REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1622 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 16837 OF 2019

LAXMIBAI .....APPELLANT(S)

VERSUS

THE COLLECTOR, NANDED & ORS.
.....RESPONDENT(S)

W I T H

CIVIL APPEAL NOS. 1623-1625 OF 2020
(ARISING OUT OF SLP (CIVIL) NOS. 20814-20816 OF 2019)

CIVIL APPEAL NO. 1626 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 4438 OF 2020)
[DIARY NO. 40018 OF 2019]

J U D G M E N T

HEMANT GUPTA, J.

Civil Appeal @ SLP(C) No. 16837 of 2019

1. Leave granted.

2. The challenge in the present appeal is to an order dated 10th December, 2018 passed by the learned Single Bench of the High Court of Judicature at Bombay dismissing the writ petition filed by the appellant against an order of disqualification under Section 14B

of the Maharashtra Village Panchayats Act, 1959[1] on account of non-submission of election expenses within the period prescribed.

3. The election of Gram Panchayat, Mugat, Taluk Mudkhed, District Nanded were held on 1st November, 2015. The results were declared on 4th November, 2015. The appellant was elected as a Member of Village Panchayat. The appellant was required to furnish election expenses within 30 days in the manner prescribed by the State Election Commission in terms of Section 14B of the 1959 Act. The appellant submitted expenses with delay of 15 days. The appellant was served with a show cause notice on 3rd March, 2016 as to why she should not be disqualified on account of failure to submit the election expenses. The appellant submitted her explanation that due to ill-health there was a delay of 15 days in furnishing of details of expenses and that delay may be condoned.

4. The Collector as a delegate of the State Election Commission passed an order dated 9th August, 2018 disqualifying the appellant for a period of five years to be a member of Gram Panchayat only for the reason that the appellant has not submitted election expenses within time.

5. The appeal against such order was dismissed on 19th November, 2018 by the Additional Divisional Commissioner, Aurangabad for the reason that the medical certificate is not issued by the Competent Authority. The said order was challenged before the

1 for short, '1959 Act'

Writ Court wherein the High Court held as under:

> "5. The learned counsel for the petitioner has tendered a copy of medical certificate on which petitioner had relied upon. The same is taken on record and marked "X" for identification. This document has no particulars whatsoever, such as name, diagnosis, date and reference number etc. There is nothing mentioned. This certificate issued by a private hospital bears only a stamp of the doctor. It is stated that the petitioner was suffering from hypertension, diabetes and was advised bed rest. This document, on the face of it, cannot be relied upon. If the authorities have not accepted such a document, there is no error in the view taken by them."

6. Learned counsel for the appellant vehemently argued that the appellant was advised bed rest on account of hypertension and diabetes, which fact caused unintended delay of furnishing of election expenses. It is also argued that the appellant is duly elected member of Panchayat and that an order of disqualification can be passed if the candidate fails to show any good reason or justification for the failure to submit accounts. It is also submitted that there is no finding that the accounts furnished, though with delay of fifteen days, are not proper or not in accordance with applicable rules or instructions. The order of disqualifying her for five years, in fact, jeopardises her right to contest election until 8th August, 2023 (i.e. from the date of the order passed on 9th August, 2018).

7. It is argued that since the appellant is a duly elected representative of Village Mugat and has been elected in a democratic process, the disqualification for a period of five years without taking into consideration the extent of default and the

consequences of disqualification renders the order of disqualification as wholly disproportionate to the deficiency alleged against the appellant. It is argued that an order of disqualification should have been passed without delay and not nearly after 3 years of the elections. It is further argued that disqualification for a period of five years is the maximum period of disqualification whereas in terms of sub-section (2) of Section 14B of the 1959 Act, the disqualification can be for a period less than five years. Therefore, the authority was expected to consider the nature and extent of default and consequent period of disqualification, which should be commensurate with the default found by such authority. The relevant Section 14B of the 1959 Act reads thus:

> **"14B. Disqualification by State Election Commission. –**
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> (1) If the State Election Commission is satisfied that a person, -
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> (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
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> (b) has no good reason or justification for such failure,
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> the State Election Commission may, by an order published in the *Official Gazette,* declare him to be disqualified and such person shall be disqualified for being a member of *panchayat* or for contesting an election for being a member for a period of five years from the date of this order.
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> (2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification."

