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ELECTION LAW

*K C Sunny**

I INTRODUCTION

THE PRIMARY object of election law is to ensure free and fair elections. In the early years of our constitutional system of governance the election law was synonymous with law governing election to Parliament, state legislative assemblies, office of the President of India and the office of the Vice-President of India. However, after the introduction of the *panchayat raj* institutions through the 73rd and 74th amendment to the Constitution there is a total change in the election law, since law relating to elections to the local bodies constituted a substantial portion of election law. So since late 1990s there is substantial increase in the number of reported cases relating to election to local bodies. In the year under survey this trend is continuing. It appears that the courts are very particular in examining the legal issues in detail and giving a purpose oriented interpretation so as to ensure the maintenance of the tradition of the country in conducting free and fair election so as to pave the way to the smooth functioning of democratic process.

II PROCEDURAL ASPECTS OF ELECTION PETITIONS

Verification

Representation of the People Act, 1951 (RP Act) prescribes elaborate procedure for filing the election petition. If the petition is not filed in accordance with the procedure prescribed, earlier practice was to dismiss the petition without trial. The petitioners were not permitted to rectify the mistake. The ultimate result was that large number of election petitions were dismissed at the initial stage owing to the failure to strictly comply with the procedural formalities. However, in the recent years there is a change in the attitude of the Supreme Court in this regard.[1]

The facts of the case disclose that it was alleged in the election petition filed by the appellant that the election be declared void on the ground of corrupt practice committed either by the respondent's election agent or by some other person with the consent of the respondent or his election agent.

* Head of the Dept of Law , University of Kerala.

1 *Umesh Challiyil* v *K.P. Rajendran*, AIR 2008 SC 1577.

The election petition was registered and notice was issued by the Kerala High Court. The respondent was the elected candidate and he raised a preliminary objection on the maintainability of the election petition. The preliminary objections were that the affidavit in form 25 was not affirmed, as such, the affirmation was not duly certified; the verification of the election petition was defective; the sources of information as regards the allegations of corrupt practices of which the appellant did not have personal knowledge; the allegations in the election petition were vague and lacked pleadings as regards the material particulars. It was contended by the appellant that there were no illegality in the verification nor the affidavit in form no.25 was defective. It was submitted that the accusations were specific and they were not vague and the facts mentioned in the election petition were duly sworn by proper affidavit.

The first preliminary objection was upheld by the high court that the affidavit which has been filed along with the election petition was not duly verified and the affidavit was not in the form as required under form 25 nor was it in inconformity with section 83 of the Act of 1951. It was further held that, the verification of the election petition was not in the manner which is required under the Code of Civil Procedure, 1908. For arriving at this conclusion the high court examined the scope of section 83 of the RP Act which reads thus:

> 83. Contents of petition.- (1) An election petition (a) shall contain a concise statement of the material facts on which the petitioner relies;
> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
> (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :
> Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit thereof.
> (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

In addition the court examined the format of the verification contained in form 25 under order 6 rule 15, CPC and arrived at a conclusion that the verification was defective since in the affidavit instead of writing " that I believe to be true" it had been stated ,that " no part thereof is false and nothing which is relevant has been concealed."

However, the Supreme Court took a different approach. It was observed:[2]

2 *Id.* at 1580-81 AK Mathur J (for himself and Altamas Kabir J).

> After going through the affidavit filed by the appellant and the format of the concluding portion of the affidavit, we fail to appreciate that in what way the verification can be found to be bad except that it has not used the word, "true" it is expressed in other way, " no part thereof is false and nothing which is relevant has been concealed." Instead of saying, "true" it has been put up in other way round, "no part thereof is false and nothing which is relevant has been concealed", which conveys the same meaning as was used, " I believe the same to be true". We fail to appreciate the distinction between the two. But the substance and the essence has been conveyed .... What one is required to do is to make proper verification disclosing the contents of which paragraphs are within his personal knowledge, and the averments in which paragraphs are within his knowledge, information or the information derived from other source and he believes the same to be true. Therefore, both the phraseology convey the same meaning except that instead of using the words, " that the averments in paragraphs 1,2 and 4 are within his personal knowledge and the averments in paragraphs 3 and 5 to 8 are within his knowledge, information and that the averments are true" he has stated, " no part thereof is false and nothing which is relevant has been concealed". Practically the same sense is conveyed and it is not such a defect which could entail dismissal of the election petition.

Another defect pointed out by the high court was that the appellant had not signed and affirmed in the manner inasmuch as there is no certification of the notary that it was solemnly affirmed by the appellant before him. This objection was based on the fact that after the signature of the deponent the only words occurring before the signature of the notary are, "Before me". The words, "Solemnly affirmed by Shri Umesh Challiyil at Ernakulam on this the 26th day of June, 2006" occurred above the signature of the deponent. Therefore, it was concluded that the affidavit did not bear the certification by the notary as to the affirmation by the deponent since such certification ought to be by the notary after the signature of the deponent. However, according to the view taken by the Supreme Court this minor defect is not a sufficient ground to dismiss the petition without going into the merit. It was observed:[3]

> But in our view, this too is a defect of very minor nature. It may be a bona fide mistake on the part of the deponent as well as the Notary but basically it conveys the sense that the affidavit has been solemnly affirmed by Umesh Challiyil at Ernakulam. This affirmation also

3 *Id.* at 1582.

> does not in any way go to the root of the matter so as to render the entire election petition not properly constituted entailing the dismissal of the same. Both the defects which have been pointed out by … Single Judge were too innocuous to have resulted in dismissal of the election petition on the basis of the preliminary objection. The Courts have to view it whether the objections go to the root of the matter or they are only cosmetic in nature. It is true that the election petition has to be seriously construed. But that apart the election petition should not be summarily dismissed on such small breaches of procedure. Section 83 itself says that the election petition should contain material facts. Section 86 says that the High Court shall dismiss the election petition which does not comply with the provisions of section 81 or Section 82 or Section 117. But not of defect of the nature as pointed out by the respondent would entail dismissal of the election petition. These were the defects, even if the Court has construed them to be of serious nature, at least notice should have been issued to the party to rectify the same instead of resorting to dismissal of the election petition at the outset.

