

SUPREME COURT OF INDIA

Tassadiq Hussain

Vs.

Mohd. Rashid Qureshi

C.A.No.1825 of 2006

(J.M. Panchal and Gyan Sudha Mishra JJ.)

23.11.2010

JUDGMENT

J.M.Panchal, J.

1. This appeal, filed under Section 123 of the Jammu and Kashmir Representation of the People Act, 1957, is directed against judgment dated March 13, 2006, rendered by the learned Single Judge of the High Court of Jammu and Kashmir at Jammu in Election Petition No. 1 of 2005 by which the Election Petition filed by the respondent No. 1, challenging election of the appellant to the Legislative Council of the State Legislature, is allowed and his election is declared void. Further the learned Single Judge has declared that in place of the appellant the respondent No. 1, i.e., Mr. Mohd. Rashid Qureshi, advocate, is proclaimed as elected.

2. The facts, giving rise to the instant appeal, are as under:

“The *Constitution of Jammu and Kashmir* (*‘the Constitution’ for short*) was implemented on January 26, 1957. Section 50 of the Constitution deals with composition of Legislative Council. Sub-Section (3) of Section 50 of the Constitution provides that eleven members of the Legislative Council shall be elected by the members of the Legislative Assembly from amongst persons, who are residents of the Province of Jammu. However, the proviso to the said sub-section stipulates that at least one member out of eleven members shall be resident of Doda District whereas at least one shall be a resident of Poonch District.

The Election Commission of India initiated election process for filling up six vacancies having fallen vacant in the Legislative Council of Jammu and Kashmir including the reserved vacancy for a person resident of Poonch District by a notification dated March 24, 2005, issued under Section 29 of the *Jammu and Kashmir Representation of People Act, 1957* (*‘the Act of 1957’ for short*). Under the notification dated March 30, 2005 it was specified that the last date for filing

nominations was March 31, 2005 whereas scrutiny of the nomination papers was to take place on April 2, 2005, which was also the last date for withdrawal of the candidatures. According to the election schedule, the polling was to take place on April 11, 2005 and election process was to be completed on April 15, 2005.

For the reserved seat for resident of Poonch District, three candidates, namely, Mr. Mohd. Rashid Qureshi, i.e., the respondent No. 1 herein, Mr. Tassadaq Hussain, i.e., the appellant herein and one Mr. Imtiyaz Ali Banday filed their nomination papers with the Returning Officer. The respondent No. 1 was the sponsored candidate of National Conference Political Party whereas two other candidates were sponsored by People's Democratic Party. Mr. Imtiyaz Ali Banday did not contest the election and withdrew his candidature on the last date fixed for withdrawal of the nominations. Admittedly, the respondent No. 1 is a resident of Tehsil Mendhar, District Poonch, whereas the appellant is resident of Village Larkoti, Tehsil Budhal, Kotranka, District Rajouri. At the time of scrutiny of nomination papers, the respondent No. 1 raised an objection to the candidature of the appellant before the Returning Officer, stating that the appellant being a resident of District Rajouri was not eligible to contest the election for the seat reserved for a resident of Poonch District and, therefore, his nomination be rejected. The Returning Officer, taking into consideration clarification given by the Election Commission of India vide letter No. 332/JK-LC/2005 dated March 30, 2005, rejected the objection raised by the respondent No. 1 and accepted the nomination papers of the appellant. While accepting the nomination papers of the appellant, the Returning Officer recorded reasons and observed that any change/alteration in the boundaries of Poonch District by an administrative or statutory order would not deprive the residents of the erstwhile Poonch District of the right to such reservation as is provided to them under the proviso to sub-Section (3) of Section 50 of the Constitution. Thereafter, the election was held and the appellant got 60 votes of the Members of the Legislative Assembly of the State as against 28 votes cast in favour of the respondent No. 1. Thus, the appellant was declared to have been elected as a member of the Legislative Council by the Returning Officer for the seat reserved for a resident of Poonch District.”