8. A bare perusal of Section 14B of the 1959 Act shows that the State

Election Commission is to be satisfied as to whether a person has no good reason or justification for the failure to furnish account of election expenses. Secondly, in terms of sub-section (2), for the reasons to be recorded, the disqualification under sub-section (1) can be removed or the period of disqualification can be reduced.

9. The Collector passed an order on 9th August, 2018 not accepting the explanation for the delayed submission of the election expenses. In appeal, learned Additional Divisional Commissioner found that the medical certificate is not issued by the Competent Authority and the matter has been verified by the Collector. The appellant has not submitted the election expenses within stipulated time, therefore, there is no error in the order passed by the Collector. The High Court in the writ petition found that the medical certificate has no particulars whatsoever such as name, diagnosis, date and reference number etc. The certificate is issued by a private hospital and bears only a stamp of doctor. Such document was not accepted as reasonable explanation for not submitting the election expenses within time. We find that the explanation in delayed submission of election expenses has not been accepted. Therefore, we do not find any reason to take a different view than the view affirmed by the High Court in the writ petition filed by the appellant.

10. However, the question which arises is that whether delay of 15 days necessarily follows the disqualification for a period of five years. Learned counsel for the appellant submitted that the order

of disqualification was passed by the Collector approximately 3 years after the election and there were only two dates of hearing for more than two years apart. Therefore, inordinate delay in pronouncing the disqualification order on the part of the Collector severely prejudices the appellant as the period of disqualification starts from the date of the order. However, the learned counsel for the respondents relies upon judgment of this Court reported as ***Union of India & Ors.*** v. ***A.K. Pandey***[2] to contend that the mandate of Section 14B of the 1959 Act is disqualification and the word 'may' have to be read as 'shall'.

11. We do not find any merit in the argument that Section 14B of the 1959 Act is mandatory. Sub-section (1) of Section 14B of the said Act empowers the State Election Commission to pass an order of disqualification of a candidate, if the candidate fails to lodge account of election expenses for lack of good reason or without any justification. Such satisfaction is required to be recorded by the Election Commission. The disqualification for a period of five years is not necessary consequence of merely not filing account of election expenses. Still further, subsection (2) empowers the State Election Commission for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification. Since authority is vested with power to reduce the period of disqualification, therefore, makes the provision directory.

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2 (2009) 10 SCC 552

12. This Court in ***A.K. Pandey*** held that the prohibitive or negative words are ordinarily indicative of mandatory nature of the provision although said fact alone is not conclusive. This Court held as under:-

> " 15. The principle seems to be fairly well settled that The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. ....."

13. In the present case, there is no prohibitive or negative expressions used in Section 14B of the 1959 Act, as it empowers the Election Commission to pass a just order of disqualification. Such provision cannot be treated to be mandatory period of five years in view of plain language of the Statute.

14. It is urged by learned counsel for the appellant that the disqualification is disproportionate to the default committed by the appellant. In a judgment reported as ***D. Venkata Reddy*** v. ***R. Sultan & Ors.***[3], it was held that the election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. The challenge in the said appeal was to an election on the allegation of corrupt practices. This Court held that the valuable verdict of the people at the polls must be given due respect and should not be disregarded on vague, indefinite, frivolous or fanciful allegations. The onus lies

3 (1976) 2 SCC 455

heavily on the election petitioner to make out a strong case for setting aside an election. The election results cannot be lightly brushed aside in election disputes. At the same time, it is necessary to protect the purity and sobriety of the elections by ensuring that the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act. The Court held as under:

> "3. Mr P. Bassi Reddy learned Counsel for the appellant has assailed before us the findings of the High Court on Issues 7, 26 and 27 as these were the only issues which affected the appellant. Mr B. Shiv Sankar, learned Counsel for the contesting respondent has endeavoured to support the judgment of the High Court by submitting that the findings arrived at by the High Court were based on a correct and proper appreciation of the evidence and the facts and circumstances of the record. In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. At the same time it is necessary to protect the purity and sobriety of the elections by ensuring that the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act."