Though the counsel for respondent advanced the argument based on the earlier decisions the court distinguished the earlier decisions and observed:[4]

> *However, in fairness whenever such defects are pointed then the proper course for the Court is not to dismiss the petition at the threshold*. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give proper opportunity to cure the defects and in case of failure to remove/ cure the defects, it could result into dismissal on account of Order 6 Rule 17 or Order 7 Rule 11 CPC. Though technically it cannot be dismissed under section 86 of the Act of 1951 but it can be rejected when the election petition is not properly constituted as required under the provisions of the CPC but in the present case we regret to record that the defects which have been pointed out in this election petition was purely cosmetic and it does not go to the root of the matter and secondly even if the Court found them of serious nature then at least the court should have given an opportunity to the petitioner to rectify such defects.

So the case was remitted to the High Court of Kerala. It seems that the view taken by the court is absolutely correct. Fairness demands that

4 *Id.* at 1584-85 (emphasis added).

opportunity may be given to the election petitioners to rectify the minor mistakes.

Particulars of corrupt practices

In *Sudarsha Avasthi* v. *Shiv Pal Singh*[5] the Supreme Court had the occasion to consider the thing to be included in the election petition as full particulars of the corrupt practice of bribery. The election of the respondent, who was the returned candidate, was challenged on the ground that the result of the election had been materially affected by improper acceptance of nomination paper of respondent. It was further alleged that respondent committed corrupt practice by giving money directly to persons with a view to induce them to contest as candidates in the said election. The respondent also committed corrupt practice by giving money to one S.P. Singhal with the object of inducing him to withdraw his nomination. In addition it was alleged that the respondent committed corrupt practice of procuring assistance in furtherance of his prospects in the election from the Additional Commissioner (Administration) , Lucknow Division 2 who was the assistant returning officer in the said election. A detailed affidavit was filed by the appellant disclosing the material facts of the corrupt practice. On behalf of the respondent it was contended that the election petition did not disclose any cause of action, pleadings are vague, frivolous and vexatious. Since the material facts and the full particulars of the allegations of corrupt practices had not been disclosed, the election petition was liable to be dismissed for non-compliance of the provisions of sections 82 and 83 of the R P Act, 1951. An application was also filed under order VI rule 16 read with order VII rule 11 of the Code of Civil Procedure for dismissal of the election petition. The respondent moved an application and prayed that the preliminary issues pertaining to the maintainability of the election petition and the other that the election petition lacked material facts and disclosed no cause of action. The high court dismissed the petition on the ground of lack of particulars regarding corrupt practices. On appeal the Supreme Court affirmed the decision:[6]

> As per Section 83 of the Act, it is the duty of the person who files the election petition and levels the allegation of corrupt practice, he has to disclose the material facts on which he relies and that should set forth the full particulars of a corrupt practice that the petitioner alleges including the full statement as far as possible disclosing the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice and the same shall be filed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure. Apart from this, he has to

5 AIR 2008 SC 2724.

6 See *id*. at 2726, AK Mathur J (for himself and Altamas Kabir J).

> file an affidavit in prescribed form in support of the allegation of such corrupt practice and he should disclose the particulars thereof. If he wants to rely on any document then it should be annexed to the petition signed by the petitioner and verified in the same manner as the petition. Section 123 of the Act deals with the corrupt practice. What shall be the corrupt practice have been enumerated in Section 123 of the Act, like; bribery which has been defined that any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of including a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election or an elector to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or an elector for having voted or refrained from voting.
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> Therefore, the detailed particulars are required to be given that how a person is being bribed by various modes.
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> All these particulars have to be given in the manner provided in Section 83 of the Act. So far as the ground of corrupt practice taken in the present petition is concerned, the same is of no help to the election petitioner for the simple reason that no affidavit in support of the allegation as envisaged by Proviso to Section 83(1) of the Act has been filed by the petitioner.

Affidavit

According to the proviso to clause (c) of section 83(1) of the RP Act, 1951 where the petitioner alleges any corrupt practice, the petition should be accompanied by an affidavit thereof. The form of the affidavit is prescribed as form 25 of rule 94-A of the Conduct of Election Rules, 1961. In *Umarddin Behleem* v. *Chandra Shekhar Baid*[7] the Rajasthan High Court held that the failure to file the affidavit in the prescribed format is a ground for dismissing the election petition. It was observed:[8]

> About the commission of the corrupt practices should be specifically mentioned in the affidavit itself and are true to his personal knowledge or true on the basis of the information furnished to him. Admittedly, the affidavit annexed with the petition at page 18 does neither about personal knowledge nor source of information and is not in accordance with the form 25 of rule 94-A of the Conduct of Elections Rules, 1961. Thus, non-compliance of this statutory provision contained in the Election Rules is hit by proviso

7 AIR 2008 Raj 41.
8 *Id.* at 48.

> to Clause (c) of Section 83(1) of the Act and this Election Petition cannot be said to have been presented in accordance with the provisions of Part VI of the Act as contemplated in Section 80, hence this question is answered in favour of respondent no. I and against the petitioners

In *Ram Sukesh* v. *Dinesh Agarwal*[9] the Uttarkhand High Court held that the delay in filing the affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars as prescribed by the proviso to section 81(1) should be strictly complied with. The court treated the delay in filing the affidavit as a ground for dismissing the election petition. It was observed:[10]

> So far as the ground of corrupt practice taken in the present petition is concerned, the same is of no help to the election petitioner for the simple reason that no affidavit in support of the allegation as envisaged by Proviso to Section 83(1) of the Act has been filed by the petitioner. The election petition containing allegation of corrupt practice was required to be accompanied by an affidavit in the prescribed form, but the same had not been done in the instant case. To fill up this lacuna, a lame effort has been made by filing an affidavit at a later stage and that too after expiry of the period prescribed for filing the election petition. The election petition was presented before the Registrar on 07/04/2007. The prescribed period for filing the election petition was to expire on 03/04/2007 as the result of the election was declared on 27/02/2007. The petitioner was declared on 27/02/2007. The petitioner was required to present the election petition accompanied by the affidavit in support of allegation of corrupt practice in the prescribed form. The affidavit was even sworn in by the election petition on 15th April, 2007 after the expiry of the prescribed period of limitation. The affidavit as tendered by the petitioner cannot be termed as a proper affidavit. The election petition is not accompanied by an affidavit in the prescribed form in support of the allegation of corrupt practice and the particulars thereof. As such the defect in the election petition is incurable and fatal. Therefore, the affidavit sworn in and filled subsequently after the expiry of limitation by the petitioner in the case at hand cannot be taken into consideration

Same approach was taken in *Rameshwar Prasad Yada* v. *Awadesh Kumar Singh*[11]. It appears that the court is very particular in the matter of strict compliance with the procedural formalities.