3. Being aggrieved by this, the respondent No. 1 filed Election Petition No. 1 of 2005 before the High Court of Jammu and Kashmir and challenged election of the appellant to the Legislative Council held in the year 2005 on the ground that the appellant, being ineligible to contest the election, his election was null and void. The respondent No. 1 further prayed that after declaring the election of the appellant as null and void, he should be declared to have been elected as Member of Legislative Council in place of the appellant.

4. The learned Single Judge took into consideration the historical background, which resulted into creation of Poonch District and Rajouri District, which was available on the official websites of the two Districts. The learned Judge observed that vide order No. 667-C of 1949 dated August 20, 1949 it was decided that the then existing Reasi District comprising Tehsils Reasi and Rampur-Rajouri was to be abolished and a new district comprising Tehsil

Rampur-Rajouri and Nowshera to be formed with the name of Rajouri having Head Quarter at Rajouri. The Court noticed that after the notification dated August 20, 1949 District Rajouri stood constituted under Section 5 of the Jammu and Kashmir Land Revenue Act, 1996 (1939 AD) as independent District. The Court also found that vide Order No. 1451-C of 1950 dated December 11, 1950, District Rajouri, for administrative and revenue purposes, was administered by District Administration, headquartered at District Poonch. The Court further noticed that no Government order or notification was brought on the record to show that a district known as District Rajouri-Poonch was ever constituted. The learned Judge further found that the Revenue Department, while issuing SRO 444 dated October 21, 1967, by which District Rajouri was excluded from Poonch-Rajouri District, did not take note of the Government Order No. 667 of 1949 dated August 20, 1949 and, therefore, no fresh notification under Section 5 of the Jammu and Kashmir Land Revenue Act for creation of Rajouri District as an independent District was required, but surprisingly the same was issued again. The learned Judge observed that Rajouri was never part of the District Poonch either before or after the commencement of the Constitution and, therefore, a resident of Rajouri District cannot and could not be in any manner deemed to be a resident of Poonch District. According to the learned Judge, in absence of definition of words "Poonch District" in the Constitution the said expression has to be understood in its natural and ordinary or popular meaning. The learned Judge observed that the ordinary and popular meaning of the expression "Poonch District" read with the provisions of Revenue Department Re-organisation Act, 2008, would mean the revenue - administrative district and placed reliance on the decision of this Court in *Maheshwari Fish Seed Farm vs. T.N. Electricity Board and another*¹ and *Dr. Ajay Pradhan vs. State of Madhya Pradesh and others*², for coming to the above mentioned conclusion. According to the learned Judge, the language of sub-Section (3) of Section 50 of the Constitution is absolutely clear and unambiguous and, therefore, the reservation provided thereby for a resident of Poonch District, which should not be construed to mean to include a resident of Rajouri District. In view of the above- referred conclusions, the learned Judge allowed the Election Petition, filed by the respondent No. 1 and election of the appellant to the Legislative Council of the State Legislature is declared to be void whereas in his place the respondent No. 1 is declared as elected by judgment dated March 13, 2006, which has given rise to the instant appeal.

5. This Court has heard the learned counsel for the parties at great length and in detail. This Court has also considered the documents forming part of the appeal.

6. Dr. Rajeev Dhawan, learned senior advocate for the appellant, contended that the view expressed by the Election Commissioner in communication dated March 30, 2005 was rightly taken into consideration by the Returning Officer while accepting the nomination papers of the appellant and rejecting the objection raised by the respondent No. 1. It was contended that as view expressed by the Election Commission has binding effect, in view of Section 138 of the Constitution, the election of the appellant could not have been declared as void. The learned counsel emphasized that Poonch including Rajouri are border Districts next to the Actual Line of Control with Pakistan and are known as hardship districts and, therefore, the learned Single Judge of the High Court committed an error in holding that

