as Panches from the multi-member single constituency. In the given situation, since only five candidates, including a scheduled caste candidate, remained in the field and only five Panches were to be elected for five seats there ought not to have been any election. However, the election was held on 8th June, 1978 and the returning officer declared first four, that is, respondents 3, 4, 5, and 7, to be elected as Panches, and Parbhati, who secured the fourth position amongst the general

category candidates was declared unsuccessful under a wrong view of the notification dated 15th April, 1977 *ibid* that only four Panches including a scheduled caste Panch was to be elected and the fifth Panch — a woman—was to be co-opted.

(5) The two petitioners, who were voters of the said Gram Sabha, on 4th November, 1978, filed the present writ petition challenging initially the election of the Sarpanch, respondent No 2, and Panches, respondents 3, 4, 5 and 7, and co-opted woman-Panch, respondent No. 8 but this petition was later on amended on 7th May, 1980, and the election of Parbhati, who was declared unsuccessful by the returning officer but later on was declared elected as member of the Gram Panchayat, Nangal, by the State Government,—*vide* notification No. 53197, dated 13th September, 1978, annexure P. 3 was also challenged.

(6) At the argument stage, the petition against the Sarpanch, respondent No. 2, was, however, not pressed.

(7) The learned Single Judge disallowed the preliminary objection with the following observations:—

> "Reliance for this contention was placed by the learned counsel on *Pritam Singh* v. *The State of Punjab and others*, (1) and *Tarsem Lal* v. *Buta Ram etc.*, (2) I am, however, unable to subscribe to the view of the learned counsel because with the passage of time, the remedy of the regular election petition has become inefficacious. The election was held in the year 1978 and two and a half years have passed since then. The term of the Gram Panchayat being five years, if the petitioners are relegated to the ordinary remedy, they are not likely to get any relief by the time the term of the Panchayat expires. Moreover, it is also doubtful if the election as a whole can be challenged by way of an election petition. In these circumstances, I do not think it proper to dismiss the petition because of the availability of the ordinary remedy under the statute."

(1) 1973 P.L.J. 623.
(2) 1973 Cur. L.J. 594.

The concept of alternative remedy as a restraint on the power of the High Court to entertain a given petition in exercise of it extraordinary writ jurisdiction under article 226 of the Constitution of India, either when it drew its potency from 'self-control' or call it 'judicial' restraint' that the High Court imposed upon itself in the exercise of its power under article 226 of the Constitution which otherwise was plenary in its sweep and recognised no such bound or for a brief period from enactment of Forty Second Amendment to the Constitution, when amended article 226 itself gave recognition to the existence of the alternative remedy as being a bar to the entertainability of writ petitions of certain categories mentioned therein, the judicial opinion has been unanimous that existence of alternative remedy did not constitute an absolute bar on the exercise of the powers under article 226 of the Constitution. The High Court always retained the discretion to exercise its power under article 226 if it found the alternative remedy to be expensive, inadequate or inefficacious. Where alternative remedy has been found to be efficacious and adequate, the Courts have unfailingly relegated the petitioner to the availing of the alternative remedy.

(8) A perusal of the observations of the learned Single Judge would show that he was persuaded to disallow the preliminary objection by two facts (1) that the alternative remedy of the regular election petition had become inefficacious because of the passage of time the election was held in the year 1978 and 2½ years had passed by the time the petition came up for final decision, and (2) that the learned Single Judge was doubtful if the election as a whole could be challenged by way of an election petition, for, according to him, the entire election was void *ab initio*.

(9) The first question that falls for consideration is as to whether the efficaciousness or adequacy of an alternative remedy is to be seen with reference to the nature of the 'alternative remedy' or with reference to the time when the party decides to have his grievance redressed. The learned Single Judge appears to think that the alternative remedy was inefficacious not in itself but because it could no longer be availed—the time to avail it having already expired by the time aggrieved party decided to approach the High Court; with respect, that is not the correct view. If such would be the view of the efficaciousness of an alternative remedy, then there would be no alternative remedy which could not be rendered inefficacious by party which does not wish to avail of it by merely waiting and allowing the limitation to avail it to expire.

(10) On the contrary, the concensus of judicial opinion expressed in *Pritam Singh* v. *The State of Punjab and others*, (1 supra); *Tarsem Lal* v. *Buta Ram etc.*, (2 supra); *and Messrs Avon Scales Company* v. *The State of Haryana and others*, (3); is that if a party does not avail of the alternative remedy within the period prescribed by the given statute, then the other party acquires a valuable right and the High Court would be depriving that party of that right by permitting the aggrieved party to invoke its extraordinary writ jurisdiction after the limitation for seeking the alternative remedy had expired as thereby such a party would have a period longer than the statute had intended for the redress of its grievance. This view has received the seal of authority even of the apex Court, as would be clear from the following observations of Krishna Iyer, J. who delivered the opinion for the Bench in *K. K. Shrivastava etc.* v. *Bhupendra Kumar Jain and others*, (4):

> "It is important to notice what the High Court has overlooked is that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision ....."

Aside from above, it deserve highlighting that in regard to the challenge pertaining to election of a candidate, their Lordships expect that 'judicial restraint' exhibited by the High Courts in the exercise of their extraordinary writ jurisdiction should be bordering on total 'self-denial', as would be evident from the folllowing observations of *Krishna Iyer, J. made in K. K. Shrivastava's case* (supra):

> "It is well settled law that while article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally effacacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutory prescribed remedy which almost reads in mandatory terms....".

(3) 1978 P.L.R. 644.
(4) A.I.R. 1977 S.C. 1703.