9 AIR 2008 Utr 33.
10 *Id.* at 37.
11 AIR 2008 Pat 17.

Pleadings

In *Ram Sukesh* v. *Dinesh Agarwal*[12]one of the grounds for dismissing the election petition was that the petitioner had nowhere stated that the result of the election insofar as it concerned the returned candidate, had been materially affected either by the improper reception, refusal or rejection of any vote or the reception of any vote which was void, or by any non-compliance with the provisions of the Constitution or of the RP Act or of any rules or orders made under the Act.

Recrimination petition

According to section 84 of the RP Act an election petitioner may, in addition to claming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. In such a situation the respondent may file recrimination petition. The procedure for filing the claim of recrimination is prescribed in section 97 which reads:

> (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:
> Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of the intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.
> (2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by Section 83 in the case of an election petition and shall be signed and verified in like manner.

In *Karam Thamarjit Singh* v. *Md Allauddin Khan*[13] the Gauhati High Court took the view that if the election petitioner did not seek a declaration to the effect that any candidate other than the returned candidate has been duly elected respondent could not file recrimination petition. It is the prerogative of the petitioner to decide whether such claim may be included in the petition or not. It was observed:[14]

> In my considered opinion, it is the prerogative of the election petitioner to confine his prayer to declare the election of the

12 AIR 2008 Utr 33.
13 AIR 2008 Gau 68.
14 *Id*. at 74.

> returned candidate as void. The Court cannot compel any such petitioner to make the additional plea as permitted under S. 84 so that the returned candidate can file recrimination petition. I find no difficulty to hold that the provisions of recrimination petition under S. 97 of the R.P Act are mutatis mutandis and parimateria to the provisions of counter-claim under Order VIII, Rule 6-A CPC. In absence of additional plea in the election petition, the respondent is debarred from raising any counter-claim in his/her written statement akin to recrimination petition provided under S. 97 of the ROP Act. For the reasons set out herein above, I am constrained to hold that the counter allegations made in the written statement are not maintainable in law.

The interpretation given by the court seems to be correct

Non jointer of parties

In *Umarddin Behleem* v. *Chandra Shekhar Baid*[15] the Rajasthan High Court held that if the election petition contained neither the prayer that the candidate himself be declared as elected candidate nor alleging any corrupt practice against other candidate, the election petition need not be dismissed on the ground that of not impleading contesting candidates other than returned candidate. The appears to be in tune with the sprit of the provisions of the RP Act.

III QUALIFICATIONS

Seats reserved for scheduled castes

According to section 5 of the RP Act a person shall not be qualified to be chosen to fill a seat in the legislative assembly of a state, reserved for the scheduled castes of that state, unless he is a member of any of those scheduled castes and he is an elector for any assembly constituency in that state. Quite often, persons who are not belonging to scheduled caste may contest election to the seats reserved for scheduled castes by way of producing false caste certificates before the returning officers. In such situations the only remedy is to file an election petition. While conducting the trial of election petition it may become the duty of the court to take evidence on the genuineness of the certificate. If the courts are not vigilant it will become impossible to prove that the concerned person is not a member of the scheduled caste. The decision of the Supreme Court in *Desh Raj* v. *Bodh Raj*[16] reveals this fact.

The facts of the case show that the appellant was a candidate in 35-Gangath Assembly Constituency of Himachal Pradesh which was reserved

15 AIR 2008 Raj 41.
16 AIR 2008 SC 632.

for scheduled castes. In the election the respondent was declared as elected. The respondent had in his nomination paper declared that he belonged to a scheduled caste *(Lohar*) and in support of his claim, had produced a caste certificate dated 16.12.1991 issued by the Executive Magistrate, Indora, District Kangra certifying that he belonged to scheduled caste of *Lohar*. The contention of the appellant was that only a few days before the polling only he learnt that respondent did not belong to *Lohar* caste but belonged to *Tarkhan* caste which was not a scheduled caste in the State of Himachal Pradesh. According to appellant, the respondent was disqualified to contest the election in the assembly constituency reserved for scheduled castes and therefore, the election of the respondent was void. In the written statement, respondent asserted that he belonged to *Lohar* caste (a scheduled caste) and was eligible and qualified to contest as a candidate for the reserved assembly constituency. After appreciating the oral and documentary evidence, the single judge of the High Court of Himachal Pradesh held that the appellant failed to prove that respondent did not belong to a scheduled caste (*Lohar*) and was not qualified to contest the election to the assembly seat reserved for scheduled castes. As a consequence, the petition was dismissed. The appellant approached the Supreme Court. After a careful examination of evidence the Supreme Court arrived at the following conclusions:

(a) Respondent was born in and is a resident of *Mohtli* village. His date of birth is 2.5.1956.
(b) Respondent is the last and fifth child of his parents who are Milki Ram and Giano. Respondent is the only 'Bodh Raj', son of Milkhi Ram in Mohtli village.
(c) Respondent was a student of government primary and middle schools, Mohtli. The school records show that Respondent is the son of Milkhi Ram of Mohtli and his caste was Tarkhan on the basis of particulars furnished by his father.
(d) In the birth register maintained in the jurisdictional Police Station as per the Punjab Police Rules, his date of birth was registered as 2.5.1956 and the caste of his parents was shown as Tarkhan;
(e) That in the Pariwar Registers maintained by the Gram Sabha between 1976 and 1989, the caste of his family was shown as 'Tarkhan' and that sometime thereafter, it was struck off and shown as 'Lohar'.

