Vinod Pandurang Bharsakade Vs. Returning Officer and anr.

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Court : Mumbai

Decided On : Dec-17-2002

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Judge : C.K. Thakker, C.J. and ;R.K. Batta, J.

Acts : Bombay Village Panchayats Act, 1959 - Sections 15 and 15A; Constitution of India - Articles 226 and 243O

Appeal No. : Writ Petition Nos. 3702, 4060, 4092, 4093, 4116, 4118, 4124, 4149, 4150, 4152, 4153 and 4155 of 2002

Appellant : Vinod Pandurang Bharsakade

Respondent : Returning Officer and anr.

Advocate for Def. : B.R. Gavai, Govt. Pleader, ;B.H. Dangre, ;Neeta Jog, ;S.Y. Deopujari, ;A.M. Deshpande and ;Anil Kilor, Assistant Government Pleaders

Advocate for Pet/Ap. : M.V. Mohokar, ;R.V. Gaikwad, ;L.A. Mohta, ;V.R. Choudhari, ;A.M. Ghare and ;N.A. Padhye, Advs.

Judgement :

C. K. Thakker, C.J.

1. A common question of law has been raised inall the petitions. To appreciate the controversy raised in the present group ofpetitions, few relevant facts in the first petition may be noted.

2. The petitioner of the first petition (Writ Petition No. 4060 of 2002) hasapproached this court by invoking Article 226 of the Constitution for an appropriate writ, direction or order, quashing and setting aside an order datedNovember 8, 2002 (Annexure-6) by which respondent No. 1, Returning officer,Balegoan, Tal. Akot, rejected the nomination form of the petitioner.

3. The case of the petitioner is that he is a bona fide resident of villageBalegaon, Tal. Akot, District Akola since his birth. Village Balegaon has anindependent gram panchayat consisting of three wards. The petitioner has twobrothers, Devidas and Vilas. All the three brothers, however, reside separately intheir respective houses. The petitioner's elder brother Devidas owns and residesin a house bearing No. 24, his brother Vilas owns and stays in a house bearingNo. 25, whereas the petitioner stays in a house bearing No. 26. All the brothersare paying house taxes to the gram panchayat independently in their own namesseparately registered in the record of the gram panchayat. Necessary documentsshowing possession of the petitioner of House No. 26 is placed on record alongwith the petition.

4. The petitioner has stated that election of gram panchayat, Balegaon, wasdeclared by the first respondent vide an election notification dated September 26,2002. As per the election programme, the nomination forms

were to be submittedbetween 24th October, 2002 and 7th November, 2002. The date of scrutiny wasfixed as November 8, 2002 and November 11, 2002 was fixed for publication oflist of final candidates. A copy of the election programme is also annexed to thepetition at Annexure-3. The petitioner being resident in Ward No. 2 of villageBalegaon, was eligible to contest the election. He submitted his nomination formas one of the candidates from the said ward on November 7, 2002 (Annexure-4).

5. Ramdas s/o Kisan Ghormade, Respondent No. 2 herein, who had alsosubmitted his nomination form from Ward No. 2 as a contesting candidateagainst the petitioner raised an objection by filing an application on November 8,2002 (Annexure-5), inter alia, contending that the petitioner was living in jointfamily in House No. 32 and he failed to pay tax due to the panchayat. Hisnomination, therefore, was required to be rejected. On the said objection raisedby respondent No. 2, the Secretary of the gram panchayat was called. Accordingto the petitioner, the Secretary categorically stated that there were no dues against the petitioner. Original record of the gram panchayat was also shown whichdisclosed that there were no dues against the petitioner. Despite, respondent No. 1,Returning Officer, rejected the nomination form of the petitioner by theimpugned order dated November 8, 2002, which is challenged in the petition.

6. The petitioner has prayed to quash and set aside the order datedNovember 8, 2002, and to direct the first respondent to accept the nominationform submitted by the petitioner and to allow him to contest the election. Interimrelief is also prayed against implementation of the order dated November 8,2002.

7. The petition was filed on November 12, 2002. No caveat was filed byany of the respondents. On November 12, 2002, the vacation Judge issued noticebefore admission by making it returnable on November 20, 2002. The learnedAssistant Government Pleader appeared and waived service for respondent No. 1while Hamdast was allowed for respondent No. 2. On 21st November, 2002, thematter was placed before us and we had heard the arguments.

8. Similar question is raised in the remaining petitions and on one groundor the other, nomination forms submitted by the petitioners came to be rejectedby the Returning Officer. Hence, all the matters have been taken up for hearingsimultaneously.

9. We have heard the learned counsel for the petitioners as also the learnedAssistant Government Pleader and learned counsel for contesting respondents.

10. The learned counsel for the petitioners raised several contentions. Itwas urged that by rejecting nomination forms illegally and unlawfully, theReturning Officer has committed an error of law as well as error of jurisdiction.He thereby acted arbitrarily and unreasonably. His decision, therefore, deservesto be quashed and set aside. Had the Returning Officer acted legally and inconsonance with law, he would have accepted the nomination forms submittedby the petitioners and allowed them to contest election. By depriving thepetitioners of their valuable right to contest election, the first respondent hasacted contrary to law and his decision deserves interference. Since the petitionersare unable to contest the election, they were constrained to approach this Courtby invoking extraordinary jurisdiction under Article 226 of the Constitution ofIndia, at this stage. If no relief is granted to the petitioners in the presentproceedings, serious prejudice will be caused to them and they will not be able tocontest the election, even though the action of the first respondent is de hors theAct. The counsel also submitted that the petitioners have not prayed for stayingof election process. A limited prayer is made to direct the Returning Officer toaccept the nomination forms of the petitioners and to allow them to contest theelection, subject to the final outcome of the writ petitions. No prejudice will becaused to the respondents, if interim relief sought by the petitioners is grantedand the petitioners will be allowed to contest election. On the other hand, ifinterim relief is refused, irreparable loss will be caused to them inasmuch asthough they are eligible to contest election and the action of the ReturningOfficer is illegal and improper, they will not be able to exercise the said right. Insuch cases, the only remedy available to the petitioners is to invoke Article 226of the Constitution and accordingly they have approached this Court forappropriate relief. It was, therefore, submitted that this court may issue appropriate directions to the

Returning Officer to permit them to contest theelection by provisionally accepting the nomination forms submitted by them,subject to the final outcome of the petitions or further orders by this Court.