15. This Court in a judgment reported as ***State of Punjab*** v. ***Baldev Singh***[4] held that issue of removal of an elected office bearer has serious repercussion. It implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. It was held that severer the punishment, greater care has to be taken to see that all the safeguards provided in a statute are scrupulously followed.

16. In ***Tarlochan Dev Sharma*** v. ***State of Punjab & Ors.***[5], this Court has held that holding and enjoying an office, discharging related duties is a valuable statutory right of not only the returned candidate but also his constituency or electoral college. Therefore, the procedure prescribed must be strictly adhered to and unless a clear case is made out, there cannot be any justification for his removal.

17. In ***Ravi Yashwant Bhoir*** v. ***District Collector, Raigad & Ors.***[6], this Court held that an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law. Where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. It was held as under:

> "35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but

4 (1999) 6 SCC 172
5 (2001) 6 SCC 260
6 (2012) 4 SCC 407

> it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu* v. *Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983] , *Mohan Lal Tripathi* v. *District Magistrate, Rae Bareily* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti* v. *District Panchayat Raj Adhikari* [(1998) 1 SCC 680 : AIR 1998 SC 1222]).
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> 36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.
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> 37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

18. The judgments relate to the procedure to be followed in election petition and proof of allegation but such principles are to be followed in the case of inflicting punishment of disqualification, which has far serious implication almost similar to indulging in corrupt practices in an election. The purity and transparency in election process does not give unbridled and arbitrary power to the

Election Commission to pass any whimsical order without examining the nature of default. The extent of period of disqualification has to be in proportion to the default. The Election Commission has to keep in mind that by such process, an election of duly elected candidate representing collective will of the voters of the constituency is being set at naught.

19. In a judgment reported as ***Chief Executive Officer, Krishna District Co-op. Central Bank Ltd.*** v. ***K. Hanumantha Rao***[7], this Court held that the limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a concept of judicial review. If the punishment is so disproportionate that it shocks the judicial conscience, the court would interfere. The relevant extract reads as under:

> "7.2 Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes.
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> 7.2.1 No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope for judicial review. This limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a well-recognised concept of judicial review in our jurisprudence. The punishment should appear to be so

7 (2017) 2 SCC 528

disproportionate that it shocks the judicial conscience. [See *State of Jharkhand* v. *Kamal Prasad*, (2014) 7 SCC 223]. It would also be apt to extract the following observations in this behalf from the judgment of this Court in *Kendriya Vidyalaya Sangthan* v. *J. Hussain*, (2013) 10 SCC 106: (SCC pp. 110-12, paras 8-10)

> "*8.* The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the Court or a tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See *UT of Dadra and Nagar Haveli* v. *Gulabhia M. Lad*, (2010) 5 SCC 775). In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.
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> xx xx xx
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> 10. An imprimatur to the aforesaid principle was accorded by this Court as well in *Ranjit Thakur* v. *Union of India*, (1987) 4 SCC 611. Speaking for the Court, Venkatachaliah, J. (as he then was) emphasising that "all powers have legal limits" invoked the aforesaid doctrine in the following words : (SCC p. 620, para 25)
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> > '25. … The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court

> Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

20. The disqualification of a candidate for five years passed under Section 14B of the 1959 Act leads to disqualification for future election as well. Though, Section 14B of the 1959 Act empowers the Commission to disqualify a candidate for a period not exceeding five years from the date of the order, but to pass an order of disqualification for five years, which may disqualify him to contest the next elections as well requires to be supported by cogent reasons and not merely on the fact of not furnishing of election expenses. We find that the order of disqualification for a period of five years is without taking into consideration the extent of default committed by the appellant and that the will of people is being interfered with in the wholly perfunctory way. We find that such mechanical exercise of power without any adequate reasons, though required to be recorded, renders the order of disqualification for a period of five years as illegal and untenable. It is abdication of power which is coupled with a duty to impose

just period of disqualification. Therefore, though the appellant could be disqualified for a period upto five years, but we find that such period of disqualification must be supported by tangible reasons lest it would border on being disproportionate.