So the Supreme Court reversed the decision of the high court. KG Balakrishnan CJ observed:[17]

> In view of the above, we are of the view that the appellant has clearly established that the respondent and his family belong to Tarkhan

17 For himself and for RV Raveendran J.

> caste which is not a scheduled caste in Himachal Pradesh. It is also clear that from around 1990, the respondent has made efforts to show his caste as 'Lohar', a scheduled caste. Consequently, we hold that the respondent who did not belong to a Scheduled Caste, was not qualified to be chosen to fill a seat in the Legislative Assembly reserved for Scheduled Castes.

Decision of the Supreme Court is significant considering the fact that this type of illegal action may defeat the basic purpose of the constitutional provision for reservation. Since inefficiency and maladministration is existing at all levels of administration it is very easy to get a false certificate. If the courts are not vigilant the miscreants will take undue advantage. It is pertinent to note that in the present case the Supreme Court reversed the decision after it reappraised the facts.

Office of profit

According to article 191 of the Constitution a person shall be disqualified for being chosen as, and for being, a member of the legislative assembly or legislative council of a state if he holds any office of profit under the government of India or the government of any state specified in the first schedule, other than an office declared by the legislature of the state by law not to disqualify its holder. In *Dayanand Rayu Mandrekar* v. *Chandrakant Uttam Chodankar*[18] the Supreme Court had an occasion to consider the implication of Goa, Daman and Diu Members of Legislative Assembly (Removal of Disqualifications) Act, 1982 which exempted certain office of profit in general terms.

The facts of the case show that the appellant in C.A. No. 3578/05 was elected to the legislative assembly of the State of Goa from Siolim constituency in the election held on 30.5.2002, whereas the appellant in C.A. No. 3579/05 was elected from Vasco-da-gama assembly constituency of the state legislature. The election petitions were preferred by two unsuccessful candidates alleging that these two appellants were holding 'office of profit' at the time when they contested the elections and, therefore, they were ineligible to be elected to the legislature. At the time of filing their nominations, one of the appellants was the chairman of the Goa Khadi and Village Industries Board of the State of Goa, whereas the other was the chairman of the Goa State Scheduled Castes and Other Backward Classes Finance & Development Corporation Ltd. of the State of Goa. It was not disputed that the appellants were holding the office as alleged in the election petition, but contended that they were not receiving any salary or allowances and were only receiving some perquisites like a chauffeur driven car with unrestricted use of petrol, the services of a personal assistant, a clerk and a

18 AIR 2008 SC 1224.

peon, residential telephone with unrestricted number of calls, mobile telephone and newspapers supplied at their residences.

The appellants in these two cases contended before the high court that they were not holding an 'office of profit' and were not receiving any salary or allowances for the said post they held. These pleas of the appellants were rejected and the high court held that they were holding an 'office of profit' and as such they were not entitled to contest the election since they were disqualified. The court, accordingly, allowed the election petitions and set aside elections of the appellants.

Rule 7 of the Goa, Daman and Diu Khadi and Village Industries Board Rules, 1967 (the 1967 Rules) provides that "The Chairman, the Vice-Chairman and other members of the Board shall be paid such salary or honorarium and allowances from the funds of the Boards as the Government may from time to time fix." Based on this rule it was argued that the appellant in C.A. No. 3578/05 was not receiving any salary or honorarium as, according to him, the government had not fixed any such salary or honorarium. So the question for consideration before the apex court was whether the appellants could seek the benefit of the 1982 Act. By virtue of clause (9) of the schedule, the appellant contended, that the office of chairman/director or member of the statutory or non-statutory board was exempted from any disqualification and the proviso to clause (9) of the schedule made it further clear that this disqualification was circumscribed by a further limitation.

The Supreme Court rejected this contention and observed:[19]

> The proviso makes it abundantly clear that the compensatory allowance would only mean 'any expense which is incurred by the holder of the office in discharge of his official function to be compensated by claim' and if any other sum of money or other perquisites are made to the holder of office as compensatory allowance, he would not get the benefit of clause (9) of the Schedule which was added. In the instant cases, the appellants were certainly in receipt of variety of perquisites which cannot be said to be given to them by way of compensatory allowance. The mobile phone, telephone and the chauffeur driven car were all permitted to be used for unlimited purposes and they were not restricted to official purposes. Moreover, Rule 7 of the 1967 Rules specifically states that the Chairman, Vice-Chairman and other members of the Board shall be paid such salary or other honorarium and allowances from the funds of the Boards as the Government may from time to time fix. The appellants were entitled to get salary or honorarium by virtue of this rule. The mere fact that they had not received or they

19 *Id.* at 1226 KG Balakrishnan CJI, Dalvir Bhandari and DK Jain JJ.

> had not opted to get this salary or honorarium is immaterial. By virtue of the said rule, they are entitled to get salary or honorarium and that, by itself, would show that they were not entitled to get the benefit of the Schedule of the 1982 Act.

In *Mohd. Akram Ansari* v *Chief Election Officer*[20] the facts of the case were that the appellant contested the election to the Delhi Legislative Assembly in 2003 but lost. The respondent Haroon Yusuf was declared elected. At the time of the election Haroon Yusuf was also the chairman of the Delhi Wakf Board. At the time of election the offices of chairperson or members of the Wakf Board was an office of profit so as to disqualify a person from being elected as a member of the legislative assembly of NCT of Delhi. Subsequently, the following amendment was introduced by the Wakf (Delhi Amendment) Act, 2006 through section 31 A:

> *Prevention of disqualification for membership of Legislative Assembly of National Capital Territory of Delhi.*:- It is hereby declared that the offices of the Chairperson or Members of the Board constituted for Union Territory of Delhi shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a member of the Legislative Assembly of National Capital Territory of Delhi.