Rajouri was not part of Poonch District. It was emphasized by the learned counsel for the appellant that at the time of making the Constitution under Order dated December 11, 1950, Poonch was administratively identified as including Rajouri and, therefore, the finding, that a resident of Rajouri is not entitled to contest the election as Member of the Legislative Council for the reserved seat of Poonch District, is erroneous and deserves to be set aside. According to the learned counsel for the appellant, interpretation of a constitutional provision cannot depend on what Government or Revenue Department of the Government thinks and if this is permitted, the reservation contemplated by proviso to sub-Section (3) of Section 50 of the Constitution would go on changing from day-to-day and, therefore, it should have been held that the appellant, who is resident of Rajouri District, was entitled to contest election for the seat reserved for a resident of Poonch District. The learned counsel submitted that if the interpretation placed by the learned Single Judge of the High Court were to be accepted, the same would adversely affect a resident of Tehsil Ladakh and Tehsil Kargil for whom reservation is made under the proviso to sub-Section (2) of Section 50 of the Constitution as well as a resident of Doda District for whom reservation is made under sub-Section (3) of Section 50 of the Constitution and, therefore, the same should not have been adopted by the High Court. According to the learned counsel, the onus was on the respondent No. 1 to prove by leading evidence that Rajouri did not form part of Poonch District and the respondent No. 1, having failed to discharge the onus, the Election Petition filed by him should have been dismissed. What was maintained was that the Constitution must be given an expansive interpretation because it is the Grand norm and the document from which the other enactments flow and as intent of the framers of the Constitution was to provide reservation to a resident of Poonch District having geographical area envisaged, the Election Petition challenging the election of the appellant should have been dismissed by the High Court. The learned counsel asserted that the expression "Poonch District" includes Rajouri District and, therefore, without any amendment in the Constitution, as contemplated by Section 147 of the Constitution, the election of the appellant could not have been voided on the ground that the expression "Poonch District" does not include "Rajouri District". The learned counsel argued that no revenue authority can change the Constitution or its intent and, therefore, the reliance placed by the learned Single Judge of the High Court on the notification dated October 21, 1967, issued under the Jammu and Kashmir Land Revenue Act was misplaced. The learned counsel stressed that the judgment impugned is erroneous and deserves to be set aside. In support of above- mentioned contentions, the learned counsel relied on the decisions of this Court in *State of U.P. and others vs. Pradhan Sangh Kshettra Samiti and others*³, *K. Venkataramiah vs. A. Seetharama Reddy and others*⁴, *Jeet Mohinder Singh vs. Harminder Singh Jassi*⁵, *Supreme Court Advocates-on-Record Association and others vs. Union of India*⁶, *Printers House Pvt. Ltd. Vs. Mst Saiyadan (deceased) by LRs. And others*⁷ and *Narender Singh vs. Mala Ram and another*⁸.

7. Mr. Ranjit Kumar, learned senior advocate for the respondent No. 1, contended that the phrase "resident of Poonch District", appearing in the proviso to sub-Section (3) of Section 50 of the Constitution, should be construed to mean its ordinary meaning, which can only mean the geographical area of District of Poonch as it existed on the date of notification of the elections in the year 2005. According to the learned counsel, the ordinary meaning of the