11. Mr. B. R. Gavai, learned Government Pleader, as also learned counselfor the contesting respondents raised a preliminary objection. According to them,the petitions filed by the petitioners at the stage of scrutiny and rejection ofnomination forms are not maintainable. Article 226 of the Constitution cannot beinvoked in such cases. The point has been finally settled by the Supreme Court aswell as by this Court in many cases. One and only one remedy available to thepetitioners is to wait till the election is over and result is declared. Thereafter theymay file election petitions in accordance with law. On merits also, the action ofrejection of nomination forms by the Returning Officer cannot be termed asillegal, unlawful or otherwise objectionable. It was, therefore, submitted that allthe petitions deserve to be dismissed.

12. In our opinion, since the preliminary objection raised on behalf of theGovernment and contesting respondents is well founded and deserves to beupheld, we do not wish to enter into merits of the matters. Before we deal withand consider the relevant case law on the point, it is necessary to bear in mind therelevant statutory provisions.

13. It is an undisputed fact that the provisions of the Bombay VillagePanchayats Act, 1958 (hereinafter referred to as 'the Act') and the BombayVillage Panchayats Election Rules, 1959 (hereinafter referred to as 'the Rules')are applicable to all these cases. Whereas Section 9 of the Act provides forincorporation of panchayats, Section 10 speaks of constitution thereof. Section 11enacts that the election of members to a panchayat shall be held on such date asthe Collector may appoint in this behalf. Such election shall be conducted in theprescribed manner. 'Prescribed' is defined as 'prescribed by Rules'. Thus, theelection will be held in accordance with rules. Section 12 deals with list of votersand Section 13 with persons qualified to vote and to be elected. Section 14 and14A enumerate disqualifications and Section 16 covers cases of disability fromcontinuing as members of panchayat. Section 15 is a salutary provision dealingwith determination of validity of elections, the relevant part thereof reads asunder:--

'15. (1) If the validity of any election of a member of a panchayat isbrought in question by any candidate at such election or by any personqualified to vote at the election to which such question refers, suchcandidate or person may, at any time within fifteen days after the date ofthe declaration of the result of the election, apply to the Civil Judge(Junior Division), and if there be no Civil Judge (Junior Division) then tothe Civil Judge (Senior Division) (hereinafter, in each case, referred to as'the Judge') having ordinary jurisdiction in the area within which theelection has been or should have been held for the determination of suchquestion.

(2) Any enquiry shall thereupon be held by the Judge and he may aftersuch enquiry as he deems necessary pass an order, confirming oramending the declared result, or setting the election aside. For thepurposes of the said enquiry the said Judge may exercise all the powers of a civil court, and his decision shall be conclusive. If the election is setaside, a date for holding a fresh election shall forthwith be fixed under Section 11.

(3) xxx xxx xxx(4) xxx xxx xxx(5) xxx xxx xxx(6) xxx xxx xxx(7) If the validity of any election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made in this behalf under Section 176 read with Sub-section (2) of Section 10 and Section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.'

14. In exercise of powers conferred by Sub-section (1) and Clauses (iii) and (iv) of Sub-section (2) of Section 176 read with Sub-section (3) of Section 10 and Section 11 of the Act, the Government of Bombay framed rules known as Bombay Village Panchayats Election Rules, 1959. Rule 3 provides for maintenance and custody of list of voters. Rule 7 empowers an officer authorized by the State Election Commissioner to fix dates, etc. for holding an election. Rule 8 deals with nomination of candidates and reads as under :

'8. Nomination of candidates.-- (1) On the day appointed for thenomination of candidates, and during the

hours appointed by an officerauthorised by the State Election Commissioner under Rule 7 in thisbehalf, each candidate shall make an application in writing in Form 'A'signed by him and present it either in person or through a representativeauthorised in writing in this behalf by such candidate to the ReturningOfficer signifying his willingness to serve as a member of the Panchayat.

(2) On receiving a nomination paper under Sub-rule (1), the ReturningOfficer shall write on the nomination paper its serial number, and shallsign thereon a certificate stating the date on which and exact time atwhich the application was delivered to him.

(3) When an election is held at or about the same time for two or morewards in a village, one and the same person may stand for election in allor any number of such wards.

Explanation.-- A person who is unable to write his name shall bedeemed to have duly signed the nomination paper if he has placed a markor thumb impression in the presence of the Returning Officer or anyother officer authorised by the Returning Officer in this behalf and suchofficer on being satisfied as to the identity of that person, has attested themarked or thumb impression as the mark or thumb impression of thatperson.

Rule 11 provides for scrutiny of nominations. It reads thus :

'11. Scrutiny of nominations.-- (1) At the time and place appointed forthe scrutiny of nominations, intending candidates and any other personduly authorised in writing by such intending candidate shall alone beentitled to be present. The Returning Officer shall allow such persons reasonable facilities for examination the nomination papers of intending candidates.

(2) The Returning Officer shall examine the nomination papers and decide all objections which may be made before him to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he considers necessary, reject a nomination paper on any of the following grounds, namely :--

(i) that the candidate is disqualified or is not qualified under the Act or these rules for election; or

(ii) that the candidate has failed to comply with any of the provisions required by these rules or the Act.