The above provision came into force only in 2006, whereas the election was held in 2003, and the election petition was filed on 13.1.2004. It was submitted that section 31A was not retrospective and hence would have no application to elections held before 2006.. The Supreme Court rejected this contention and observed:[21]

> It is true that the Amendment Act 2006 does not specifically state that it is retrospective. However, the use of the words and shall be deemed never to have been disqualified in the above provision makes it clear that it is retrospective.

The court further pointed out that even if the elected candidate was disqualified in the year 2003, he has to be deemed not to have been disqualified in view of section 31-A which was inserted in the year 2006.

IV ELECTION COMMISSION

Requisition of staff

In terms of the provisions of clauses (1) and (6) of article 324 of the Constitution of India, it is mandated that whenever the Election Commission

20 (2008) 2 SCC 95.
21 *Id.* at 96, AK Mathur and Markandey Katju JJ.

asks for deployment of staff for the purpose of conducting elections, it is obligatory on the part of the President of India or the governor of the state to make such number of staff made available to it. For this purpose section 159 of the 1951 Act was enacted . The provision reads :

> Staff of certain authorities to be made available for election work. - (1) The authorities specified in subsection (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.
> (2) The following shall be the authorities for the purposes of sub-section (1), namely:— (i) every local authority;
> (ii) every university established or incorporated by or under a Central, Provincial or State Act;
> (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
> (iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.

In *Election Commission of India* v. *St Mary's School and Others*[22] the Supreme Court examined the question whether the powers of the commission are so wide as to ask the services of school teachers without considering the question whether the normal work of the school may be affected or not**.** Respondent no.1 was an unaided school, governed by the provisions of the Delhi School Education Act, 1973 and the rules framed thereunder. It filed a writ petition in public interest, questioning the action of the appellant as regards utilizing the services of the teachers of the government schools for various purposes during school timings, as a result whereof the students in the said schools were deprived of obtaining instructions from their teachers during such period. In the writ petition it was pointed out that the absence of teachers occur due to their deployment for non- educational purposes; and as the teaching and administrative staff of these schools have been used by the state agencies as well as the appellant herein for various other duties outside school during school hours including: polling duties to general election to *Lok Sabha*. polling duties to general election to Delhi Legislative Assembly, polling duties to local bodies elections, Gurudwara election, revision of polling lists, pulse polio drive, preparation of census lists, surveys on malaria, pollution etc.

22 (2008) 2 SCC 390.

The Act and the rules framed thereunder which govern the field mandate that all the schools in Delhi have to function for a minimum of 210 days in a year. It was pointed out that although the extent of the period differed, the teachers were asked to perform polling duties for a few months and also for census duties for considerable period. The writ petition highlighted that absence of teachers from the school for a long time resulted in unfinished courses, high drop out rates, poor results and inability to compete in open examinations, such as medicine, engineering etc. and/or to get admission in other prestigious or professional colleges.

The Municipal Corporation of Delhi (MCD) in its counter affidavit contended that absence of the teachers and other administrative staff of schools for performing duties allocated by the officers of the Election Commission is in national interest. In the counter affidavit, it was, stated: "That the main work assigned to teachers is in relation to teaching work. However, in the larger national interest, some of the teachers are called upon to do some other Government work relating to public interests like polio vaccination, preparation of voter list, etc".

Before the court the Election Commission categorically stated that as far as possible teachers would be put on electoral roll revision works on holidays, non-teaching days and non-teaching hours; whereas non-teaching staff be put on duty any time. The court accepted this assurance and observed:[23]

> We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law.

It appears that a balancing approach has been taken by the court. This approach is reflected in the following words:[24]

> The provisions of the 1950 and 1951 Acts although were enacted in terms of Article 324 of the Constitution of India, the same must be given restricted meaning. Holding of an election is no doubt of paramount importance. But for the said purpose the education of the children cannot be neglected. Therefore, it is necessary to maintain the balance between the two.

Legal effect of ignoring instructions given by the commission

During the course of elections the Election Commission may issue directions to all officers in charge of the conduct of elections. There may be instances in which subordinate officers may act in contravention of the

23 *Id.* at 403.
24 *Id.* at 402.

direction issued by the commission. Whether such contravention may be treated as a ground for setting aside the election on the reasoning that the result of the election has been materially affected by non compliance with the provisions of the Constitution or of the RP Act or rules or orders made under the Act.[25]

The election petitioner contended that though they were the voters, electoral photo identity cards (EPIC) were not issued by the district administration for *mala fide* and oblique purposes, and that the presiding officer of the concerned booths refused to allow voters to exercise their franchise on the basis of alternative documents as prescribed by the Election Commission. According to the petitioner, the election to the assembly constituency was materially affected as it defeated the entire purpose of the election. He, therefore, contended that the election of the sole respondent from the said constituency be set aside, it being void and illegal. The Patna High Court accepted this contention and ordered to set aside the election.

V ELECTION SYMBOL

For the purpose of allotment of election symbols, political parties are recognized as state parties and national parties under the Election Symbol (Reservation and Allotment) Order, 1968. A particular symbol may be reserved for national parties and state parties. The recognized parties may lose their recognition if they fail to secure sufficient percentage of votes or sufficient number of seats in the general election. However, paragraph 10 A of the Election Symbol (Reservation and Allotment) Order provides for a concession in this regard. The paragraph reads:

> 10A. Concession to candidate set up by an unrecognized party which was earlier recognised as a National or State Party - If a political party, which is unrecognized at present but was a recognised National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such party was earlier recognised in that State or Union Territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for the party when it was a recognised National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union Territory, on the fulfilment of each of the following conditions namely.:-
>
> (a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the

25 *Ram Prakash Mahto* v. *Tar Kishore Prasad,* AIR 2008 Pat 131.

publication in the Official Gazette of the notification calling the election:

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph I read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment.

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.

In *Subramanian Swamy* v. *Election Commission of India*[26] the Delhi High had an opportunity to examine the constitutional validity of paragraph 10 A. The writ petitioner had contended that aforesaid para 10A should be re-drafted in line with the requirement of article 14 of the Constitution.

