IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P NO.3575 OF 2003
Date of decision : July 25, 2007.

Prithvi Raj,

.....Petitioner

versus

State Election Commission, Punjab & others,

.....Respondents

Coram : Hon'ble Mr.Justice Vijender Jain, Chief Justice
Hon'ble Mr.Justice M.M.Kumar,
Hon'ble Mr.Justice Jasbir Singh,
Hon'ble Mr.Justice Rajive Bhalla,
Hon'ble Mr.Justice Rajesh Bindal,

Present : Mr.P.S.Khurana, Advocate,
for the petitioner.

Mr.A.G.Masih, Sr.DAG, Punjab
for respondents No.1 to 3.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

VIJENDER JAIN, CHIEF JUSTICE

We are called upon to answer, a reference, dated 30.6.2004, doubting, the correctness of the opinion, rendered by a Full Bench, in Lal Chand vs State of Haryana, 1998 (1) PLJ 577.

In order to place the present controversy in its correct perspective, it would be necessary to briefly recapitulate the facts leading to

the present reference.

Election to Municipal Council, Jalalabad, was notified. The petitioner filed his nomination papers as a candidate from ward no.12.His name appeared in the array of candidates. The State Election Commission deleted his name on the ground that his name had been deleted from the electoral roll. The petitioner approached this Court by way of this petition, praying for issuance of a writ in the nature of certiorari to quash the order,passed by the State Election Commission, Punjab. The petitioner asserted that though his nomination papers were validly accepted by the Returning Officer, the State Election Commissioner passed the impugned order deleting his name from the array of contesting candidates, on the ground that his name stood deleted from the electoral rolls.

The respondents raised a preliminary objection as to the maintainability of the petition by asserting that clause(b) of Article 243-ZG of the Constitution of India, states that notwithstanding anything contained in the Constitution no election to a Municipal Council shall be called in question except by an election petition and therefore the jurisdiction of the High Court to entertain a writ petition against the impugned order, was barred . It was further asserted that the State of Punjab, in obedience to the mandate of Articles 243K and 243ZA of Constitution, had enacted the Punjab State Election Commission Act, 1994 (herein after referred to as "Election Commission Act"). Article 243ZG(b) of the Constitution and Section 74 of the Election Commission Act provide that no election shall be called in question except by an election petition presented in accordance with the provisions of the Election Commission Act. Section 73 of the Election Commission Act envisages the setting of election tribunals to

entertain election petitions. In the light of the above constitutional and statutory provisions, it was prayed that this Court had no jurisdiction to entertain the writ petition, as the petitioner's remedy was to file an election petition.

The petitioner, however, relied upon the judgment in Lal Chand's case (supra), to contend that Article 243 ZG (b) of the Constitution, did not oust the jurisdiction of the High Court. It was asserted in support of the maintainability,of the writ petition that in Lal Chand's case (supra), while considering the provisions of Articles 243O and 243ZG of the Constitution, it was held that the High Court's jurisdiction, to entertain a writ petition was not barred and Articles 243O and 243 ZG of the Constitution would have to be read down, and subject to Article 226 of the Constitution. The above ratio was based on the doctrine of basic structure of the Constitution and it was held that as Article 226 of the Constitution was integral to the basic structure of the Constitution, Articles 243O and 243ZG, could not be read to create a bar on the powers conferred by Article 226 of the Constitution, and, therefore, they would have to be read down, and subject to the powers conferred upon a high court, under Article 226 of the Constitution.

Doubting the correctness of the aforesaid opinion, a Division Bench, made a reference to a larger Bench. The larger Bench, thereafter, made a further reference, which reads as follows :-

"Article 243-ZG of the Constitution of India reads as under:-

"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;

(b) no election to any 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 of a State".

(2)This Article came for interpretation by the Apex Court in **Anuragh Narain Singh and another versus State of U.P and others,** (1996) 6 SCC 303, and it was held as follows :-

" 11. The question that came up for decision before the Allahabad High Court has been stated in the judgment in the following words :

".....the common question raised in all these petitions is as to whether in terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election."

12.The answer must be emphatically in the affirmative. The bar imposed by Article 243-ZG is twofold. Validity of laws relating to

delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any Court. No election to a municipality can be questioned except by an election petition....."

(3) A Full Bench of our Court in **Lal Chand versus State of Haryana**, 1998 (1) PLJ 577 held to the effect that since powers of judicial review is the basic feature of our constitutional system, it cannot be tinkered with or eroded and, thus, keeping in view the facts and circumstances of the case a challenge can be made directly before the High Court.