(2A) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.(3) For the purpose of Sub-rule (1) the production of a certified copy ofan entry made in the list of voters shall be conclusive evidence of theright of any voter named in that entry to stand for election unless it isproved that the candidate is disqualified.'

Rule 12 relates to completion of scrutiny.

15. It may be profitable to refer at this stage to the provisions of Part IX(The Panchayats) as inserted by the Constitution (Seventy-third Amendment)Act, 1992. Part IX contains Articles 243 to 243-O and deals with Panchayats. It,inter alia, provides for constitution and composition of Panchayats, reservationof seats, duration of Panchayats, disqualification for membership, power,authority and responsibilities of Panchayats, etc. Article 243-O, which is materialfor the purpose of controversy raised in the present petition requires to be quotedin extenso :

'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 constituenciesor the allotment of seats to such constituencies made or purportingto be made under Article 243K, shall not be called in question inany court;

(b) no election to any Panchayat shall be called in question except byan election petition presented to such

authority and in such manneras is provided for by or under any Law made by the legislature of aState.'

16. With a view to give effect to the provisions of Part IX of theConstitution as inserted by the Constitution (Seventy-third Amendment) Act,1992, the Bombay Village Panchayats Act was also amended. Accordingly, Section 15A was inserted by the Maharashtra Act, 1994 (Act 21 of 1994) creatinga bar to interference by courts in electoral matters. The said section reads :

'15A. Bar to interference by courts in electoral matters.--No electionshall be called in question except in accordance with the provisions of Section 15; and no court other than the Judge referred to in that sectionshall entertain any dispute in respect of such election'.

17. In the light of the above statutory provisions under that Act, the Rulesand also in Part-IX of the Constitution, we have to consider whether the petitionsfiled by the petitioners against rejection of nomination forms are maintainableunder Article 226 of the Constitution of India at this stage. Both sides havereferred to and relied upon several decisions of the Hon'ble Supreme Court aswell as of this Court. We will refer to some of them.

18. The first leading decision of the Apex Court on the point is aConstitution Bench decision in N. P. Ponnuswami v. The Returning Officer,Namakkal Constituency, Namakkal, Salem Dist and Ors., : [1952]1SCR218 . In thatcase, A filed a nomination paper for election to the Madras Legislative Assemblyfrom Namakkal Constituency in Salem District. At scrutiny, the ReturningOfficer of the constituency rejected the nomination paper of A on certaingrounds. A moved the High Court under Article 226 of the Constitution prayingfor a writ of certiorari to quash the order of the Returning Officer rejecting hisnomination paper and to direct him to include his name in the list of validnominations to be published. The High Court, however, dismissed the petition onthe ground that it had no jurisdiction to interfere with the order of the ReturningOfficer by reason of the provisions of Article 329(b) of the Constitution.Aggrieved A approached the Supreme Court.

19. Broadly, two questions were raised before the Supreme Court; (i) Theconclusion arrived at by the High Court did not follow from the language ofArticle 329(b) of the Constitution; and (ii) the anomalies which would arise if theconstruction adopted by the High Court on Article 329(b) would be acceptedwere so startling that the Court should lean in favour of the construction that theHigh Court had power to interfere under Article 226.

20. The relevant part of Article 329 which came to be considered in N. P.Ponnuswami reads as under :

'329. Bar to interference by courts in electoral matters.--Notwithstanding anything in the Constitution

(a) xxx xxx xxx(b) no election to either House of Parliament or to the House or eitherHouse of the Legislature of a State shall be called in questionexcept by an election petition presented to such authority and insuch manner as may be provided for by or under any law made bythe appropriate Legislature.'

21. Bare reading of the above provision makes it clear that Article 243-O,as inserted by the Constitution (Seventy-third Amendment) Act, 1992, is almostsimilar to Article 329(b). Keeping in mind the phraseology used in both theArticles, in our considered opinion, while dealing with and deciding the questionraised in the present group of petitions, the ratio laid down in N. P. Ponnuswamiby the Constitution Bench has to be kept in mind.

22. The Constitution Bench, interpreting Article 329(b) of the Constitution,held that the word election as used in that Article would mean what it normallyand etymologically means, viz. all stages upto the result of polling and the finalselection of a candidate. It was also observed that the fact that an election petitioncould be filed only after polling is over or after a candidate is declared elected would not make any difference and at the stage of rejection of nomination paper,an aggrieved party cannot invoke extraordinary jurisdiction of the High Courtunder Article 226 of the Constitution.

23. In that case also, it was contended by the petitioner that the action ofthe Returning Officer in rejecting nomination paper could be questioned underArticle 226 of the Constitution. The reason put forward by the petitioner was thatthe scrutiny of nomination paper and rejection were governed by Section 36 ofthe Representation of the People Act, 1951. Parliament had made that provisionin exercise of the powers conferred on it by Article 327 of the Constitution whichwas 'subject to the provisions of the Constitution'. Thus, the action of theReturning Officer was subject to the extraordinary jurisdiction of the High Courtunder Article 226.

24. Negativing the argument, however, Fazl Ali, J. observed :

'These arguments appear at first sight to be quite impressive, but in myopinion, there are weightier and basically more important arguments insupport of the view taken by the High Court. As we have seen, the mostimportant question for determination is the meaning to be given to theword 'election' in Article 329(b). That word has by long usage inconnection with the process of selection of proper representatives indemocratic institutions, acquired both a wide and a narrow meaning. Inthe narrow sense, it is used to mean the final selection of a candidatewhich may embrace the result of the poll when there is polling or aparticular candidate being returned unopposed when there is no poll. Inthe wide sense, the word is used to connote the entire processculminating in a candidate being declared elected.'

25. Relying on a decision of the High Court of Madras in Srinivasalu v.Kuppuswami : AIR1928Mad253 , the Supreme Court stated that the term'election' should be taken to embrace the whole procedure whereby an electedmember is returned.

