

RAJASTHAN HIGH COURT

Sameera Bano

Vs.

State of Rajasthan

Civil Spl. (Appeal (W) Nos. 236, 276 and 289 of 2006
(S.N. Jha, C.J., Ashok Parihar and Ajay Rastogi, JJ.)

02.04.2007

JUDGEMENT

S. N. Jha, C.J. And Ashok Parihar, J.

1. A significant question of law-whether the dispute relating to any pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Rajasthan Panchayati Raj Act, 1994 read with rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 or it can also be adjudicated by the authority under Rule 23 of the Rajasthan Panchayati Raj Rules, 1996 read with Section 39(2) of the Rajasthan Panchayati Raj Act, 1994 - is involved in these three special appeals. The point being common the appeals were heard together and are disposed of by this common judgment.
2. The representative facts may be noticed from D. B. special Appeal (W) No. 236/2006 which was argued as the leading case.
3. The appellant filed writ petition, S. B. Civil Writ Petition No. 9758/2005, for quashing the enquiry initiated by the Chief Executive Officer (CEO), Zila Parishad Jhunjhunu. She was informed that the preliminary enquiry held by the Additional Chief Executive Officer, Zilla Parishad Jhunjhunu disclosed that third child was born to the appellant after 27-11-1995; if she so desired, she could appear for personal hearing on the date fixed viz. 16-12-1995, and submit her show-cause and produce evidence failing which the enquiry would be concluded ex parte. It is relevant to mention here that having more than two children-born after 27-11-1995 is a disqualification for election as panch or member of the Panchayati Raj Institution under Section 19(1) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act').

4. The election in question was held in the month of January 2005. The appellant contested the election and was elected as Sarpanch of Gram Panchayat Bheemsar within Panchayat Samiti Jhunjhunu. According to the respondents, by reason of the birth of the third child after 27-11-2005 she was disqualified from contesting the election and she was therefore not entitled to continue in office. Challenging the authority of the CEO to make any enquiry in respect of pre-election disqualification the appellant filed the writ petition. She also prayed for stay of enquiry proceedings. It was submitted before the learned single Judge that there was conflict of opinion on the point and some petitions had been referred to larger Bench to resolve the dispute. The writ petition of the appellant was admitted to hearing on 27-2-2006. By a separate order on the same day the learned single Judge declined to stay the enquiry observing that the appellant can challenge the finding of the enquiry in revision under Section 97 of the Act. Challenging the said order dated 27-2-2006 the appellant has come to Division Bench in this appeal contending *inter alia* that in similar cases enquiry has been stayed by this Court.

5. On 18-5-2006 the Division Bench observed that the case involves questions of law which need to be decided and considering that office of Sarpanch has a fixed term, the appeal may be finally decided at the stage of admission itself lest the exercise may become infructuous. Later, by order dated 25-7-2006 after a detailed hearing, the Division Bench referred the case to larger bench so that conflict between different judgments, if any, may be resolved and an authoritative pronouncement is made on the point. That is how the case came before this Bench.

6. D. B. Civil Special Appeal (W) Nos. 276/2006 and 289/2006 are converse cases at the instance of the complainant and the State, respectively, challenging the interim order of the learned single Judge dated 20-12-2005 in S. B. Civil Writ Petition No. 9558/2005 staying the order of the State Government dated 28-11-2005 by which the writ petition/respondent, Dinesh Chand, was removed from the office of Pradhan, *Panchayat Samiti Baseri* on receipt of the enquiry report of CEO Zila Parishad, Dholpur holding that he was disqualified for election as he had more than two children after 27-11-2005.

7. The aforesaid order was passed or notice issued in connection with enquiry under rule 23 of the Rajasthan Panchayati Raj Rules (in short, 'the Rules') read with sub-section (2) of Section 39 of the Act. Before noticing these provisions, it would be appropriate to make some introductory remarks and refer to the relevant provisions of the Act.