(4) The judgments of the Apex Court in **Anugrah Narain Singh (supra)**, which was rendered on September 10, 1996 and **Mohinder Singh versus Chief Election Commissioner**, AIR 1978 SC 851, which have bearing on the issue involved, were also not brought to the notice of the Full Bench in Lal Chand's case (supra).

(5) It is well settled that an Article of the Constitution of India cannot be declared ultra vires of its another Article.

(6) We, therefore, consider desirable to refer the issue in regard to the jurisdiction of the High Court under Article 226 of the Constitution qua Article 243-ZG of the Constitution of India to a 5 Judges Bench to avoid our embarrassment to say anything in regard to

the ratio laid down in Lal Chand (supra)

(7) We order accordingly.

(8) Let the office place the record before one of us (the Chief Justice) on his administrative side."

As the reference order, calls into question, the ratio, laid down in Lal Chand's case (supra), it would, be appropriate to extract the reasoning, adopted by the Full Bench, in paras 22, 23 & 24 of Lal Chand's case (supra), as under :-

"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 the Supreme Court has held hat 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 Court under Articles 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 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional, validity of statutory provisions and rules. All decisions of those Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunal 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 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 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."

Before we proceed to answer the questions posed, in the reference order, it would be appropriate to briefly refer to the nature of the powers, conferred upon a High Court, under Article 226 of the Constitution.

Article 226 of the Constitution encapsulates a High Court's power to issue writs, directions, or orders 'including' writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, so as to enforce the rights conferred by Part III of the Constitution 'and for any other purpose'. A High Court's jurisdiction to issue rule nisi, thus, flows from Article 226 of the Constitution. The power of judicial review is neither

arbitrary nor unbridled. High Courts, while upholding their jurisdiction to issue writs, orders or directions have generally, declined to exercise jurisdiction where an alternative and efficacious remedy is available, the cause suffers from unexplained delay and laches, or involves adjudication of disputed questions of facts, and relevant to the present case, in election matters, where the process of election has commenced. These restraints,that a High Court, places, on exercise of the power of judicial review, cannot be equated with a lack of jurisdiction or an assertion that the High Court lacks powers to entertain a writ petition.

There is no dispute that one of the pillars that supports the edifice of the Constitution is the power of judicial review which is integral to and an inalienable part of the basic structure of the Constitution. The doctrine of "basic structure", though not defined in, or delimited in any part of the Constitution was propounded, in Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461 and thereafter affirmed in numerous judicial pronouncements including Minerva Mills Limited v. Union of India, AIR 1980 SC 1789 and L.Chandra Kumar (supra). In a recent judgment, I.R.Coelhlo (dead) by L.R.s V State of Tamil Nadu & Others, 2007(2) SCC 292, the Apex Court, opined thus :-

> "130. Equality, rule of law, judicial review and separation of powers form parts of the basic structures of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and

judicial powers are vested in one organ. Therefore, the duty to decide whether the limit have been transgressed has been placed on the judiciary."

Thus no degree of judicial scholarship is required to hold that Article 226 of the Constitution of India, is integral to the scheme of judicial review, and thus to the basic structure of the Constitution. Without Article 226, the Constitution, would be an empty shell, lacking substance, and a mere piece of paper, devoid of any means to protect and enforce its lofty ideals.

We now proceed to consider and answer the reference. The reference order questions the correctness of the ratio laid down by a Full Bench, in Lal Chand's case, i.e. whether it was rightly held that Article 243 ZG(b) of the Constitution, would have to be read down and subject to Article 226.As a necessary corollary the ambit and scope of Article 243ZG(b) of the Constitution would have to be considered. Reference has been made to judgments of the Apex Court in State of U.P vs Pradhan Sangh Kshetra Samiti, AIR 1995 SC 1512, Anugrah Narain Singh and another v. State of Uttar Pradesh and others, JT 1996 (8) SC 733, Jaspal Singh Arora vs. State of Madhya Pradesh, 1998 (9) SCC 594, N.P.Ponnuswami v. The Returning Officer, Namakkal, AIR 1952 SC 64, and Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851, Election Commission of India v. Ashok Kumar and others (2000) 8 SCC 216 . The reference order, in essence suggests that in view of the plenary bar enacted by, Article 243ZG(b) of the Constitution, a High Court would have no jurisdiction to entertain, a petition calling into

question an election, as an "election" can only be called into question, by way of an election petition.