26. Fazl Ali, J. then stated :

'I also find myself in agreement with it. It seems to me that the word'election' has been used in Part XV of the Constitution in the widesense, that is to say, to connote the entire procedure to be gone through toreturn a candidate to the legislature. The use of the expression 'conductof elections' in Article 324 specifically points to the wide meaning, and thatmeaning can also be read consistently into the other provisions whichoccur in Part XV including Article 329(b).

Referring to Halsbury's Laws of England, the Court stated that the word'election' can be and has been appropriately used with reference to theentire process which consists of several stages and embraces many steps,some of which may have an important bearing on the result of theprocess.

27. The Court also considered whether in election matters two attacks werepossible; before the election and after the election. It observed:

'The question now arises whether the law of elections in this countrycontemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking theextraordinary jurisdiction of the High Court under Article 226 of theConstitution (the ordinary jurisdiction of the Courts having beenexpressly excluded), and another after they have been completed bymeans of an election petition. In my opinion, to affirm such a positionwould be contrary to the scheme of Part XV of the Constitution and theRepresentation of the People Act, which as I shall point out later, seemsto be that any matter which has the effect of vitiating an election shouldbe brought up only at the appropriate stage in an appropriate mannerbefore a special tribunal and should not be brought up at an intermediatestage, before any Court. It seems to me that under the election law, theonly significance which the rejection of a nomination paper has consistsin the fact that it can be used as a ground to call the election in questionArticle 329(b) was apparently enacted to prescribe the manner in whichand the stage at which this ground, and other grounds which may beraised under the law to call the election in question, could be urged. Ithink it follows by necessary implication from the language of thisprovision that those grounds cannot be urged in any other manner, at anyother stage and before any other Court. If the grounds on which anelection can be called in question could be raised at an earlier stage anderrors, if any, are rectified, there will be no meaning

in enacting aprovision like Article 329(b) and in setting up a special tribunal. Any othermeaning ascribed to the words used in the article would lead toanomalies, which the Constitution could not have contemplated, one ofthem being that conflicting views may be expressed by the High Court atthe pre-polling stage and by the election tribunal, which is to be anindependent body, at the stage when the matter is brought up before it.'

The Court went on to state :

'I think that a brief examination of the scheme of Part XV of theConstitution and the Representation of the People Act, 1951 will showthat the construction I have suggested is the correct one. Broadlyspeaking, before an election machinery can be brought into operation,there are three requisites which require to be attended to, namely, (1)there should be a set of laws and rules making provisions with respect toall matters relating to, or in connection with, elections, and it should bedecided as to how these laws and rules are to be made; (2) there shouldbe an executive charged with the duty of securing the due conduct ofelections; and (3) there should be a judicial tribunal to deal with disputesarising out of or in connection with elections. Articles 327 and 328 dealwith the first of these requisites, Article 324 with the second and Article 329with the third requisite. The other two articles in Part XV, viz. Articles 325and 326 deal with two matters of principle to which the Constitutionframers have attached much importance. They are: (1) prohibitionagainst discrimination in the preparation of, or eligibility for inclusion in,the electoral rolls, on grounds of religion, race, caste, sex or any of them;and (2) adult suffrage. Part XV of the Constitution is really a code in itself providing the entire ground-work for enacting appropriate laws andsetting up suitable machinery for the conduct of elections.'

28. Considering the scheme of the Representation of the People Act, 1951,the Court observed that the Act was a self-contained enactment so far as electionswere concerned which meant that whenever a matter connected with electionswould come before the Court, it had to look at the Act and the Rules madethereunder.

29. The Court also considered the well recognised principle of law thatwhere a right or liability is created by a statute which provides a special remedyfor enforcing it, the remedy provided by such statute only should be availed of.The contention that the Representation of the People Act was enacted subject tothe provisions of the Constitution and hence it would not bar jurisdiction of theHigh Court under Article 226 of the Constitution was negatived on the groundthat Article 329(b) completely shut out such interpretation.

30. It was also argued that the post election remedy was wholly inadequateto afford the relief which the petitioner sought, namely, staying of election ortreating the nomination paper of the petitioner as legal and valid. For that,observations of Wallace, J. in Sarvothama Rao v. Chairman, Municipal Council,Saidapet AIR 1923 Mad 475 were pressed in service. The Supreme Court notedthat those observations were no doubt in favour of the petitioner. They, however,represented only one side of the picture and the same learned Judge (Wallace, J.)presented the other side of the picture in a subsequent decision in Desi Chettiar v. Chinnasami Chettiar AIR 1928 Mad 1271. Though the observations weremade in regard to election to local boards, if would apply with greater force toelection to Legislatures because of the provisions of the Constitution, noted theSupreme Court.

31. The Court then summed up the conclusions as follows :--

'(1) Having regard to the important functions which the legislatures haveto perform in democratic countries, it has always been recognized to be amatter of first importance that elections should be concluded as early aspossible according to time-scheme and all controversial matters and alldisputes arising out of elections should be postponed till after theelections are over, so that the election proceedings may not be undulyretarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to 'anything which does not affect the 'election;' and if any irregularities

are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.'

It was stated that the right to vote or to stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Likewise, strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of itsown members, and if the legislature takes it out of its own hands and vests in aspecial tribunal an entirely new and unknown jurisdiction, that specialjurisdiction should be exercised in accordance with the law which creates it.

32. It was also argued that if nomination would be considered as part ofelection which could be called in question only in accordance with the provisionsof Article 329(b) of the Constitution by presentation of an election petition to anappropriate tribunal, the Returning Officer would have no jurisdiction to decidethe matter and Section 36 of the Act would be ultra vires inasmuch as it conferredon the Returning Officer a jurisdiction which was conferred on the tribunalappointed in accordance with Article 329(b) of the Constitution.