The case because the Janata Party lost its status as a national party due to its inability to get requisite percentage of votes and seats in the legislature in the general elections of 1996. It ceased to be a recognised party both at the national and at the state level. An order was passed by the Election Commission derecognising it as a state political party. Consequently, it also lost the right to the exclusive use of the symbol of "Chakra Haldhar". One of the contentions raised by th petitioner was that the Janata Party, although not a recognised political party then, could not be deprived of the exclusive use of its election symbol known as "Chakra Haldhar", which was its reserved symbol when it was functioning as a recognised national political party. It was submitted that a political party even if it was de-recognised by the Election Commission could not be deprived of the use of its symbol which it was using when it was a recognized political party. Plea taken was that the Election Commission could not deny exclusiveness of a symbol to a party which, because of its long user, became associated with a party, soon after designating it as a unrecognized party, as it violated the provisions of article 14 of the Constitution. It was contended that unrecognized parties which have all along been un-recognized could not be put at par with the Janata Party as it stood altogether on a different footing by virtue of the fact that it was in the past a recognized party for a very long time, and only subsequently due to turn of events had become an un-recognized party.

The court examined the legal basis of the Election Symbols (Reservation and Allotment) Order, 1968 and observed:[27]

26 AIR 2008 Del !9.

27 *Id.* at 23.

> The symbol system is a creation of Election Commission of India and no political party has absolute rights to have a symbol of its own choice. There is no dispute in respect of the fact that under the law only a candidate has a right to have a symbol. Therefore, a symbol depicts a political party to which the candidate belongs. There are two kinds of such symbols, one is a reserved symbol and the other is a free symbol. Reserved symbols are meant for the recognized political parties, who have the right to exclusive use of such symbols. Free symbols are available for use in the election by the candidates belonging to un-recognized parties or independent candidates. Rules 5(1) and 10(4) of the Conduct of Election Rules make provision that every candidate at an election shall be allotted a different symbol subject to such restrictions as the Commission may specify. In pursuance of the aforesaid provisions and in exercise of its plenary powers of superintendence, direction and control of elections, to Parliament and State Legislatures under Article 324 of the Constitution of India, the Election Commission of India has promulgated the aforesaid Order called the Election Symbols (Reservation and Allotment) Order, 1968. The said order provides for registration of political parties with the Election Commission of India and also provides for registration of political parties as recognised national and State parties. The said Order also provides and lays down the privisions and conditions on fulfilment whereof the parties could be recognised as National and State parties.

The court highlighted the nature of right conferred through the Symbol Order in the following words:[28]

> The petitioner having availed of the benefit of paragraph 10A for a period of six years, now challenges the legality of the same immediately after the end of the period of six years, which has come to an end only on 26th September, 2006. The official classification, which is sought to be brought in by the petitioner that the Janata party cannot be grouped with unrecognized registered parties, who have never been recognized, as such cannot be accepted as any further classification of unrecognized parties will itself be arbitrary and discriminatory. Paragraph 10A, in our opinion, gives sufficiently a long period for a political party to regain its status and recognition as a recognized party through its performance in the general elections during the aforesaid six years period. If some party is unable to do the same, we do not see as to how a political party which has been de-recognized and is now unrecognised can have a

28 *Id.* at 24.

> better claim than any other unrecognized party, which remains to be unrecognised throughout due to its performance. In our considered opinion, they should be reacted equally and there should be no further classification amongst the said unrecognized political parties. Allowing a political party to retain its reserved symbol on a permanent basis whithout reference to its political performance at the election would be discriminatory in relation to other registered unrecognised parties. If that is done, the same would lead to a situation where a political party would still retain a particular symbol even if it is declared unrecognized and reduced to a non entity in the matter of poll performance and mandate of the electors. The same would also lead to an anomalous situation and would definitely be unfair to other registered unrecognized parties, who might have performed better and got better mandate of the electors in terms of number of votes polled and seats won at election as compared to the Janata Party.

The court took the view that the issue of violation of article 14 did not arise in the present case.

VI NOMINATION

Re-scrutiny of nominations

The question whether the returning officer could conduct the re-scrutiny of the nomination and accept an already rejected nomination paper was the issue before the Patna High Court in *Rameshwar Prasad* v. *Awadhesh Kumar Singh.*[29] The facts of the case show that election notification was issued on 23.9.2005 with respect to the detailed programme of the assembly election in 231 Gaya-Muffasil Assembly Constituency in Bihar. The last date for filing of nomination paper was 30.9.2005 and altogether 17 candidates filed their nomination papers before the returning officer by 30.9.2005 the date fixed for filing the nomination papers. The sole petitioner was the official candidate of Janata Dal, whereas, the sole respondent was the official candidate of the Indian National Congress. Along with his nomination papers, the petitioner had attached a notice in form B regarding the symbol allotment order issued by the authorized person of Janta Dal (United) to show that he was the official candidate of the said political party. Another candidate, namely, Binod Kumar Yadvendu also filed his nomination papers before the returning officer as the official candidate of Janta Dal (United) political party along with a notice in form B regarding another symbol allotment order issued by the authorized person of the same political party, but this symbol allotment order was passed without cancelling the earlier symbol allotment order issued in favour of the petitioner.

29 AIR 2008 Pat 17.

The nomination papers of all the candidates were scrutinized on 1.10.2005 by the returning officer in the presence of the candidates or their respective representatives, in which the petitioner's nomination paper was accepted as an official candidate of Janta Dal (United) and that fact was recorded by the returning officer on the nomination paper itself, but the nomination paper of Binod Kumar Yadvendu claiming to be an official candidate of Janta Dal (United) was rejected as symbol allotment order in his favour and the filing of the nomination paper by him were subsequent to those of the petitioner. This decision was communicated to Binod Kumar Yadvendu by the returning officer. None of the validly nominated candidates had withdrawn his candidature till the final date for withdrawal, which was 3.10.2005.

However, the returning officer sent a communication dated 3.10.2005 to the petitioner directiong him to be present in his chambers at 2.30 P.M. on the same date for the purposes of rescrutiny of nomination papers of the election petitioner and the aforesaid Shri Binod Kumar Yadvendu as per direction of legal advisor of the Election Commission of India. On the said date and time, the petitioner appeared before the returning officer and submitted that since the Act and the rules did not confer any power of review upon the returning officer and when the nomination paper of the election petitioner had already been accepted and that of Binod Kumar Yadvendu rejected on the date of scrutiny, there was no scope of re-scrutiny of nomination papers and no order of review could have legally been passed, as any order reviewing the earlier order already passed on scrutiny would be illegal and contrary to the provisions of law.