In order to adjudicate the present controversy, it would be necessary to reproduce the relevant provisions of the Constitution, the Punjab Municipal Act, 1911, (herein after referred to as "the Municipal Act", as also the provisions of the Election Commission Act.

Articles 243K, 243ZA, 243O, 243ZG of the Constitution of India read as follows :-

> "243K, **Elections to the Panchayats.-** The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
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> (2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:
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> Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.
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> (3) The Governor of a State shall, when so

requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

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 243K, 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."

243ZA**. Elections to the Municipalities**.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred

to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZG.**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 243ZA shall not be called in question in any court;

(b) no election to any 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 of a State."

Pursuant to Articles 243K and 243ZA of the Constitution, the State of Punjab, has enacted the Punjab State Election Commission Act, 1994 and has thereunder set up the Punjab State Election Commission which supervises, amongst others, elections to Municipal Committees. The Act also provides for the setting up of election tribunals and sets out the grounds upon which challenge may be laid to an election.

The word 'election' is defined in Section 3(4c) of the Municipal Act. An election to a Municipality is notified under Section 13-A of the

Act. Sections 3(4c) and 13-A of the Municipal Act read as follows :-

"3. **Definitions.--**

xx xx xx xx xx

(4c) "election" means and includes the entire election process commencing on and from the date of notification calling for such election of members and ending with the date of declaration and notification of results thereof

13-A **Power of State Government to direct holding of general election -** (1) Subject to the provisions of this Act and the rules made there under, the State Government, may by notification, direct that a general election of the members of the Municipalities or an election to fill a casual vacancy shall be held by such date as may be specified in the notification and different dates may be specified for elections for different Municipalities or group or groups of Municipalities.

(2) As soon as a notification is issued under sub-section (1), the Election Commissioner shall take necessary steps for holding such general election."

Article 243ZG(b) of the Constitution postulates that notwithstanding anything contained in the Constitution, no 'election' to any municipality shall be called in question except by way of an election petition.

An election to a Municipality commences with the issuance of a notification by the State Government under Section 13-A(1) of the Municipal Act and concludes with the declaration of the result. The word `election' as defined in Section 3 (4-c) of the Municipal Act, includes the entire process of election commencing on and from the date of notification calling for such an election and ending with the date of declaration and notification, of the result. Thus, the term "election,"as defined in Section 3 (4c) of the Municipal Act, takes within its ambit the period commencing from the issuance of a notification calling for an election, to the declaration of the result. The "election" is to be conducted by the Election Commission, duly constituted under the Election Commission Act.

Section 73 of the Election Commission Act prescribes the setting up of Election Tribunals, to hear election petitions. Section 74 of the aforementioned enactment postulates that an election shall only be called into question, by way of an election petition. Section 76 thereof, provides that an election petition may be filed on one or more of the grounds specified in sub-section (1) of Section 89 of the Election Commission Act. Section 89 enumerates the grounds for declaring an election void. Section 108 of the Election Commission Act defines corrupt practices and electoral offences that render an election void. The Election Commission Act, thus, prescribes, the setting up of election tribunals, and sets out the grounds, upon which challenge may be laid to an election. It also prescribes the procedure i.e. the mode and manner for filing of election petitions.

Article 243 ZG of the Constitution commences with a non-obstante clause..... "Notwithstanding anything in this Constitution....."

Thereafter, clauses (a), 243 ZG postulates that the validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies shall not be called in question. Clause (b) of the aforementioned Article, interpretation whereof is subject matter of the present reference, postulates that no election to any municipality shall be called in question except by an election petition.

A conjoint reading of the provisions of Constitution, the Municipal Act and the Election Commission Act leads to a singular conclusion, namely, that once an election has been notified under Section 13-A(2) of the Municipal Act, an "election", as defined in Section 3(4-c) thereof, can only be called into question, by way of an election petition, filed in accordance with the provisions, and the mode and manner, as set out in the Election Commission Act.