word "District" is to be found in *J&K Revenue Department Reorganisation Act, 2008*, which means a "Revenue District" whereas Articles 243A and 243P(b) of the Constitution of India define the word "Districts" to mean as District in the State and, therefore, the judgment impugned should be upheld by this Court. The learned counsel also pointed out the Legal Glossary published by the Government of India which defines the word "District" as portion of territory marked off or defined for some special administrative or official purpose and includes a division or sub-section of a province or presidency. The learned counsel emphasized that a word in the Constitution should not be given historical meaning as the Constitution is always dynamic, organic living document which goes on changing to meet the needs of the people as well as the exigencies of the time. The learned counsel stressed that the intention of the Legislature should be primarily gathered from the language used and while ascertaining the intention, attention should be paid to what has been said and not to what has not been said. According to Mr. Ranjit Kumar, learned counsel for the respondent No. 1, the words of the statute should be first understood in their natural ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning unless such a construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. It was argued that the natural and ordinary meaning of the words used by the Legislature should not be departed from unless it can be shown that the legal context in which the words are used, requires a different meaning and a statute should be read in the ordinary and primary sense without any omission or addition. The learned counsel contended that the language employed in the proviso to sub-Section (3) of Section 50 of the Constitution is precise, plain, categorical as well as unambiguous and also expresses the intention of the framers of the Constitution, which is that the expression "Poonch District" does not include District Rajouri. The learned counsel argued that different principles of interpretations as suggested by the learned counsel for the appellant, for understanding as to what was in the mind of the framers of the Constitution while enacting the proviso to sub-Section (3) of Section 50 of the Constitution need not be gone into, more particularly, when the ordinary meaning of the phrase "Resident of Poonch District" is clear and unambiguous. It was submitted that even otherwise Rajouri District was not even historically a part of the Poonch District and merely because the Head Quarters of DM/SSP of both Rajouri and Poonch Districts were directed to be located at Poonch, vide order dated December 11, 1950, Poonch and Rajouri cannot be regarded as one District. It was submitted that the District Rajouri was a part of District Bhimber in 1904 (A.D.) and thereafter it was bifurcated from District Bhimber and was affiliated to Reasi District, but in the year 1949, vide order No. 667-C of 1949 dated August 20, 1949, District Reasi comprising Tehsils Rampur-Rajouri and Reasi, was abolished and a new District known as District Rajouri comprising Tehsils Rampur-Rajouri and Nowshera was formed, whereas pursuant to Cabinet Order No. 667-C, mentioned above, issued in exercise of powers under Section 5 of the Land Revenue Act, 1996 (SVT), District Rajouri was formed, which was constituted comprising Tehsil Rajouri Tehsil Nowshera. The submission, which was placed by the learned counsel for the respondent No. 1 for consideration of the Court, was that burden of proof was not on the respondent No. 1 to prove that District Poonch did not include District Rajouri because both the parties had accepted, as mentioned in the impugned order of the High Court, that it was purely a question of law to be decided by the Court.

According to the learned counsel for the respondent No. 1, the appellant was not precluded to bring evidence on record to establish that a resident of Rajouri should be called as Resident of Poonch District. The learned counsel emphasized that no material having been produced by the appellant to show that District Poonch includes District Rajouri, the ordinary meaning of the expression "Resident of Poonch District" as appearing in the proviso to sub-Section (3) of Section 50 of the Constitution, should be adopted by the Court. What was maintained was that though Election Commission of India has a duty to superintend, direct and control elections, there is no power available to Election Commission of India to define boundaries of the constituencies or territorial limits as a result of which the view expressed by the Election Commission in its communication dated March 30, 2005 that a resident of Rajouri District would be entitled to contest election on a seat reserved for a resident of District Poonch, has no value at all. The learned counsel referred to the decision of this Court in *Laxmi Kant Bajpai vs. Haji Yaqoob and others*⁹, to buttress his arguments that Election Commission of India has no power to change the boundaries or area or extend the boundaries of any constituency. It was argued by the learned counsel for the respondent No. 1 that if the framers of the Constitution had intended to give representation by way of reservation to the residents of Poonch as well as Rajouri for all time to come, the framers of the Constitution would have defined the territories of District Poonch as well, but, it is an admitted position that the territories of District Poonch were never defined by the Government and, therefore, in the absence of any such definition, "Poonch District" will have to be given its natural, ordinary or popular meaning. It was pointed out that Section 5 of the Jammu and Kashmir Representation of People Act provides for delimitation of constituencies, i.e., MLC constituency and in case the intention of the Government was to provide special status to the residents of Rajouri, there could have been an appropriate delimitation of constituencies of MLC also and in absence of such a delimitation for MLC the historical meaning should not be assigned while interpreting the provisions of the Constitution.

8. In support of the above mentioned submissions, the learned counsel for the respondent No. 1 has placed reliance on the decision of this Court in *Maheshwari Fish Seed Fram vs. T.N. Electricity Board and another*¹⁰.