8. The *Panchayats* and Municipalities as institutions of self-governance were conferred constitutional status by the 73rd and 74th Amendments in the Constitution of India incorporating parts IX and IX-A therein. Part IX comprising of Articles 243 to 243-O deals with *Panchayats* while Part IX-A comprising of Articles 243P to 243ZG deals with Municipalities. These cases relate to *Panchayats* and therefore it is not necessary to notice the provisions relating to Municipalities in Part IX-A which are the same as in Part IX. Article 243B lays down that there shall be constituted in every State, *Panchayats* at the village, intermediate and district levels in accordance with the provisions of this Part. There are provisions - which we need not separately notice - relating to composition of *panchayats*; duration of *panchayats*; disqualifications for membership; and elections to the *Panchayats*, among other matters. The State legislature however is required to make laws on different subjects "subject to the provisions of Chap. IX".

9. It is relevant to point out here that the Rajasthan Panchayati Raj Act 1994 has been enacted and the rules viz. Rajasthan Panchayati Raj Rules 1996 or the Rajasthan Panchayati Raj (Election) Rules 1994 - with which we are concerned in these cases - have been framed in fulfillment of the above mentioned mandate of the Constitution in Part IX. The provisions of Part IX are somewhat akin to the corresponding provisions relating to membership of Parliament and the State Legislature as we shall find soon hereinafter.

10. In these cases we are concerned with disqualification for membership the provisions in regard to which are contained in Article 243F which may be quoted as under:-

"243F. Disqualifications for membership:-

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the

Legislature of a State may, by law, provide."

11. In the light of the provisions of Article 243F (1)(b) the State Legislature specified the disqualifications in Section 19 of the Act. Section 19 so far as relevant for these cases runs as under:-

"19. Qualifications for election as a Panch or a member :- Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panchayati or, as the case may be, a member of such Panchayati Raj Institution unless such person-

.....

(1) has more than two children;

.....

Provided that -

.....

(iv) the birth during the period from the date of commencement of this Act, hereinafter in this proviso referred to as the date of such commencement, to 27th November, 1995, of an additional child shall not be taken into consideration for the purpose of the disqualification mentioned in clause (1) and a person having more than two children (excluding the child, if any, born during the period from the date of such commencement to 27th November, 1995) shall not be disqualified under that clause for so long as the number of children he had on the date of commencement of this Act does not increase;

.....

Explanation.- For the purpose of clause (1) of Section 19, where the couple has only one child from the earlier delivery or deliveries on the date of commencement of this Act and thereafter, any number of children born out of a single subsequent delivery shall be deemed to be one entity."

12. The case of the respondents is that a person having more than two children - born after 27-11-1995 - is disqualified for election as a panch/member of any Panchayati Raj Institution and in the event of his election despite such disqualification, he is liable to be ousted from the office in an enquiry under rule 23 of the Rules read with Section 39(2) of the Act.

13. As stated above, the impugned enquiry in these cases has been held or is sought to be held under the aforesaid provisions. Section 39 which is somewhat similar to clause (2) of Article 243F of the Constitution runs as under:-

"39. Cessation of membership.- (1) A member of a Panchayati Raj Institution

shall not be eligible to continue to be such member if he-

(a) Is or becomes subject to any of the disqualifications specified in Section 19;
or

(b) has absented himself from three consecutive meeting of the Panchayati Raj Institution concerned without giving information in writing to such Panchayati Raj Institution; or

(c) is removed from the membership; or

(d) Resigns from the membership; or

(e) Dies; or

(f) Fails to make the prescribed oath or affirmation of the office of membership within three months from the date of election or appointment.

(2) Whenever it is made to appear to the Competent Authority that a member has become ineligible to continue to be a member for any of the reasons specified in sub-section (1), the Competent Authority may, after giving him an opportunity of being heard, declare him to have become so ineligible and thereupon he shall vacate his office as such member :

Provided that until a declaration under this sub-section is made, he shall continue to hold his office."