The words used in sub-clause (b) of Article 243(ZG), and section 74 of the Election Commission Act, do not, by specific intent or necessary inference, place any embargo on or in any manner curtail a High Court's jurisdiction under Article 226 of the Constitution. Neither Article 243ZG of the Constitution nor Section 74 of the Election Commission Act makes any reference to the High Court. However, where the cause placed before a High Court calls into question an "election," the High Court would in the exercise of judicial restraint, desist from exercising jurisdiction, This principle of judicial/ jurisdictional restraint,was propounded,by the Apex Court in Ponnuswami's case (supra) and then followed and further explained in Mohinder Singh Gill's case (supra), while interpreting the provisions of Article 329(b) of the Constitution. The salutary object that underlines these judgments is the paramount need in a democracy, to ensure an expeditious

conclusion of elections. It was therefore held that a High Court, would not entertain, a writ petition calling into question an "election". Another conclusion that flows from these judicial pronouncements, is that challenge to an election, though not barred, judicial review thereof would be postponed to the post election stage. In order to appreciate the ratio of the above judgments it would be necessary to refer to Article 329(b) of the Constitution which reads as follows :-

> "**329. Bar to interference by courts in electoral matters.-**
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> xx xxx xx xx xx
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> *(b)* no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

Article 329(b) of the Constitution postulates that notwithstanding anything in this Constitution, no election to either House of Parliament or to either House of Legislature of a State shall be called in question except by an election petition.

The language used in Article 329(b) of the Constitution is similar to the language used in Article 243ZG(b). Therefore, the judgment in Mohinder Singh Gill's case (supra), which succinctly explains the nature and the extent of the bar, contained in Article 329(b) of the Constitution and therefore the import of the words and expressions used in Article 243ZG(b)

of the Constitution, is relevant and in our considered opinion a complete answer to questions posed in the reference order. A relevant extract from the judgment in Mohinder Singh Gill's case (supra) reads as follows :-

> "28. What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to 'calling in question' an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation "Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election". Likewise, it is fallacious to treat ' a single step taken in furtherance of an election' as equivalent to election.
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> 29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is "anything done towards the completion of the election proceeding" and whether the proceedings before the High Court felicitated the election process or halted its progress. The question immediately arises as to whether the relief sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as

to whether the cancellation of the poll and the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question'.

30. The plenary bar of Article 329(b) rests on two principles: (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. Durga Shankar Mehta (supra) has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's overall power to interfere under Article 136 springs into action. In Hari Vishnu (supra) this Court upheld the rule in Ponnuswami excluding any proceeding, including one under Article 226, during the on-going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Article 329(b) does not bind.

31. If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting, the conclusion is irresistible, even though the

argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed poll process and to complete it through the salvationary effort of a re-poll. whether, in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations, for good reasons, is lawful. This shows that re-poll in many or all segments, all-pervasive or isolated, can be lawful. We are not concerned only to say that if the regular poll, for some reason, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter attack. Wise or valid, is another matter.

32.On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is therefore, barred by Article 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere

cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case."

In order to further fortify the conclusion, drawn herein above, para 9 of the judgment in Digvijay Mote's case (supra) reads as follows :-

(9) " However, it has to be stated this power is not unbridled. Judicial review will still be permissible, over the statutory body exercising its functions affecting public law rights. We may, at this stage, usefully quote Judicial Remedies in Public Law- Clive Lewis, page 70:

" The term 'public law, has, in the past, been used in at least two senses. First, it may refer to the substantive principles of public law governing the exercise of public law powers, and which form the grounds for alleging that a public body is acting unlawfully. These are the familiar Wednesbury principles. A public law 'right' in this sense could be described as right to ensure that a public body acts lawfully in exercising its public law powers. The rights could be described in relation to the individual heads of challenge, for example, the right to ensure that natural justice is observed, or to ensure that the decision is based on relevant not irrelevant considerations, or is taken for a purpose authorised by

> statute, or is not Wednesbury unreasonable. Secondly, 'public law' may refer to the remedies that an individual may obtain to negative an unlawful exercise of power. These are essentially remedies used to set aside unlawful decisions, or prevent the doing of unlawful acts, or compel the performance of public duties. These remedies now include the prerogative remedies of certiorari, mandamus and prohibition, and the ordinary remedies of declarations and injunctions when used for a public law purpose involving the supervisory jurisdiction of the Courts over public bodies."

The aforementioned judgments, thus, set out, in no uncertain terms, that a Court shall not entertain a petition "calling in question", an "election," once the "election" has been notified.

An "election", under the Municipal Act, commences with the issuance of a notification, by the State Government, under Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that "calls into question" an "election", during the period of the "election", would not be entertained, under Article 226 of the Constitution of India. Redress to any such grievance,would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act. The aforementioned conclusions, however, shall not be construed to oust the jurisdiction of a

High Court, under Article 226 of the Constitution of India. A High Court's power of judicial review is merely postponed, to a time and a stage, after the conclusion of the election and then also to a judicial appraisal of any judgment or order that may be passed by an Election Tribunal, duly constituted, in terms of Section 73 of Election Commission Act.