9. The learned counsel for the State of Jammu and Kashmir argued that the contention of the learned counsel for the appellant that the appellant was entitled to contest election for the reserved seat of District Poonch on the ground that at the time of commencement of the Constitution, Rajouri was part of District Poonch is misconceived and incorrect. It was submitted that Section 5 of the *Jammu and Kashmir Land Revenue Act, 1996 Svt. (1939 AD)* inter alia provides that the Government may by notification vary the limits of Tehsils, Districts and Provinces under which the territories administered by each are defined and may also by notification alter the number of those Tehsils, Districts and Provinces. What was pleaded was that in exercise of powers under Section 5 of the said Act, notifications had been issued from time to time by the Government for demarcating the areas of the Districts. According to the learned counsel, the Districts or Tehsils for any purposes means Districts or Tehsils, as the case may be, as notified by the Government from time to time under Section 5 of the said Act. It was maintained that in the year 1949 the General Department of Prime

Minister's Secretariat had issued an order bearing No. 667-C of 1949 whereby District Rajouri was constituted comprising Tehsil Rampur-Rajouri and Nowshera with its Head Quarters at Rajouri and, therefore, it is wrong to contend that District Poonch, as mentioned in the proviso to sub-Section (3) of Section 50 of the Constitution, includes Rajouri. The learned counsel for the State contended that as on the date of the election in the instant case, District Rajouri was a separate District and distinct from Poonch District and, therefore, the benefit of the reserved seat that is provided under Section 50(3) of the Constitution would not be available to the residents of District Rajouri. The learned counsel stressed that the High Court by its impugned judgment has correctly appreciated the facts as well as rightly interpreted the law and, therefore, the said judgment should not be interfered with by this Court.

10. This Court has heard learned counsel for the parties at length and in great detail. This Court has also taken into consideration the documents forming part of the appeal as well as relevant provisions of law to which attention of the Court was drawn by the learned counsel for the parties and the authorities cited at the Bar.

11. Before proceeding to consider the submissions advanced at the Bar it would be relevant to note that the learned counsel for the appellant conceded that the appellant was not claiming recrimination. It means that the appellant has given up his prayer to declare that the respondent NO. 1 was not qualified to be elected as member of the Legislative Council. The concession made by the learned counsel for the appellant was in view of the fact that this point was not raised by the appellant herein before the High Court.

12. Another relevant fact, which requires to be noticed, is that the learned counsel for the appellant agreed that the Poonch District stands divided for the purpose of law and order, revenue and for Assembly constituencies. However, he emphasized that for the purpose of the Legislative Council, there was no division of Poonch District. This Court finds that the latter argument, if accepted, would lead to absurd results. It may be mentioned that it was averred by the respondent No. 1 in his petition before the High Court that right from the elections in the year 1967 till date no resident of District Rajouri was elected as a member of Legislative Council for the seat reserved for residents of District Poonch. In fact, an averment was made that the respondent No. 3 herein, i.e., the Returning Officer in 2005 elections was also the Returning Officer in 1999 elections and he had rejected the nomination paper of a resident of Rajouri as being not eligible. This Court finds that that the Returning Officer was given a reward within one week of rejection of nomination papers of a resident of Rajouri District and the extension of one year in service was granted to him. Therefore, this Court finds some force in the argument advanced by the learned counsel for the respondent No. 1 and learned counsel for the State Government that the Government and Election Commission had always interpreted the word "Poonch District" under the proviso to Section 50(3) of the Constitution to mean as Revenue District of Poonch and Rajouri was not considered to be part of District Poonch. This Court finds that the above-stated averments could not be demonstrated to be untrue. The past history does not support the case of the appellant that though for all practical purposes including for the purpose of Assembly

election, District Poonch was divided, it stood integrated for the purpose of election to Legislative Council.

13. In view of the rival submissions advanced at the Bar, the question which arises for determination of the Court is whether the expression "Poonch District" used in the proviso to sub-Section (3) of Section 50 of the Constitution of Jammu and Kashmir, 1957, reserving a seat in the Legislative Council for the resident of Poonch District means Poonch District as it existed on March 24, 2005 when the election notification was published or it includes Rajouri also. Another question which arises for consideration by the Court is whether the District Rajouri was ever constituted and notified under the law as a part of Poonch District prior to or on the date of commencement of the *Constitution of Jammu and Kashmir, 1957*.