33. Negativing the contention, the Supreme Court stated :

'This argument displays great dialectical ingenuity, but it has no bearingon the result of this appeal and I think it can be very shortly answered.Under Section 36, Representation of the People Act, 1951, it is the dutyof the Returning Officer to scrutinize the nomination papers to ensurethat they comply with the requirements of the Act and decide allobjections which may be made to any nomination. It is clear that unlessthis duty is discharged properly, any number of candidates may stand forelection without complying with the provisions of the Act and a greatdeal of confusion may ensue. In discharging the statutory duty imposedon him, the Returning Officer does not call in question any election.Scrutiny of nomination papers is only a stage, though an important stage,in the election process. It is one of the essential duties to be performedbefore the election can be completed, and anything done towards thecompletion of the election proceeding can by no stretch of reasoning bedescribed as questioning the election. The fallacy of the argument lies intreating a single step taken in furtherance of an election as equivalent toelection. The decision of this appeal, however, turns not on theconstruction of the single word 'election', but on the construction of thecompendious expression - 'no election shall be called in question' in itscontext and setting, with due regard to the scheme of Part XV of theConstitution and the Representation of the People Act, 1951. Evidently,the argument has no bearing on this method of approach to the questionposed in this appeal, which appears to me to be the only correct method.'

34. Finally, the Court noted that many High Courts had also taken a similarview, Fazl Ali, J. said :

'We are informed that besides the Madras High Court, seven other StateHigh Courts have held that they have no jurisdiction under Article 226 ofthe Constitution to entertain petitions regarding improper rejection ofnomination papers. This view is in my opinion correct and must beaffirmed'

35. From the law laid down and observations made in N.P. Ponnuswami,it is abundantly clear and there is no doubt in our mind that the ConstitutionBench of the Supreme Court in no uncertain terms held that a petition under Article 226 of the Constitution against improper rejection of nomination form isnot maintainable and the High Court has no jurisdiction to entertain such petition.

36. In a number of subsequent cases, N. P. Ponnuswami has been referredto, relied upon and reiterated.

37. In Nanhoo Mal and Ors. v. Hira Mal and Ors., : [1976]1SCR809 ,the Supreme Court applied N.P. Ponnuswami to an election under the local law,i.e. President of the Municipal Board under the U. P. Municipalities Act, 1916.

38. The Court stated;

'It follows that the right to vote or stand for election to the office of thePresident of the Municipal Board is a creature of the statute, that is, theU. P. Municipalities Act and it must be subject to the limitations imposedby it. Therefore, the election to the office of the President could bechallenged only according to the procedure prescribed by that Act andthat is by means of an election petition presented in accordance with theprovisions of the Act and in no other way. The Act provides only for oneremedy, that remedy being an election petition to be presented after theelection is over and there is no remedy provided at any intermediatestage. These conclusions follow from the decision of this Court inPonnuswami's case, : [1952]1SCR218 (supra) in its application to thefacts of this case. But the conclusion above stated were arrived at withouttaking the provisions of Article 329 into account. The provisions ofArticle 329 are relevant only to the extent that even the remedy underArticle 226 of the Constitution is barred as a result of the provisions. Butonce the legal effect above set forth of the provision of law which we areconcerned with is taken into account there is no room for the HighCourts to interfere in exercise of their powers under Article 226 of theConstitution. Whether there can be any extraordinary circumstances inwhich the High Courts could exercise their power under Article 226 inrelation to elections it is not now necessary to consider. All theconsiderations applied in coming to the conclusion that elections to thelegislatures should not be delayed or protracted by the interference ofCourts at any intermediate stage before the results of the election areover apply with equal force to elections to local bodies.' (emphasissupplied)

39. In K. K. Shrivastava v. Bhupendra Kumar Jain and Ors., : AIR1977SC1703 , speaking for the Apex Court, Krishna Iyer, J. said;

'It is well settled law that while Article 226 of the Constitution confers awide power on the High Court there are equally well settled limitationswhich this Court has repeatedly pointed out on the exercise of suchpower. One of them which is relevant for the present case is that wherethere is an appropriate or equally efficacious remedy the Court shouldkeep its hands off. This is more particularly so where the dispute relatesto an election. Still more so where there is a statutorily prescribedremedy which almost reads in mandatory terms. While we need not inthis case go to the extent of stating that if there are exceptional orextraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to aplurality of returns of elections, therefore a writ petition will lie, is afallacious argument. It is important to notice what the High Court hasoverlooked is that the period of limitation prescribed by the rules is 15days and if writ petitions are to be entertained long afterwards it willstultify the statutory provisions. Again in the present case an electionpetition covering the same subject-matter is actually pending. There is nofoundation whatever for thinking that where the challenge is to an 'entireelection' then the writ jurisdiction springs into action. On the other handthe circumstances of this case convince us that exercise of the powerunder Article 226 may be described as mis-exercise. It is unfortunate that anelection petition, which probably might have been disposed of long ago,is still pending because the writ petition was pending in the High Courtand later on special leave having been granted these appeals have beenpending in this Court. How injurious sometimes the repercussions ofentertaining writ petitions are where they should not be is illustrated bythis very case.'

40. In S. T. Muthusami v. K. Natarajan and Ors., : [1988]2SCR759 , itwas held that a writ petition under Article 226 of the Constitution at a stage aftercommencement of election process but before declaration of result was notmaintainable. That petition was filed under the provisions of the Tamil NaduPanchayats Act, 1958. It was argued that alternative and effective remedy by wayof election petition under the Act would be no bar to the jurisdiction of the HighCourt under Article 226. The Court conceded that filing of an election petitionwould not have the effect of overriding the powers of the High Court underArticle 226 of the Constitution but such remedy has to be taken intoconsideration in determining whether it would be appropriate for the High Courtto exercise power under Article 226 of the Constitution. Since the High Courtinterfered at the stage of allotment of symbol, the court set aside the decisionobserving that the High Court had committed a serious error in issuing a writunder Article 226 of the Constitution. It may also be stated that this decision wasprior to

the Constitution (Seventy-third Amendment) Act, 1992.