14. Rule 23 purportedly framed to give effect to the provisions of sub-section (2) of Section 39 of the Act lays down the procedure for removal; it runs as under :-

"23. Procedure for removal in case of disqualification-. (1) Whenever it is represented to, or otherwise brought to the notice of the Chief Executive Officer in case of Panch/Sarpanch and to the State Government in case of Pradhan/Up-Pradhan, Pramukh/Up-Pramukh or member of a Panchayati Raj Institution, who has been declared to be duly elected as such or who has been appointed as such under any provision of the Act, was not qualified, or was disqualified, for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified for continuing as such member, the competent authority shall draw up clearly and precisely the alleged disqualification or disqualifications forming the subject of the representation made to it, or otherwise brought to its notice, and shall forthwith issue a notice to such member, which shall:-

(i) Set out the gist of the allegations against him.

(ii) Fix a date, not less than fifteen days after the date of issue of the notice, on which the inquiry shall be made,

(iii) Require him to show cause, for personal appearance or in writing, why his

seat should not be declared by the State Government to be or to have become vacant on the ground of his having been not qualified or disqualified, as alleged, (iv) Call upon him to produce, in denial of the allegation, such documentary or other evidence as may be in his possession, and

(v) Invite him to appear personally, if he so desired, on the date fixed by the notice, and a copy of the notice shall be sent also to the informant, if any.

(2) On the date fixed by the notice, the Chief Executive Officer or the State Government as the case may be shall hear the informant, if any, as well as the member if he appears before him and requests for a personal hearing, shall consider the document and other evidence produced by them in proof or disproof of the allegation or allegations, shall make such further inquiry as he may think necessary, shall record a finding as to the alleged disqualification or disqualifications and shall either order the proceedings to be dropped or declare the seat of such member to have become vacant or make such other order as may be proper in the circumstances of the case under Section 39 of the Act."

15. According to the appellants, the election of the panch/member of any Panchyati Raj Institution can be called in question only by way of election petition in terms of Section 43 read with Section 117 of the Act further read with rule 80 of the Panchayati Raj (Election) Rules. Sub-section (2) of Section 39 of the Act is limited to post-election disqualifications as specified in sub-section (1) of Section 39 of the Act and the enquiry under rule 23 therefore would be limited to such post-election disqualification alone.

16. According to the appellants further, the rule cannot travel beyond the scope of corresponding provision of the Act i.e. Section 39, and therefore any enquiry in respect of pre-election disqualification would be illegal and the rule to the extent it permits such enquiry would be *ultra vires* the Act.

17. Sections 43 and 117 of the Act and rule 80 of the Panchayati Raj (Election) Rules (in short, the election Rules) may be noticed as under:-

"43. Determination of disputes as to elections.- (1) An election under this Act or the rules made there under may be called in question by any candidate at such election by presenting in the prescribed manner to the District Judge having jurisdiction a petition in this behalf on the prescribed grounds and within the prescribed period;

Provided that an election petition presented as aforesaid may, for the reasons to be recorded in writing, be transferred by the District Judge for hearing and

disposal to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him.

(2) A petition presented under sub-section (1) shall be heard and disposed of in the prescribed manner and, the decision of the Judge thereon shall be final.

117. Bar to interference by Courts in certain matters. - Notwithstanding anything contained in this Act,-

(a)

(b) No election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act.

80. Manner of challenging an election under the Act.- An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds :-

(a) That on the date of election, a returned candidate was not qualified or was disqualified, for such election, or
..... .."