14. It is well settled that the words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. If the language used has a natural meaning, normally the Court cannot depart from that meaning, unless reading the statute as a whole, the context directs the Court not to do so. In the construction of the statutes their words are normally interpreted in their ordinary grammatical sense. Of course, the context in which they occur and the object of the statute has to be kept in mind while adopting ordinary grammatical sense of the word. It is often said that the golden rule is that the words of a statute must prima facie be given their ordinary meaning. Parliament should prima facie be credited with meaning what is said in an Act of Parliament or Constitution. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless the Courts seek, whenever possible, to apply the golden rule of construction, that is to read the statutory language grammatically and terminologically in the ordinary and primary sense, which it bears in its context without omission or addition. Of course, Parliament should also be credited with good sense that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage.

15. If the expression "Poonch District", appearing in the proviso to sub-Section (3) of Section 50 of the Constitution, is interpreted in its ordinary and grammatical meaning, it means District Poonch as was constituted at the time when election notification was published. If an ordinary meaning of the expression "Poonch District" is accepted, it would mean the geographical area of District Poonch as it existed on the date of notification issued for holding elections in the year 2005. The word 'resident of Poonch District' in its ordinary sense would mean a resident of Poonch District and resident of Rajouri cannot be regarded as resident of Poonch District. If the framers of the Constitution had intended to give representation by reservation to the residents of Poonch as well as of Rajouri, nothing prevented them from defining the territories of District Poonch as inclusive of Rajouri. In the absence of such definition, the expression "Poonch District" must be understood in its natural, ordinary or popular meaning. It is an admitted position that as per the definition of the term "District" mentioned in the provisions of Revenue Department Reorganization Act,

2008, the word "District" means a "Revenue District" and if this interpretation is adopted, it becomes at once clear that the expression "District Poonch" appearing in the proviso to sub-Section (3) of Section 50 of the Constitution, does not include Rajouri.

16. Even historically this Court finds that Rajouri was never part of Poonch District either before or after the commencement of the Constitution. There was no Constitution of Jammu and Kashmir in the year 1949, but what was applicable and prevalent was J&K Constitution Act of SVT 1996 (year equivalent to 1939 AD). Under the said Act Prime Minister was head of the State. The General Department of Prime Minister's Secretariat issued an order No. 667-C of 1949 dated August 20, 1949 mentioning that Reasi District comprising Tehsil Reasi and Rampur- Rajouri be abolished and instead a new District to be known as District Rajouri comprising Tehsils Rampur-Rajouri and Nowshera be formed as a temporary measure with Head Quarters at Rajouri. It may be stated that Tehsil Rampur-Rajouri is the present Tehsil of Rajouri which earlier used to be known and called as Rampur-Rajouri. After publication of above mentioned order dated August 20, 1949, the Government formed and constituted a new District known as District Rajouri with Head Quarters at Rajouri comprising Tehsil Rajouri and reconstituted Tehsil of Nowshera, by issuing an order under Section 5 of the Jammu and Kashmir Land Revenue Act, 1996 (Samvat). Again, an order No. 1451-C of 1950 dated December 11, 1950 was issued mentioning that the Head Quarters of District Magistrate and Wazir Rajouri and Poonch and Superintendent of Police, Rajouri be located at Poonch and that of Assistant Superintendent of Police at Rajouri. A conjoint and meaningful reading of above mentioned notifications/orders makes it abundantly clear that though District Rajouri stood constituted as an independent District, its Head Quarters for District Magistrate and Deputy Commissioner was located at Poonch, which was also the Head Quarters of District Poonch. Thus for administrative and revenue purposes District Rajouri was administrated by District Administration Head Quarters located at District Poonch. This Court finds that under these circumstances, the High Court had recorded a finding that since there was no separate and independent District Administration provided for District Rajouri and District Poonch as well as District Poonch continued to be administered by joint District Administration from Poonch, both the Districts for the purpose of administration were being referred to as one District, namely, Rajouri- Poonch District. It is pertinent to note that the record does not indicate that any such district known as Rajouri-Poonch District was ever formed by the Administration. The record also shows that this position continued up to the year 1957, when the Jammu and Kashmir Constitution was brought into force with effect from January 26, 1957. What is relevant to notice is that the General Department of the State issued Government Order No. 137-C of 1967 dated September 30, 1967 splitting Poonch District into two Districts, i.e., (1) Poonch District comprising Haveli and Mendhar Tehsils with Head Quarters at Poonch and (2) Rajouri District comprising Rajouri and Nowshera Tehsils with Head Quarters at Rajouri, in the interest of revenue and law and order. By the said order Tehsils Rajouri and Nowshera which were excluded from the Poonch District, constituted a separate district known as District Rajouri. It is worthwhile to note that the Revenue Department of the State issued notification SRO 444 dated October 21, 1967 under Section 5 of the Jammu and Kashmir Land Revenue Act, SVT 1996, directing that the territorial limits of Tehsil Rajouri and Nowshera shall be