21. Consequently, the order dated 9th August 2018 passed by the Collector and subsequent orders in appeal and in the writ petition are set aside in part to the extent of prescribing disqualification for a period of five years and the matter is remitted to the Collector to take into consideration the period of delay/default, the purport for which the election expenses are sought to be furnished and that the order of disqualification operates from the date of the order including delay in passing the order of disqualification. The Collector shall pass the order afresh in respect of period of disqualification in accordance with law preferably within a period of one month from the date of receipt of a copy of this judgment. The period of disqualification, if any, will be operative from the date of the order passed earlier by the Collector on 9th August, 2018 and any elections held as a consequence of the order of disqualification will abide the final order to be passed by the Collector.

Civil Appeals @ SLP(C) Nos. 20814-20816 of 2019

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Civil Appeal @ SLP(C) … Diary No. 40018 of 2019

22. Delay condoned. Leave granted.

23. The present appeals arise out of a common order dated 24th July, 2019 passed by the learned Single Bench of the High Court of

Judicature at Bombay whereby the writ petition filed by the appellant Gulabrao Ananda Patil was dismissed and writ petitions filed by Ritesh Suresh Patil and Pradip Nimba Patil were partly allowed.

24. The elections of Panchayat Samiti, Village Mukti, Taluk and District Dhule, Maharashtra were held on 1st December, 2013. The appellant Gulabrao Ananda Patil contested the said elections. The results were declared on 2nd December, 2013 and the appellant Gulabrao Ananda Patil was not elected. The appellant was required to furnish election expenses within 30 days in the manner prescribed by the State Election Commission in terms of Section 15B of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961[8]. Since the appellant did not submit the account of election expenses within stipulated period, he was served with a show-cause notice on 21st July, 2014 to explain as to why he should not be disqualified for next five years on account of his failure to submit the account of election expenses. The appellant did not submit any reply within the prescribed time i.e. within seven days but on 28th August, 2014, he submitted his explanation that due to ill-health, he could not furnish the details of expenses. The Collector vide order dated 3rd November, 2014 disqualified the appellant for contesting elections for a period of five years. An appeal filed by the appellant was dismissed by the Divisional Commissioner on 18th December, 2017.

25. Meanwhile, the elections of Gram Panchayat, Village Mukti were

8 for short, '1961 Act'

notified. The appellant submitted his nomination on 21st September, 2017 for the post of Sarpanch. Such nomination of the appellant was objected by Pradip Nimba Patil (Petitioner in W.P. No. 11929 of 2017 before the High Court) but was rejected by the Returning Officer on 25th September, 2017. The appellant was declared elected to the post of Sarpanch. The Returning Officer held that the disqualification is applicable only for the elections of Zilla Parishads and Panchayat Samiti and not for the elections of Gram Panchayat. The order of the Returning Officer was challenged before the High Court in Writ Petition No. 11929 of 2017 and in Writ Petition No. 13711 of 2017.

26. Writ Petition No. 3846 of 2018 was filed by the appellant Gulabrao Ananda Patil challenging the order dated 18th December, 2017 passed by the Divisional Commissioner confirming the order dated 3rd November, 2014 passed by the Collector to disqualify him for a period of five years on account of his failure to submit account of election expenses within the stipulated period. Writ Petition No. 11929 of 2017 was filed by Pradip Nimba Patil challenging the order dated 25th September, 2017 passed by the Returning Officer whereby the objection raised by him to the nomination of appellant Gulabrao Ananda Patil to the post of Sarpanch was rejected. Writ Petition No. 13711 of 2017 was filed by Ritesh Suresh Patil (appellant herein in Civil Appeal arising out of Special Leave Petition Diary No. 40018 of 2019) with a prayer to set aside the election of appellant Gulabrao Ananda Patil, who has been declared

elected as Sarpanch of Village Mukti, on the ground that on the date of his nomination, he was disqualified from contesting the said election. A further prayer is also made by appellant Ritesh Suresh Patil to declare him elected as Sarpanch of Gram Panchayat, Village Mukti by setting aside the election of Gulabrao Ananda Patil.