18. It may not be out of place to mention that the provisions of Sections 43 and 117 of the Act are *pari materia* (Article 243-O (b) in respect of election to Panchayati Raj Institution) and Article 329(b) (in respect of election to Parliament and the State Legislature) and it may be apposite to notice them as under :-

"243-O. Bar to interference by Courts in electoral matters. Notwithstanding anything in this Constitution-

(a)

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

329. Bar to interference by Courts in electoral matters.- Notwithstanding anything in this Constitution.

(a)

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

19. Section 43, it would appear, in clear and unequivocal terms lays down that election

of panch/member of any Panchayati Raj Institution held under the Act/Rules can be challenged by way of election petition before the concerned District Judge, having jurisdiction in the manner, on ground set out in rule 80 of the Election Rules. If there was any scope for doubt in this regard, it is dispelled by Section 117 which declares in most unambiguous terms that no election to any Panchayati Raj Institution shall be called in question "except by an election petition presented to such authority and in such manner as provided for" in Section 43 and rule 80.

20. Section 117, if we may say so, provides answer to the contention of the respondents regarding maintainability of enquiry in respect of pre-election disqualification under rule 23 read with Section 39 of the Act. As seen above, one of the grounds on which the election can be challenged - as set out in clause (a) to rule 80 - is that a returned candidate was not qualified or was disqualified for election on the date of election. Rule 80 thus includes within its ambit the disqualification of the successful candidate on the date of election i.e. a pre-election disqualification as a ground of challenge. Thus where the successful candidate had more than two children - born after 27-11-1995, and was therefore disqualified for election by reason of clause (1) of Section 19 of the Act, his election can be challenged by way of election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules.

21. The question for consideration is whether the election of the successful candidate can also be challenged before the authority under rule 23 of the Panchayati Raj Rules read with Section 39(2) of the Act.?

22. Section 39, as its heading suggests, deals with 'cessation' of membership. It lays down that a member of a Panchayati Raj Institution shall not be eligible "to continue" to be such member in the conditions specified in clauses (a) to (f). Clauses (b) to (f), it is clear on a plain reading, visualize post-election eventualities. They refer respectively to absence of the member from three consecutive meetings; removal from membership; resignation; death or failure to subscribe the oath or affirmation of office. These are the grounds which will make the person ineligible to continue to be member of a Panchayati Raj Institution and result in cessation of his membership.

23. On behalf of the respondents reliance was placed on clause (a) - in particular, the words "is or becomes" - therein and it was submitted that clause "is or becomes subject to any of the disqualifications specified in Section 19" refers to pre-election disqualifications. According to the counsel for the respondents, where the member "is"

subject to disqualifications specified in Section 19, he is not eligible to continue to be member and the membership can be terminated after enquiry in the manner provided in rule 23 of the Panchayati Raj Rules.

24. Clause (a) in terms no doubt refers to disqualifications specified in Section 19. However, in order to appreciate its true import, the clause may be dissected into two parts - "is subject to" and "becomes subject to any of the disqualification". So far as "becomes subject to..." is concerned, the word 'become' as an intransitive verb means "start to be". In the New Shorter Oxford Dictionary, it is defined to mean "come to be" or "being to be". The word "becomes" therefore visualizes a subsequent event which renders the person disqualified if he has incurred any of the disqualifications specified in Section 19.

25. The question is whether "is subject to" refers to and includes past disqualifications as on the date of election. We may straightway observe that if the legislature intended to include past or pre-election disqualification as ineligibility "to continue to be such member" for the purpose of cessation of membership under Section 39, it would have used the word "was" in place of "is". However, we do not wish to take that short route. It is well settled rule of interpretation that the words in a statute are not to be treated as surplusage and the Court normally would not substitute the word by another word. The duty of the Court is to give effect to the law assuming that the word was deliberately and knowingly used by the framers of the statute.

26. The intention of the legislature appears to be to oust the person from the office if he is presently suffers from any disqualification. We should not be understood as suggesting that notwithstanding some pre-election disqualification the person can continue to be member or panch. As seen above, a pre-election disqualification is a ground specified in clause (a) of rule 80 of the Election Rules on which the election of the returned candidate can be set aside in an election petition under Section 43 of the Act. In these cases, we are concerned with the question whether any order having the same effect and consequence can be passed on account of pre-election disqualification under rule 23.