excluded from the existing Poonch-Rajouri District and shall constitute a separate District to be known as District Rajouri. If one reads the above mentioned two orders, a glaring fact, which cannot be ignored, becomes evident is that though no fresh notification under Section 5 of the Jammu and Kashmir Land Revenue Act for creation of the District Rajouri as an independent District was required, yet the same was issued again to emphasis that Tehsil Rajouri and Nowshera excluded from administratively known as Poonch-Rajouri District and constituted into a separate District known as District Rajouri. Though in the above mentioned two orders, this Court finds, a reference to Poonch-Rajouri District, in fact, there was no district formed or constituted, which was known as Poonch-Rajouri District and probably all the confusion has arisen only because of reference of a district known as Poonch-Rajouri District in the above mentioned two orders.

17. The contention advanced by the learned counsel for the appellant that if the expression "Resident of District Poonch", appearing in the proviso to sub-Section (3) of Section 50 of the Constitution, is interpreted to mean a resident of District Poonch and does not include resident of Rajouri, would have adverse effect on the interpretation to be put to the proviso to sub-Section (2) of Section 50 of the Constitution, in which reference is made to Kargil and Leh, is found by this Court to be an argument in terrorem and cannot be accepted.

18. The argument that the interpretation canvassed by the respondent No. 1, if accepted by the Court, would have effect on the interpretation of the proviso to sub-Section (2) of Section 50 of the Constitution, is no ground to place an incorrect interpretation on the proviso to sub-Section (3) of Section 50 of the Constitution. In *Indian Overseas Bank vs. I.O.B. Staff Canteen Workers' Union and another*¹¹ the contractor, who was running canteen, was removed and the Indian Overseas Bank ('I.O.B.' for short) agreed for floating a cooperative society to run the canteen. The Central Office of I.O.B. agreed to provide all infrastructural facilities. The staff required was employed by promoters, who were administering the canteen. The canteen was successfully being run by the Central Office from the amounts realized from day-to-day receipts. However, the canteen was not able to meet its financial requirements and was closed. Consequently the canteen workers were thrown out of employment. At the instance of the workers' union, Government of India made two references to the Industrial Tribunal. Meanwhile, Central Office made arrangement with a third party for running the canteen on contractual basis. Aggrieved by this, the workers filed a complaint under Section 33-A of the Industrial Disputes Act. The Tribunal held that the employees of the canteen were to be treated as workmen of IOB and entitled to same status and facilities. The Tribunal also allowed the claim made in the complaint. On writ petitions filed by the IOB, a single Judge of the High Court set aside the Award of the Tribunal, which was subsequently restored by the Division Bench of the High Court. Before this Court the IOB expressed an apprehension that if the claim of the canteen workers was upheld, the appellant Bank would also have to face similar claims from every employee of the canteens run everywhere. Negating the said argument this Court held that such an argument in terrorem cannot deprive the workers of such status if they are entitled to such status.