However, the returning officer rejected the nomination paper of the petitioner, which was earlier accepted and accepted the nomination paper of Binod Kumar Yadvendu, which was earlier rejected on the basis of the direction given by the Election Commission . When the issue came before the high court in the form of election petition it was held that the Election Commission has the power to issue such direction.

It was observed:[30]

> [T]he provisions of law are also clear as article 324 of the Constitution of India gives sufficient power and authority to the Election Commission for the superintendence, direction and control of the entire election process, whereas, Clause 18 of the Commission with respect to issuance of instructions and directions in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and such direction is in the opinion of the Commission necessary for

30 *Id.* at 23.

> the smooth and orderly conduct of the elections. Hence, as per the aforesaid provisions, all the difficulties in this regard can be removed by the Election Commission which has imbibed vast and all per vasive power in that regard.
> Hence, no fault or illegality can be attributed to the Election Commission or the Returning Officer, who acted according to the final decision regarding nomination taken by that political party. Initially scrutiny was done by the Returning Officer on 1-10-2005, but in furtherance thereof no steps could be taken by him as the next date i.e. 2-10-2005 was a holiday and no final list was published and on 3-10-2005 the impugned order was passed as would be clear from the order-sheet of the Returning Officer (Ext.D). In the said circumstances, the Returning Officer was quite justified in making final scrutiny of the nomination papers of the petitioner and Shri Binod Kumar Yadvendu in the light of the order of the Election Commission as well as the final decision of the political party with respect to nomination of its candidates. Only thereafter the matter could be said to have been finalized and final list of the contesting candidates in Form 7-A was published, according to which, the election was held and the election was concluded.

The view appears to be erroneous. The power of the commission to issue direction could not be exercised in such a way as contrary to the provision of the statute. In this case the decision of the commission was contrary to section 39 of the RP Act 1951 which reads:

> Nomination of candidates at other elections.—(*1*) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a Union territory to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—
> (*a*) the last date of making nominations, which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday; (*b*) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday; (*c*) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday; (*d*) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the seventh day after the last date for the withdrawal of candidatures; and (*e*) the date before which the election shall be completed.

Here the date appointed for scrutiny was 1.10.2004 and the date for withdrawal was 3.10.2004. The returning officer conducted re-scrutiny on the date appointed for withdrawal, which is an action contrary to the provision of the Act.

In addition there exists neither any provision in the statute nor any earlier practice which recognizes the concept of re-scrutiny.

VII ELECTION TO LOCAL BODIES

In the year under survey some important questions of law relating to election to local bodies have been discussed by the Supreme Court and high courts. It appears that reported cases relating to local body elections are increasing .Important cases are discussed below.

Conflicting provisions relating to office of profit

The effect of contradictory provisions of two statutes relating to office of profit was the issue in *Somlal* v. *Vijay Laxmi*.[31] Facts of the case show that as per section 208 (1)(g) of the Punjab 1994 (Panchayati Raj Act) a person who is a whole-time salaried employee of any local authority, statutory corporation or board or a co-operative society registered under the Punjab Co-operative Societies Act, 1961 or of the state government or the central government, is disqualified for being chosen as and for being a member of a *panchayat*. However, according to section 11 of the subsequent legislation, Punjab State Election Commission Act,1994 provides that a person shall be disqualified for being chosen as and for being a member of a *panchayat* or a municipality if he holds an office of profit under a *panchayat* or a municipality; or he holds an office of profit under the Government of India or any state government and not for holding office of profit under local authority and being a member of the marketing board. Appellant was an employee of the market committee. Therefore, as per section 11 of the Election Commission Act an incumbent is not disqualified to contest the election. The election tribunal after recording necessary evidence found that the appellant was an employee of the Haryana State Agricultural Marketing Board, Sirsa and therefore, he was disqualified from contesting the election for *sarpanch, gram panchayat*. Hence, the election tribunal set aside the election of the appellant and allowed the election petition of the respondent- Vijay Laxmi — and declared her as elected to the office of *sarpanch*. On appeal the Supreme Court considered the question whether election of *sarpanch*/member of a *gram panchayat* can be set aside on the basis of disqualifications contemplated under section 208 of the Punjab Panchayati Raj Act, 1994 or it can be set aside only on the basis of disqualifications enumerated in section 11 of the Punjab State Election Commission Act, 1994? The court observed:[31*a*]

31 AIR 2008 SC 2088.

31*a* *Id*. at 2095.

> The disqualifications are only mentioned in Section 208 of the Act 9 of 1994 and the intention of the legislature is very clear and Section 11 of the Act of 1994 being in later point of time stating therein what are the disqualifications, therefore, the disqualifications mentioned in Section 11 of the Act 19 of 1994 will prevail and not the disqualifications mentioned in Section 208 of Act 9 of 1994. The disqualifications mentioned in Section 208 which are consistent with Section 11 of Act 19 of 1994 can only survive and not other disqualifications.

So it has been established that in the matter of election disqualification if there is conflict between earlier law and later law the provisions of earlier law will prevail.

Appointment of assistant returning officers

The legal effect of the appointment of assistant returning officers through a general order to the effect that persons occupying particular posts are appointed as assistant returning officers was the issue in *V.A. Shabeer* v. *P.A. Niamathulla.*[32]

Facts of the case show that the appellant and the respondent were candidates who contested the election from ward no.2 of Alangad Block Panchayat in the Kerala State held on 24.9.2005. The appellant was declared elected. The candidate who lost the election (respondent) challenged the election by way of an election petition before the election tribunal mainly on two grounds. It was first contended that the officer who accepted the nomination papers of the appellant had no authority to receive the same and secondly the appellant had not made or subscribed an oath or affirmation before the returning officer or any other person authorized by the state election commission and, therefore, he was not qualified to fill a seat.