As to the second aspect of the reasoning of the learned Single Judge that he was doubtful if the whole election could be challenged by way of an election petition, it may be observed that here again, with respect, he appears to run counter to the judicial concensus which finds expression in the following observations of *Krishna Iyer, J. in K. K. Shrivastava's case* (supra);

> "There is no foundation whatever for thinking that where the challenge is to an 'entire election' then the writ jurisdiction springs into action."

The above view has been reiterated by their Lordships of the Supreme Court in a recent decision reported in *Bar Council of Delhi and another* v. *Surjeet Singh and others*, (5), and the following observations of N. L. Untwalia, J. who wrote the opinion for the Bench, in this regard can be recalled with advantage:

> "The view that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates....."

What is more, it appears that the view expressed by a Full Bench of this Court in *Zile Singh and others* v. *The State of Haryana and others*, (6) had not been brought to the notice of the learned Single Judge, wherein it had been clearly enunciated that an election petition under section 13-B of the Act, as amended and applied in Haryana, calling in question the election of all the Panches elected at one time to a particular Panchayat was competent. The prescribed authority under section 13-C had the jurisdiction to entertain and decide such a petition on merits.

(11) Mr. Garg then lastly contended that since the election of Parbhati, who was declared elected by the State Government,—vide

(5) A.I.R. 1980 S.C. 1612.

(6) A.I.R. 1975 Pb. & Haryana 115.

notification dated 13th September, 1978, could not have been challenged before the Election Tribunal and he was elected Panch only on 13th Septmber, 1978—long time after the appellants were declared elected as Panches—so the election of Parbhati had per force to be challenged on the writ side and if the voter-petitioners, respondents herein, had succeeded in getting his election set aside as they have,- vide *Shera Ram and others* v. *State of Haryana and others* (7),and if the High Court had necessarily to set aside the election of other Panches, that is, appellants herein, by virtue of the ratio of *Zile Singh's case* (supra), then the voter-petitioners could also then justifiably challenge the election of the appellants on the writ side without availing the alternative remedy.

(12) The learned counsel, we are afraid, is assuming too much when he says (1) that decision of the High Court setting aside the election of Parbhati by quashing the State Government notification dated 13th September, 1978 as being illegal,, would have necessarily involved the quashing of the election of other Panches too and, (2) that election of Parbhati could not have been challenged before the Election Tribunal.

(13) As regards the first, it may be observed that Parbhati had secured fourth position amongst general category candidates in that multi-member single constituency. Neither in the contingency where either the Election Tribunal or the High Court was to find that Parbhati was wrongly declared unsuccessful by the Returning Officer nor in the other contingency where his election as Panch by virtue of Government notification dated 13th September, 1978 was to be set aside by the High Court as a result of the said notification, the election of the other Panches was to be adversely affected much less to be necessarily quashed. It would have been a different matter if his nomination-papers had been rejected by the returning officer and the Election Tribunal or the High Court was later on to find that his nomination-papers were wrongly rejected, then that fact would have necessarily resulted in the declaration of the election of other successful Panches also as invalid, as held by a Full Bench of this Court in the *case of Zile Singh and others* (supra), following the ratio of the Supreme Court decision in *Vashist Narain Sharma* v. *Dev*

(7) C.W. 4485 of 1978 decided on 25th April, 1980.

Chander and others, (8) and *Surendra Nath Khosla and another* v. *S. Dalip Singh and others*, (9).

(14) As regards the second, it may be pointed out that the provisions of section 13-C of the Act, which are in the following terms, in terms clearly envisage a challenge to the election of any person as a Panch or Sarpanch on the grounds mentioned in section 13-o of the Act :

"13-C. (1) Any member of the Sabha, may, on furnishing the prescribed security in the prescribed manner —

(a) Where an election was held after the 12th August, 1960, and before the 27th September, 1962, within thirty days of the latter date: or (b) where an election is held after the 27th September, 1962, within thirty days of the date of announcement of the result thereof :

Present on one or more of the grounds specified in sub-section (1) of section 13-0 to the prescribed authority an election petition in writing against the election of any person as a Sarpanch or Panch....."

"13-0. (1) If the prescribed authority is of the opinion —

(a) that on the date of his election the elected person was not qualified or was disqualified to be elected under this Act, or

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

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

(d) that the result of the election in so far as it concerns the elected person, has been materially affected.

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

(8) AIR 1954 S.C. 513.
(9) AIR 1957 S.C. 242.

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

(iii) by any non-compliance with the provisions of this Act or of any rule made under this Act, the prescribed authority shall set aside the election of the elected person.

* * * * * * * * * * * *

Sub-clause (iii) of clause (d) of sub-section (1) of section 13-0 of the Act—reproduced above—clearly envisages that if the result of the election in so far as it concerns the elected person has been materially affected by any non-compliance with the provisions of this Act or of any rule made under this Act, the prescribed authority shall set aside the election of the elected person.

(15) Under the compliance of the provisions of the Act and the rules made thereunder, only a person validly appointed as the returning officer could declare a person to be elected (see rule 32 of the Gram Panchayat Rules, 1960). But, in fact, the result was declared either by a person who admittedly was not the returning officer or a person purporting to act as the returning officer although was not legally so appointed, then that would be a clear non-compliance with the provisions of the Act and, therefore, election of such a Panch could have been impugned before the prescribed authority within the prescribed period.

(16) For the reasons aforementioned, we allow this appeal and set aside the judgment of the learned Single Judge and dismiss the writ petition. However, there would be no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

H. S. B.