19. It is significant to note that a query had been made to the Election Commission of India as to whether the benefit of reservation under Section 50(3) of the Constitution of Jammu and Kashmir can be given to a resident of Rajouri. To this, the Election Commission of India had responded vide communication dated March 30, 2005 clarifying that the Poonch District referred to in Section 50(3) of the Constitution of Jammu and Kashmir, would include District Rajouri, which was a part of undivided Poonch District at the time of commencement of the Jammu and Kashmir State. It is argued on behalf of learned counsel for the appellant that under Section 138 of the Constitution of Jammu and Kashmir, Election Commission of India has power to superintend and control elections held in the State of Jammu and Kashmir and, therefore, the view taken by the Election Commission of India in its communication dated March 30, 2005 is binding and should be accepted by this Court. It is true that under Section 138 of the Constitution of Jammu and Kashmir, the superintendence, direction and control of elections to either House of the State Legislature held under the Constitution vest in the Election Commission of India. However, in exercise of powers under Section 138 of the Constitution, the Election Commission of India cannot define boundaries of the constituencies or territorial limits either of State Legislature or of Legislative Council. After analyzing the different provisions of the Constitution of India and role expected to be played by the Election Commission of India, this Court in *Laxmi Kant Bajpai vs. Haji Yaqoob and others* (supra), has ruled that the Election Commission of India has no power to change the boundaries or areas or extend the boundaries or areas of any constituency. May be, the view taken by the Election Commission of India can be taken into consideration by the Court of Law while interpreting the provisions of proviso to sub-Section (3) of Section 50 of the Constitution. However, the power to superintend, direct and control elections does not make the clarification binding either on the State Government or the persons contesting the elections and voters. It is certainly not binding on this Court. Having taken into consideration the view expressed by the Election Commission of India in its communication dated March 30, 2005, this Court finds it difficult to agree with the view expressed therein. The clarification issued by the Election Commission of India is not only contrary to historical background of the two districts concerned, but is also plainly against the well-settled principles of interpretation of statute.

20. The last plea that the burden to prove that the expression "Resident of Poonch District" does not include a resident of Rajouri is on the respondent No. 1, who has filed petition challenging the election of the appellant as a Member of the Legislative Council and as the said burden was not discharged, the petition should have been dismissed, has no substance at all.

21. A glance at the impugned order makes it evident that both the parties had accepted before the High Court that this was purely a legal issue to be decided on the interpretation of the provisions of the Constitution. In such circumstances question of burden of proof never arose before the High Court. This Court finds that it was the specific case of the appellant that the expression "a resident of District Poonch" includes a resident of District Rajouri and, therefore, the appellant, if advised, could have brought the evidence on record to substantiate the said plea. The fact remains that no material was brought on record of the case by the

appellant to indicate, even remotely, that a resident of Rajouri is called or known as resident of Poonch District for the purposes of the proviso to sub-Section (3) of Section 50 of the Constitution. Under the circumstances, this Court is of the view that the High Court was justified in not dismissing the petition filed by the respondent No. 1, questioning the election of the appellant as a Member of the Legislative Council on the ground that the respondent No. 1 had failed to discharge the burden of proof.

22. For the reasons mentioned above, this Court does not find any substance in the appeal. The conclusion drawn by the High Court in the impugned judgment that the expression "a resident of Poonch District" in the proviso to sub-Section (3) of Section 50 of the Constitution, does not include a resident of Rajouri is just and no ground is made out to interfere with the same in the instant appeal. Therefore, the appeal, which lacks merit, deserves to be dismissed.

23. The appeal, therefore, fails and is dismissed. There shall be no order as to costs.

¹(2004) 4 SCC 705

²AIR 1988 SC 1875

³1995 Supp. (2) SCC 305

⁴1964 (2) SCR 35

⁵(1999) 9 SCC 386

⁶(1993) 4 SCC 441

⁷(1994) 2 SCC 133

⁸(1999) 8 SCC 198

⁹(2010) 4 SCC 81

¹⁰(2004) 4 SCC 705

¹¹(2004) 4 SCC 245