41. In Boddula Krishnaiah and Anr. v. State Election Commissioner,A. P. and Ors., : [1996]3SCR687 , the Court held that once an election process hasbeen set in motion, the High Court would not be justified in interfering with suchprocess and in giving direction to the election officer to stall proceedings or toconduct the election process afresh.

42. In V.S. Achuthanandan v. P.J. Francis and Anr., : [1999]2SCR99 ,the Supreme Court observed that the High Court of Allahabad in Ashraf Ali Khan v. Tika Ram and Ors. 20 ELR 470 rightly explained the position of lawthus :

'In the case of an election there are certain steps to be taken until the pollis taken. In the first place, there is an announcement about the holding ofan election. This is followed by nomination of candidates. After thenominations are made, a scrutiny of the nomination is held. After thenominations are scrutinized a list of validly nominated candidates isprepared. After the list of validly nominated candidates is prepared, there is a stage of withdrawal enabling a candidate to withdraw hiscandidature. After the withdrawal, if any, a candidate may retire fromcontest, and finally, there is the poll. Indeed, an election is onecontinuous process involving these steps in this connection. I may referto what has been pointed out in the case of Shankar v. ReturningOfficer, Kolaba. With regard to the expression election, it was stated asfollows :

'The expression election in Article 329(b) of the Constitution of Indiabears a wider meaning than the very limited restricted meaning of theresult of an election or the counting of votes. 'Election' has the samemeaning as the expression used in Articles 327 and 328 viz., mattersrelating to or in connection with election. Therefore, nomination ofcandidates, scrutinizing of nominations, and decisions as to whether anomination paper is valid or not, are all part and parcel of an election.

Election is not merely the ultimate decision or the ultimate result.'Election' is every stage from the time the notification is issued till theresult is declared, and even perhaps if there is an election petition, till thedecision of the Election Tribunal. It is one whole continuous integratedproceeding and every aspect of it and every stage of it and every step init is, a part of the election, and what is prohibited by Article 329(b) iscalling in question any one aspect or stage of the election. Theexpression except by an election petition, in the article does not point tothe period when it can be called in question; it rather points to themanner and the mode in which it can be called in question; and Article 329(b) provides that the only way any matter relating to or in connectionwith an election can be called in question is by an election petition,which could be presented to such authority and in such manner as maybe provided for by law passed by the appropriate Legislature.' (emphasissupplied)

43. From the above cases, it is clear that normally, a High Court in exerciseof extraordinary jurisdiction under Article 226 of the Constitution would notentertain a petition, once election process has started. It is also clear that once anotification of election programme is published, election process can be said tohave started.

44. It is, however, submitted on behalf of the respondents that it cannotsuccessfully be contended that this court has no jurisdiction to entertain a petitionunder Article 226 of the Constitution before the election is over and the onlyremedy available to the petitioner is to file an election petition. It was argued thatin S. T. Muthusami, the Court stated that election petition would not have effectof overriding powers of the High Court under Article 226 of the Constitution.Similar view was expressed in Boddula Krishnaiah.

45. Reference was also made to K. Venkatachalam v. A. Swamickan andAnr., : [1999]2SCR857 . In that case, without taking recourse to an alternativeremedy under the relevant statute, a petition was filed under Article 226 of theConstitution alleging that fraud on the Constitution was committed and a persongot himself elected by impersonation. The returned candidate being not an electorin the electoral roll of the Legislative Assembly constituency, lacked basic qualification as required by Article 173(c) of the Constitution read with Section 5of the Representation of the People Act, but contested the election to the StateLegislative Assembly by

impersonating himself to another person who was anelector of that constituency. The writ petition was held maintainable, relief wasgranted by the High Court and the decision was upheld by the Supreme Court.

46. In our opinion, the ratio laid down in K. Venkatachalam would notapply to the facts of the present case. In that case, a writ of quo warranto wassought after the election, inter alia, alleging that there was fraud on theConstitution and the person who got himself elected was not eligible andqualified to contest the election and yet he got himself elected by impersonation.The Court, therefore, held that the jurisdiction of the High Court under Article226 of the Constitution was wide enough to cover all violations of law or theConstitution and it ought to exercise its extraordinary jurisdiction in such cases.It was also indicated that the returned candidate would be even criminally liable,as he filed his nomination on an affidavit impersonating himself. If, in suchcircumstances, he is allowed to sit and vote in the Assembly, his action would befraud on the Constitution.

47. The Court said :

'Article 226 of the Constitution is couched in the widest possible termsand unless there is a clear bar to jurisdiction of the High Court its powersunder Article 226 of the Constitution can be exercised when there is anyact which is against any provisions of law or violative of constitutionalprovisions and when recourse cannot be had to the provisions of the Actfor the appropriate relief. In circumstances like the present one the bar ofArticle 329(b) will not come into play when the case falls underArticles 191 and 193 and the whole of the election process is over.Consider the case where the person elected is not a citizen of India.Would the court allow a foreign citizen to sit and vote in the LegislativeAssembly and not exercise jurisdiction under Article 226 of theConstitution?'

48. Finally, in Election Commission of India v. Ashok Kumar and Ors. : AIR2000SC2979 , after considering several leading decisions on the point, theSupreme Court laid down certain principles on entertaining petitions underArticle 226 of the Constitution of India and in issuing interim directions after thecommencement of electoral process.

49. The Court stated :

'For convenience sake we would now generally sum up our conclusionsby partly restating what the two Constitution Benches have already saidand then adding by clarifying what follows therefrom in view of theanalysis made by us hereinabove :

(1) If an election, (the term election being widely interpreted so as toinclude all steps and entire proceedings commencing from the date ofnotification of election till the date of declaration of result) is to be calledin question and which questioning may have the effect of interrupting,obstructing or protracting the election proceedings in any manner, theinvoking of judicial remedy has to be postponed till after the completingof proceedings in elections.