The words and expressions that appear in Article 243 ZG(b) of the Constitution must be strictly construed and any interpretation beyond the simple grammatical connotations of the words and expressions appearing therein would be impermissible. The word "election..... and the expression..... "called into question.....", used in Article 243ZG(b) of the Constitution,clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e calling in question the election, would have to be made by way of an election petition,filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Article 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition.

However the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question an election. A petition, seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Article 243 ZG(b)

of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.

The above exposition requires further elucidation. If the grievance put forth, falls within any of the grounds enumerated, for the filing of an election petition under Sections 89 and 108 of the Election Commission Act, Article 243 ZG(b) of the Constitution would come into play, and the grievance urged, would have to be redressed by filing an election petition,after the conclusion of the election. The High Court,would in the exercise of judicial restraint,relegate such a petitioner to his remedy of an election petition. This exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction. Thus,the Full Bench, in Lal Chand's case (supra) did not commit any error of law, while holding that Article 226 of the Constitution, being an integral part of the basic structure of the Constitution, could not be diluted and exercise thereof could not be barred by any provision of the Constitution of India. The judgments of the Hon'ble Supreme Court in Ponnuswami's case and Mohinder Singh Gill's case (supra), were apparently not brought to the notice of the Full Bench. The principle of judicial/jurisdictional restraint enunciated therein was apparently not placed before the Full Bench.

Reference may also be made to judgments of the Hon'ble Supreme Court reported as State of U.P. Vs. Pradhan Sangh Kshetra Samiti, AIR 1995 SC 1512, Anugrah Narain Singh and another V. State of Uttar Pradesh and others, JT 1996(8) SC 733, Jaspal Singh Arora V. State of Madhya Pradesh, 1998(9) SCC 590.

In State of U.P. V. Pradhan Sangh Kshetra Samiti (supra), the

Hon'ble Supreme Court, while considering the ambit and scope of clause (a) of Article 243 O of the Constitution, which bars any Court from taking cognizance of any dispute, raised with respect to delimitation of constituencies etc., held as follows :-

> "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 the allotment of seats to them. We may, in this connection, refer to a decision of this Court in Meghraj Kothari v. Delimitation Commission, (1967) 1 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 the 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 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 not to be termed 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 could only be made by the Parliament itself which could 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 (k k), 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."

In Jaspal Singh Arora's case (supra), while interpreting Article 243 ZG, and after taking into consideration the judgment of the Hon'ble Supreme Court rendered in Anugrah Narain Singh and another's case (supra), held as follows :-

> "These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court."

An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justiciable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process,would not be permissible, except to the limited extent noticed herein above.

As regards the second question, the Full Bench in Lal Chand's case (supra) has held that the provisions of Article 243 of the Constitution would have to be read down and subject to Article 226.This interpretation in our considered opinion negates the ratio in Mohinder Singh Gills case (supra) In our considered opinion, a harmonious interpretation to these provisions, as assigned by the Hon'ble Supreme Court in Mohinder Singh Gill's case (supra), while interpreting a similar provision, namely, Article 329(b) of the Constitution, and as explained, herein above, would suitably resolve this apparent conundrum of constitutional interpretation. Article 243ZG(b) of the Constitution, cannot be read down or held to be ultra vires of the provisions of Article 226 of the Constitution of India. The provisions of Article 243ZG(b) of the Constitution have to be read in the light of the principles of law, as set down in Mohinder Singh Gill's case (supra),and the judgments refereed to in the preceding paragraphs, namely, that the High Court would not entertain a challenge "calling in question" an "election." Challenge to an election, would be postponed, to a time and stage after the conclusion of the "election" and then also by an election petition, a High Court would, in the exercise of judicial restraint, postpone judicial review

to a stage after the Election Tribunal adjudicates the election petition. The power of a High Court, under Article 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair pool. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extra ordinary powers of this Court under Article 226 of the Constitution.

The reference is, thus, answered in the aforementioned terms.

The writ petition be set down for hearing as per roster.

(VIJENDER JAIN)
CHIEF JUSTICE

(M. M. KUMAR)
JUDGE

(JASBIR SINGH)
JUDGE

(RAJIVE BHALLA)
JUDGE

(RAJESH BINDAL)
JUDGE

July 25, 2007
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