In the election Deputy Director of Fisheries (Zonal) was appointed as the returning officer of the constituency. Regarding the appointment of assistant returning officer the following general order was issued: "In exercise of the powers conferred under sub-section (1) of Section 42 of the Kerala Panchayat Raj Act, 1994 (Act 13 of 1994), the State Election Commission hereby appoints the Secretary of each block panchayat as the Assistant Returning Officer to assist the Returning Officers notified in Notification No.192/2005/SEC dated 18th August, and 191/2005/SEC dated 18.8.2005 of the State Election Commission."[33]

32 (2008) 10 SCC 295.

33 S. 42 of the Act was as follows:
42. Assistant Returning Officers (1) The State Election Commission may appoint one or more persons as assistant returning officers to assist any returning officer in the performance of his functions.
(2) Every assistant returning officer shall, subject to the control of the returning officer, be competent to perform all or any of the functions of the returning officer.

During the period of election, in Smt PC Mary was the block development officer. However, she retired and district collector issued the order to the effect that "She is relieved of her duties as Block Development Officer on the A.N. of 31.8.2005. and Shri O.G. Venugopal, Extension Officer (IRD) will hold full additional charge of the BDO, Alangad till further orders." Being the person holding the charge of the assistant returning officer as per the general order of the State Election Commission, Venugopal accepted the nomination paper and permitted the appellant to subscribe the oath of affirmation before him. The contention of the respondent was that since there was no specific order appointing Sri Venugopal as assistant returning officer he was not competent to accept the nomination paper and to permit the appellant to subscribe the oath of affirmation before him.

The Kerala High Court held that since Venugopal could not come in the category of a returning officer, he could not have permitted the appellant to subscribe the oath of affirmation before him. However, on appeal, the Supreme Court took a different approach pointing out that Venugopal was actually acting as the secretary to the block *panchayat*, since he was holding a full additional charge of the block *panchayat*. According to the court his very appointment to that post would clothe him with the powers under the state election commission.

Election petitions

During the course of trial of election petitions normally the provisions of the Code of Civil Procedure(CPC) may be applied . According to the view taken by the Rajasthan High Court in *Idrish Khan* v. *Pradhladi*[34] all provisions of the CPC need not be applied in the trial of election petitions. So an application for injunction was refused. In *S Nagarathnamma* v. *P. Muralidhar Reddy*[35] the Andhra Pradesh High Court held that the restoration of petition under order 9 rule 7 of CPC was not applicable in election petitions.

Writ petition

According to the view taken by the Kerala High Court in *Nazeerkhan* v *Kerala State Election Commission*[36] while exercising the writ jurisdiction in the matter relating to defection, the jurisdiction of the court was limited to the issues of whether there was failure to comply with principles of natural justice, whether the findings were perverse and whether the action was in violation of any statutory provision.

Disqualification

In certain states arrears due to government is a disqualification for being a candidate in election. According to the view taken by the Kerala High Court

34 AIR 2008 Raj 135.
35 AIR 2008 AP 133.
36 AIR 2008 Ker 240.

in *Malathi J. Rai* v. *Suhara Abbas Ali*[37]arrears due to a co-operative society could not be treated as arrears due to government.

In *Narendra Naryan Das* v. *State of Bihar*[38] the Patna High Court considered the question whether voluntarily acquiring the citizenship of Nepal is a ground for disqualifying a person for being the *Grama Mukhiya* and answered it in the affirmative. The issue of citizenship was again considered in *Dhanwanti Devi* v. *State Election Commission*.[39] In this case the father and mother of the petitioner were citizens of Nepal. However, she married an Indian citizen and set up a house in India. She managed to get her name included in the electoral roll and got elected as *grama mukhiya*. The court upheld the decision of the state election commission in disqualifying her.

Disqualification on the ground of two or more children was the issue in *Lajja Bai* v. *State of MP*.[40] The facts of the case show that the appellant was disqualified for being a *sarpancha* on the ground that she had given birth to her fifth child. However, the provision of the Act was subsequently amended so as to remove the disqualification on the ground of having more than two living children. The Madhya Pradesh High Court took the view that the petitioner could not take the benefit of the amendment since she was disqualified on the relevant date.

Under section 59(10) of the Gujarat Panchayats Act conviction for committing a criminal offence involving moral turpitude or initiating of proceeding in criminal offence involving moral turpitude is a ground for suspending a *sarpanch* from the office. In *Shantaba Kanaji Vaghela* v. *District Development Officer*[41] the Gujarat High Court took the view that there was no need to give the opportunity of being heard before ordering the suspension.

Nomination

The raising of objection by the returning officer on his own motion and rejection of nomination without giving an opportunity to the concerned candidate to rebut the objection was the issue in *Bariia Ambaben* v. *State of Gujarat*.[42] The Gujarat High Court declared that the order of rejection would be illegal and liable to be quashed.

VII CONCLUSION

For adjudication of election disputes other than disputes relating to election to local bodies jurisdiction is conferred upon the high courts. While

37 AIR 2008 Ker 7.
38 AIR 2008 Pat 124.
39 AIR 2008 Pat 149.
40 AIR 2008 MP 185.
41 AIR 2008 Guj 51.
42 AIR 2008 Guj 73.

disposing of election petitions the earlier approach of the high courts was to insist on strict compliance with the procedure prescribed by the law. Even minor defect in the election petition was a ground for dismissing the petition. The ultimate effect was that every year large number of election petitions used to be dismissed without going into the merits of the allegations. However, in the recent years the Supreme Court has been taking the view that the petitioners may be permitted to rectify the minor defects. In the year under survey it seems that this approach is continuing.

Since independence the services of the teachers were being used for the preparation of electoral roll and conduct of election. Quite often this disrupted the normal functioning of the schools. In the year under survey the Supreme Court expressed the view that teachers should not ordinarily be put on duty on teaching days and within teaching hours. One hopes that the Election Commission will strictly implement this direction.

In the year under survey so many issues connected with election to local bodies came before the courts. The general approach of the courts has been to examine each issue in detail and to formulate new principles wherever it found necessary to do so.