27. The High Court dismissed the writ petition filed by Gulabrao Ananda Patil. The writ petitions filed by Pradip Nimba Patil and Ritesh Suresh Patil were partly allowed by setting aside the order passed by the Returning Officer rejecting the objections raised by him while the relief claimed in the writ petition filed by Ritesh Suresh Patil to declare him elected as Sarpanch was not granted. Appellants Gulabrao Ananda Patil and Ritesh Suresh Patil are in appeal before this Court.

28. The argument of the appellant before the High Court was that the order dated 3rd November, 2014 has been passed without considering the explanation of the appellant regarding his ill-health and that the order has been passed mechanically. The High Court found that admittedly the appellant Gulabrao Ananda Patil has not submitted any account of election expenses incurred on the date of voting, therefore, there is no error in the order passed by the Collector disqualifying the appellant from contesting election for next five years. Learned counsel for the appellant submitted that disqualification of the appellant was on account of non-furnishing of expenses under the 1961 Act. The disqualification under

Section 15B of the 1961 Act was to contest an election for being a Councillor. Such disqualification is not applicable to contest an election in respect of another local body governed by separate statute, the 1959 Act.

29. It is further submitted that the order passed by the Returning Officer confers a cause to an aggrieved person to file an election petition under Section 15 of the 1959 Act. Such order of acceptance of nomination papers could not be challenged in a writ petition in view of Article 243-O of the Constitution of India and in view of alternate efficacious remedy provided under the 1959 Act.

30. It is also submitted that the disqualification for a period of five years is wholly disproportionate to the default committed by the appellant of not filing the election expenses incurred on the date of election.

31. Similar argument has been examined in an appeal preferred by ***Laxmi Bai***. For the reasons recorded therein, we find that the order of disqualification for a period of five years is illegal and untenable and cannot be sustained.

32. Learned counsel for the appellant referred to a judgment reported as ***Commissioner of Central Excise, New Delhi*** v. ***Hari Chand Shri Gopal & Ors.***[9] to contend that the appellant has substantially complied with the provisions of submitting election expenses, therefore, the order of disqualification is not tenable. We do not find any merit in the said argument. The election expenses are sought to maintain purity of election and to bring transparency in

9 (2011) 1 SCC 236

the process. The voters must know everything about his candidate during and post elections. Therefore, such judgment which deals with excise duty is not applicable to the facts of the present case.

33. The provisions of Section 15B of the 1961 Act are similar to the provisions of Section 14B of the 1959 Act. Section 15B of the 1961 Act reads as under:

> **"15B. Disqualification by State Election Commission:** -
>
> (1) If the State Election Commission is satisfied that a person,-
>
> (a) has failed to lodge an account of election expenses within the time and in the manner required by the State Election Commission, and
>
> (b) has no good reason or justification for such failure,
>
> the State Election Commission may, by an order published in the *Official Gazette,* declare him to be disqualified and such person shall be disqualified for being a Councillor or for contesting an election for being a Councillor for a period of five years from the date of this order.
>
> (2) The State Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) or reduce the period of any such disqualification."

34. The appellant was elected as a candidate in respect of election to Gram Panchayat conducted in terms of 1959 Act. Section 13 of the said Act as it existed prior to substitution by Maharashtra Act 54 of 2018, contemplates disqualifications to contest for election. The relevant provision reads as under:

> "**13. Persons qualified to vote and be elected**
> (1) Every person who is not less than 21 years of age on

> the last date fixed for making nomination for every general election or bye-election and whose name is in the list of voters shall, unless disqualified under this Act, or any other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.
>
> (2) Every person whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected for any ward of the village. No person whose name is not entered in the list of voters for such village shall be qualified to be elected for any ward of the village.....”

35. The High Court followed its earlier judgment reported as ***Gokul Chandanmal Sangvi*** v. ***State of Maharashtra and Others***[10], holding that the disqualification incurred by a candidate will entail disqualification to contest an election under 1959 Act in terms of Section 13 of the said Act. Since the appellant has been disqualified under the provisions of 1961 Act, therefore, such disqualification is a disqualification for the purposes of the elections under 1959 Act as well. Therefore, the appellant could not contest elections for Gram Panchayat having been disqualified for a period of five years under the 1961 Act. We see no reason to disagree with the findings of the High Court in this respect.