(2) Any decision sought and rendered will not amount to 'calling inquestion an election' if it subserves the progress of the election andfacilities the completion of the election. Anything done towardscompleting or in furtherance of the election proceedings cannot bedescribed as questioning the election.

(3) Subject to the above, the action taken or orders issued by ElectionCommission are open to judicial review on the well-settled parameterswhich enable judicial review of decisions of statutory bodies such as on acase of mala fide or arbitrary exercise of power being made out or thestatutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of theelection proceedings, judicial intervention is available if assistance of thecourt has been sought for merely to correct or smoothen the progress ofthe election proceedings, to remove the obstacles therein, or to preserve avital piece of evidence if the same would lost or destroyed or renderedirretrievable by the time the results are declared and stage is set

forinvoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution whileentertaining any election dispute though not hit by the bar of Article329(b) but brought to it during the pendency of election proceedings. Thecourt must guard against any attempt at retarding, interrupting,protracting or stalling of the election proceedings. Care has to be taken tosee that there is no attempt to utilize the court's indulgence by filingpetition outwardly innocuous but essentially a subterfuge or pretext forachieving an ulterior or hidden end. Needless to say that in the verynature of the things the court would act with reluctance and shall not act,except on a clear and strong case for its intervention having been madeout by raising the pleas with particulars and precision and supporting thesame by necessary material.'

It may, however, be stated that the facts in Ashok Kumar were totallydifferent. After dissolution of 12th Lok Sabha by the President of India in April,1999, the Election Commission of India announced the programme for thegeneral election to constitute 13th Lok Sabha. Polling in the State of Kerala wason 11th September, 1999. The counting was scheduled on 6th October, 1999. Inexercise of the powers conferred by Rule 59-A of the Conduct of Election Rules,1961, the Election Commission of India issued a notification which was stayedby the High Court in a writ petition under Article 226 of the Constitution of Indiaand certain directions were issued. The Apex Court held that the ElectionCommission had power to issue notification and the High Court ought not tohave made interim order 'to intervene so as to take care of an alleged aberrationand maintain the flow of election stream within its permissible bounds'.

50. The learned counsel for the parties referred to some of the decisions ofthis Court. In Bhosale Deepak Manikrao and Ors. v. State of Maharashtra andOrs. 1998 (2) ALL MR 546 a Division Bench of this court considered a similarquestion. In that case too, an order of rejection of nomination paper of severalcandidates was questioned by filing a writ petition under Article 226 of theConstitution. Those nomination papers were rejected. It was contended that rejection of the nomination papers was without valid reason and a writ ofmandamus was sought directing the Returning Officer to accept the nominationpapers and permit them to contest the election.

51. Relying on Sections 15 and 15A of the Act, Article 243-O of theConstitution and following N. P. Ponnuswami and other cases, the Court heldthat a petition would not be maintainable against an order rejecting a nominationpaper. Legality or propriety of the election can be challenged only by filing anelection petition. The Court observed that Section 15 confers very wide powerson the trial Judge to decide validity of an election, without specifying anygrounds. Qualification or disqualification of an elected candidate, improperrejection or acceptance of a nomination paper, improper counting or commissionof corrupt practice, etc. are some of the grounds for invalidating an election. Sub-section (7) of Section 15 prohibits setting aside of an election only on the groundof an error made by the Officer charged with carrying out the rules. It means thatif there is an error which does not go to the root of the case and is only aninfraction of a rule, that by itself will not entitle a person to challenge the electionand get it set aside. But when Returning Officer accepts a nomination paper,which ought not to have been accepted, or rejects a nomination paper, whichshould not have been rejected, he adjudicates entitlement of a person to contest ornot to contest the election. Sub-section (7) of Section 15 would, therefore, notprevent the judge from considering improper rejection or acceptance ofnomination paper as a ground for setting aside the election of a returnedcandidate.

52. In Farook Ali Khan v. Maharashtra State Election Commission andOrs. 1998(2) Mh.L.J. 750 almost a similar question arose, though dealing withan election of Municipal Corporation under the Bombay Provincial MunicipalCorporations Act, 1949. In Farook Ali Khan also, petitioners challenged an orderpassed by the Returning Officer rejecting or accepting nomination papers ofcertain candidates. Election notification was issued on August 18, 1997 andnomination papers were scrutinized on 28th August, 1997. The question beforethe Court was, whether at that stage a petition under Article 226/227 of theConstitution would lie and an order of rejection or acceptance of nominationpaper could be challenged.

53. Considering Article 329(b)(b) and Article 243-ZG of the Constitution[which is in pari materia to Article 243-O(b)], the Court held that rejection oracceptance of a nomination paper is one of the stages in the election and suchaction cannot be challenged in a petition under Article 226/227 of theConstitution in the High Court and the only remedy is to file an election petitionas provided by law.

54. In Maroti Sakharam Wasekar v. Tahsildar, Mul and Anr. 1999 (2) Mh.L.J. 550 a nomination paper of the petitioner was rejected by the ReturningOfficer and the said action was challenged by filing a petition under Article 226of the Constitution. The election programme was announced and nominationpapers were filed on December 7, 1998. The election was scheduled to be held onDecember 26, 1998. On 12th December, 1998, at the time of scrutiny, thenomination paper was rejected. It was contended that nomination papers wererejected on the ground of non-payment of dues of the Panchayat, which was baseless and false as there was no default. The said order, therefore, required tobe interfered with.

55. The Division Bench, however, considering Section 15 of the Act as alsoArticle 243-O(b) of the Constitution and relying on Farook Ali Khan and othercases, held that writ petition under Article 226 of the Constitution challengingrejection of nomination papers was not maintainable. The Court observed that thefiling of nomination paper, scrutiny and rejection or acceptance thereof will be apart of election process and a petition under Article 226 of the Constitutionwould not lie against acceptance or rejection of nomination paper.