27. The word "is" as per different dictionaries means "be". The word "is subject to" therefore would mean "be subject to". The word "be" as per the New Shorter Oxford Dictionary, is used in both present and past tense. As a past indicative it means "was" "were". As a full verb it means "have place in the realm of fact; exist; live". In the traditional sense (Old English), it means "come into existence; come about; happen;

occur; take place" and so on. The word "is" therefore nothing different from "becomes" in the context of Section 39.

28. One of the rules of interpretation of statute is that the meaning of the particular word is to be judged "by the company it keeps". The rule is known as 'noscitur a sociis'. In simple words it means that when two or more words which are capable of analogous meaning are coupled together, "they take their colour from each other". The rule is more comprehensive than the rule of 'ejusdem generis'. We may usefully quote Justice Gajendragadkar from *State of Bombay v. Hospital Mazdoor Sabha*,¹

"This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their color from each other, that is; the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases. 'Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis'. In fact the latter maxim 'is only an illustration or specific application of the broader maxim noscitur a sociis'....."

29. In these premises, we do not find any conflict between "is subject to" and "becomes subject to" in Section 39(1) (a) of the Act.

30. It is also a settled rule of interpretation that where the statute is capable of more than one interpretation, the one which fits in the context and does not come in conflict with other provisions of the Act should be preferred. While interpreting clause (a) of Section 39(1) of the Act, the provisions of Sections 43 and 117 of the Act and rule 80 of the Election Rules cannot be ignored. All these and other cognate provisions have to be harmoniously construed.

31. If a different interpretation of "is subject to" in clause (a) of Section 39 were to be attempted, it should be kept in mind that sub-section (1) of Section 39 specifies the grounds or reasons for which the member will not be eligible to continue to be a member of a Panchayati Raj Institution. So far as the manner of cessation of membership is concerned, the relevant provision is sub-section (2) in which the words are "has become ineligible to continue to be a member for any of the reasons specified in sub-section (1)". It lays down that for any such reasons or on any such ground, the

competent authority may after giving him opportunity of hearing, declare him "to have become so ineligible" whereupon the member "shall vacate" his office as such member. In sub-section (2) the word "is" absent.

32. In view of the provisions of sub-section (2), it is clear that the declaration as to ineligibility of the person can be made by the competent authority only where the member "has become" ineligible for any of the reasons.

33. Rule 23 no doubt contains words "was not qualified. for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified."

The rule, it would appear, *prima facie* suggests that enquiry under rule 23 can be made in respect of past disqualifications too. This, however, we are inclined to think, will not be in consonance with sub-section (2) of Section 39 of the Act and, indeed, Article 243-F of the Constitution which deals with disqualification for membership. We have seen above that the Gram Panchayat Raj Rules of 1994 have been framed in fulfillment of the mandate of Article 243F of the Constitution. Clause (1) of Article 243F lays down that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified by or any other law made by the legislature of the State. Under clause (2) if any question arises as to whether a member has become subject to any such disqualification, the question shall be referred to the authority prescribed by law. It may be mentioned here that Article 243F(2) is worded on the pattern of article 103(1) and Article 192(1) with respect to the disqualification for the Members of Parliament and the State Legislature respectively. In both Articles 103(1) and 192(1) the words are "has become" subject to any disqualification. We have explained the import of the words "has become" and held that the expression contemplates disqualification incurred subsequently and not past or pre-election disqualifications. We have also held that there is no apparent conflict between "is subject to" and "becomes subject to" in clause (a) of Section 39(1). We therefore hold that rule 23 to the extent it seeks to extend the enquiry there under to pre-election disqualification is beyond the scope and mandate of Section 39(2) of the Act read with Article 243F (2) of the Constitution of India and therefore *ultra vires* the Act and the Constitution.