36. The High Court in ***Gokul Chandanmal Sangvi***, while considering argument that the remedy of an aggrieved person accepting nomination papers of the present appellant is by way of election petition, held that if there were illegalities in the election, it would have effect of vitiating the election. The High Court held as under:

> “10. ……..There is a reference in this case about the

10 2018 (4) Mh LJ 911

> judgment in N. P. Punnuswami vs The Returning Officer AIR 1952 SC 64. In Punnuswami's case, the appellant's nomination was rejected and he challenged the same by a writ of certiorari to quash the order and include his name. The High Court dismissed the petition on the ground that it had no jurisdiction to interfere with the order of the Returning Officer. The Apex Court held that, the only remedy provided was by election petition to be presented after the election was over and even the High Court had no jurisdiction under Article 226 of the Constitution of India during the intermediate period. However, if there were illegalities in the election, it would have effect of vitiating the election.
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> *** *** ***
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> 17. We find that, the Returning Officer has taken a stand totally contradictory to the provisions of law while upholding the nomination of respondent No. 5. Since respondent No. 5 was disqualified but was allowed to contest the election, the whole election stands vitiated."

37. In the judgment reported as ***N. P. Punnuswami*** v. ***The Returning Officer***[11] it was held by this Court that the only remedy provided was by election petition to be presented after the election was over and even the High Court had no jurisdiction under Article 226 of the Constitution of India during the intermediate period. It was held that the ground of rejection of nomination paper cannot be urged in any other manner, at any other stage and before any other court. It further held that under the election law, the rejection of a nomination paper can be used as a ground to call election in question before the Authority prescribed by law in terms of Article 329 of the Constitution of India. This Court arrived at the following conclusions:

11 AIR 1952 SC 64

> “(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.
>
> (2) In conformity with this principle, the scheme 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 commit ted 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.”

38. The 73rd Constitutional Amendment inserted Part IX in the Constitution of India. Article 243-O of the Constitution of India as inserted provides that no election to any panchayats shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made under the legislature of the State. Article 243-O of the Constitution of India reads as under:

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

(b) no election to any Panchayats 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."

39. In terms of such constitutional provisions, Section 15A was inserted by Maharashtra Act No. 21 of 1994. The dispute in the present appeals does not pertain to election to either House of the Parliament but to a local body. The constitutional bar is contained in Article 243-O of the Constitution of India in furtherance of which Section 15A was inserted in the year 1994. Section 15A of the 1959 Act reads thus:**-**

> "**15A. Bar to interference by Court in electoral matters.-**No election to any Panchayat shall be called in question except in accordance with the provisions of Section 15; and no court other than the Judge referred to in that Section shall entertain any dispute in respect of such election."

40. A Constitution Bench in ***Mohinder Singh Gill & Anr.*** v. ***The Chief Election Commissioner, New Delhi & Ors.***[12] examined the ***N.P. Ponnuswami's*** case and held that Article 329 of the Constitution of India starts with a *non obstante* clause that notwithstanding contained in this Constitution, no election to either house shall be called in question except by an election petition. Therefore, Article 226 of the Constitution of India stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed out but left

12 (1978) 1 SCC 405

unexplored in ***Ponnuswami.*** It was held that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage. The Election Tribunal has powers to give relief to an aggrieved candidate.

41. In respect of elections to a local body, this Court in a judgment reported as ***S. T. Muthusami*** v. ***K. Natarajan & Ors.***[13], approved Full Court Judgment of Madhya Pradesh High Court reported as ***Malam Singh*** v. ***The Collector, Sehore***[14], wherein it was held that there is no constitutional bar to the exercise of writ jurisdiction in respect of election to local bodies such as Municipalities, Panchayat and the like but it is desirable to resolve the election dispute speedily through the machinery of election petitions. In ***Malam Singh's*** case, the Madhya Pradesh High Court held as under:

> "7. The Act, therefore, furnishes a complete remedy for the particular breach complained of. The Legislature prescribed the manner in which and the stage at which the rejection of a nomination paper can be raised as a ground to call the election in question. We think it follows by necessary implication from the language of Section 357(1) that this ground cannot be urged in other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Section 357(1) and in setting up an election tribunal. The question of improper rejection of a nomination paper has, therefore, to be brought up be-

13 (1988) 1 SCC 572
14 AIR 1971 MP 195

fore the election tribunal by means of an election petition after the conclusion of the election.