56. No doubt, strong reliance was placed by the learned counsel for thepetitioners on a recent decision of the Division Bench of this court in AnantJanardati Patil v. State of Maharashtra and Ors. : AIR2002Bom87 , In thatcase, considering the provisions of Rules 8 and 11 (2-A) of the 1959 Rules, itwas held that if the defect in the nomination paper is 'not of a substantialcharacter', the Returning Officer cannot reject it.

57. In Anant Janardan, the petitioner claimed to belong to Mahadeo-Koli, a notified Scheduled Tribe. It was his case that the Executive Magistrate, Uran,had issued necessary certificate in favour of the petitioner. The petitionersubmitted his nomination form on October 9, 1997, as a Scheduled Tribecandidate. At the time of scrutiny, however, the nomination was rejected by theReturning Officer on the ground that the certificate was not in prescribed format.Keeping in mind the provisions of Rule 11(2A), which lays down that theReturning Officer cannot reject any nomination paper on the ground of anydefect which is not of a substantial character and observing that there was noformat prescribed under the Rules for submitting caste certificate, the Court heldthat the action of the Returning Officer in rejecting the nomination paper of thepetitioner was contrary to law and such an order could be challenged by filing apetition under Article 226 of the Constitution.

58. It was contended on behalf of the respondents that the petition underArticle 226 was not maintainable and only remedy available to the petitioner wasto file an election petition. The Court, no doubt, considered the provisions ofArticle 243-O of the Constitution. In the peculiar facts of the case, however, thatby way of an interim order passed by the Court on January 16, 1998, by whichthe Returning Officer was directed to accept the nomination paper of thepetitioner and was further directed to scrutinise it in accordance with law and wasasked not to reject the same on the ground of caste claim of the petitioner asScheduled Tribe, the Court observed that it would not be proper thereafter to askthe petitioner to pursue the remedy under the election laws.

59. The Court stated :

'As noted above the petitioners nomination papers were accepted underthe interim order of this court and petitioner was elected unopposedbeing sole contestant. In the circumstances remedy under election law isnot available to him in challenging the order of Returning Officerrejecting his nomination papers and matter has to be examined by usunder Article 226.'

A similar view was taken by the High Court of Gujarat in Kalidas KarsanbhaiChavda v. Returning Officer, Vadodara Jilla Panchayat Elections and Anr., : AIR1981Guj195 ; and in Smt. Navubha Gokaji Chavda, Mehsana and Ors. v. Returning Officer and Ors., : AIR1982Guj281 , albeit before insertion of Article243-O of the

Constitution.

60. The learned counsel for the respondents contended that in AnantJanardan, the Division Bench has not considered several decisions including theleading decision of the Constitution Bench of the Supreme Court in N. P.Ponnuswami, wherein it had been unequivocally and explicitly held that at thestage of rejection of nomination paper, a petition under Article 226 of theConstitution would not lie. It was also held that there cannot be two attacks onmatters connected with election proceedings, one while election process is goingon by invoking extraordinary jurisdiction of the High Court under Article 226 ofthe Constitution and the other after the election is over Anant Janardan,therefore, is per in curium,

61. To us, the law appears to be well settled and it is that once the electionprocess has started, it has to be over in accordance with the provisions of therelevant statute. Once an election notification is issued, the process can be said tohave started. There are various stages of election. One of such stages is scrutinyof nomination papers. It is thus a part and parcel of election process. The lawcontemplates only one attack in election matters, and that too, after the election isover. A petition under Article 226 of the Constitution against rejection ofnomination paper, therefore, cannot lie. Since, in the instant cases, nominationpapers of the petitioner have been rejected, keeping in view the mandate of theConstitution in Article 243-O(b) and Sections 15 and 15-A of the Act, the remedyavailable to the petitioners is to file election petition in accordance withprovisions of the Act and not to invoke extraordinary jurisdiction of this courtunder Article 226 of the Constitution.

62. It is, no doubt, contended that Section 15 of the Act provides for filingof an election petition without specifying any ground for setting aside suchelection. Improper rejection or acceptance of nomination paper is not made oneof the grounds for setting aside the election. Hence, a remedy provided by Section 15 of the Act cannot be termed an alternative or equally efficaciousremedy. In N. P. Ponnuswami, the Court considered the provisions of Section 100of the Representation of the People Act, 1951, wherein one of the grounds fordeclaring an election void was improper rejection of a nomination paper. [Clause (c)of Sub-section (1) of Section 100].

63. We are not impressed by the above argument. In N.P. Ponnuswamiitself, the Constitution Bench stated;

'The next important question to be considered is what is meant by thewords 'no election shall be called in question'. A reference to anytreatise on elections in England will show that an election proceeding inthat country is liable to be assailed on very limited grounds, one of thembeing the improper rejection of a nomination paper.'

64. Thus, in our judgment, improper rejection or acceptance of nominationpaper can be said to be one of the grounds for setting aside the election particularly when no grounds have been specified by the Legislature in Section 15of the Act. That apart, as already observed in earlier part of the judgment, inBhosale Deepak Manikrao, a Division Bench of this court has held that Sub-section (7) of Section 15 of the Act would not prevent the Judge from consideringimproper rejection or acceptance of a nomination paper as a ground for settingaside the election of a returned candidate. We are in agreement with the aboveview and reject the contention raised by the learned counsel for the petitioners.

65. For the foregoing reasons, in our opinion, the petitions filed by thepetitioners under Article 226 of the Constitution against rejection of nominationpapers are not maintainable at this stage in the light of the provisions of Article243-O(b) of the Constitution read with Sections 15 and 15A of the Act. Thepetitions are, therefore, liable to be dismissed and are accordingly dismissed,without observing anything on merits, however, with no order as to costs.