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17. Lastly, their Lordships stated that the law of election in this country does not contemplate that there should be two attacks on matters connected with election proceedings, in the following passage:—

> "In my opinion, to affirm such a position would be contrary to the scheme of ..... the Representation of the People Act, which as I shall point out later, seems to lie that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. It seems to me that under the election law, the only significance, Which the rejection of a nomination paper has, consists in the fact that it can be used as a ground to call the election in question."

18. There is no constitutional bar to the exercise of writ jurisdiction in respect of elections to Local Bodies such as, Municipalities, Panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So, their Lordships of the Supreme Court in *Sangram Singh* v. *Election Tribunal, Kotah*, AIR 1955 SC 425, stated:—

> "..... though no legislature can impose limitations on these constitutional owners it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

42. This Court again examined the question in respect of raising a dispute relating to an election of a local body before the High Court by way of a writ petition under Article 226 of the Constitution of India in a judgment reported as ***Harnek Singh*** v. ***Charanjit Singh & Ors.***[15]. It was held as under:

> "15. Prayers (b) and (c) aforementioned, evidently, could not have been granted in favour of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution of India. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view of the fact that an efficacious alternative remedy is available therefor. (See Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., 2 (2005) 8 SCC 242: 005 (7) SCALE 290.)
>
> 16. Article 243-O of the Constitution of India mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.
>
> 17. In C. Subrahmanyam Vs. K. Ramanjaneyullu and Others : (1998) 8 SCC 703, a three-Judge Bench of this Court observed that a writ petition should not be entertained when the main question which fell for decision before the High Court was non-compliance of the provisions of the Act which was one of the grounds for an election petition in terms Rule 12 framed under the Act."

43. Section 10A of the 1959 Act and Section 9A of the 1961 Act read with Articles 243-K and 243-O, are *pari materia* with Article 324 of

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15 (2005) 8 SCC 383

the Constitution of India. In view of the judgments referred, we find that the remedy of an aggrieved person accepting or rejecting nomination of a candidate is by way of an election petition in view of the bar created under Section 15A of the 1959 Act. The said Act is a complete code providing machinery for redressal to the grievances pertaining to election as contained in Section 15 of the 1959 Act. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary in nature and may not be exercised in view of the fact that an efficacious alternative remedy is available and more so exercise restraint in terms of Article 243-O of the Constitution of India. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court. However, the order of the High Court that the appellant has not furnished the election expenses incurred on the date of election does not warrant any interference.

44. Consequently, the order passed by the Collector on 3rd November, 2014 and subsequent orders in appeal and in the writ petition are set aside in part to the extent of prescribing disqualification for a period of five years and the matter is remitted to the Collector to

take into consideration the nature of default, the purport for which the election expenses are sought to be furnished and that the order of disqualification operates from the date of the order including delay in passing the order of disqualification. The Collector shall pass the order afresh in respect of period of disqualification in accordance with law preferably within a period of one month from the date of receipt of copy of this judgment. The period of disqualification, if any, will be operative from the date of the order passed earlier by the Collector on 3rd November, 2014 and that any elections held as a consequence of the order of disqualification will abide the final order to be passed by the Collector.

45. In view of the above, Civil Appeals arising out of Special Leave Petitions (Civil) Nos. 16837 of 2019 and 20814-20816 of 2019 are allowed in the abovementioned terms; whereas Civil Appeal arising out of Special Leave Petition (Diary No. 40018 of 2019) is dismissed.

.....J.
(A.M. KHANWILKAR)

.....J.
(HEMANT GUPTA)

.....J.
(DINESH MAHESHWARI)

NEW DELHI;
February 14, 2020.