34. In terms of clause (2) of Article 243F, if any question arises as to whether a member of a Panchayat has become subject to any disqualification mentioned in clause (1), the question is to be referred for the decision of such authority and in such

manner as the State Legislature may by law provide. In other words, what can be referred to the authority is the dispute as to whether the person suffers from any disqualification mentioned in clause (1). The result of the election cannot be challenged before the authority. That can be done only by way of election petition before the prescribed forum vide Article 243-O(b) of the Constitution.

35. While considering the import of Articles 190(3) and 192(1) of the Constitution in *Election Commission v. Saka Venkata Rao*,² a Constitution Bench of the Apex Court held that they are applicable only to disqualifications to which a member becomes subject after he is elected as such, and neither the Governor nor the Commission has jurisdiction to inquire into a member's disqualification which arose long before his election. Clause (a) of Section 39(1) is similar to Article 190(3) of the Constitution of India. Section 39(2) corresponds to Article 192. Article 243F(2) is similar to Article 192(1).

36. It would not be out of place to mention here that Section 39(1) of the Act as it originally stood, was subject to the provisions of Section 40. By amendment (Act 9 of 2000), Section 40 was deleted and the words "subject to the provisions of Section 40" in sub-section (1) of Section 39 were also deleted. Under Section 40 as it then stood, any allegation or doubt as to whether any member of a Panchayati Raj Institution "is" or "has become" disqualified was subject matter of adjudication by the District Judge after enquiry.

37. It was submitted on behalf of the appellants that if the authority under rule 23 is vested the power to adjudicate upon the pre-election disqualification which is a ground for setting aside the result of election under rule 80 of the Election Rules read with Section 43 of the Act, it may result in conflicting findings. Whereas in an election petition under Section 43 on the same very ground of any pre-election disqualification in terms of rule 80(a), at the instance of unsuccessful candidate, the District Judge may hold that the returned candidate did not suffer from any such pre-election disqualification, the authority under rule 23 of the Rules may hold to the contrary. We find enough force in the contention. We do not think that the framers of the Act intended to have two parallel proceedings before different authorities. We have already observed above that the Act has to be harmoniously construed, and any interpretation which is likely to bring the provision in conflict with the other provisions, should not be accepted.

38. It was submitted on behalf of the respondents that the petition under Section 43 of

the Act can be filed only by any unsuccessful candidate, and therefore, a third party cannot question the result of election. According to counsel for the respondents, if the unsuccessful candidate does not challenge the election - in collusion with the successful candidate or otherwise - the election may never be called in question at all even though the person was disqualified for election. The submission is well founded but does not improve the case of the respondents. The fact that the third party cannot challenge the election of the successful candidate despite his disqualification under Section 43 does not mean that the election cannot be challenged at all. Any person can approach the High Court under Article 226 of the Constitution and seek ouster of the successful candidate from the office by a writ of quo warrant. For seeking writ of quo warrant, it is not necessary that a person should have *locus stand* i.e. personal interest in the subject-matter. Writ of quo warrant can be issued if the Court is satisfied that the person was not qualified for the office/post and he is a usurper.

39. In *K. Venkatachalam v. A. Swamickan*,³ it was held that where recourse to election petition was not taken within the period prescribed, the petition for a writ of quo warrant was maintainable. That was a case in which the appellant was not an elector as per the electoral roll and was therefore not qualified to seek election.

40. As indicated at the outset, conflicting views have been expressed by different Benches of this Court necessitating reference of these cases to the Larger Bench, counsel for the parties naturally placed reliance on the judgments which support their case.

41. On behalf of the appellants, reliance was placed amongst others, on *Jagram v. State of Rajasthan*,⁴ *Bheru Singh Rathore v. State of Rajasthan*,⁵ *Smt. Pritam Rana v. The State of Rajasthan*,⁶ On behalf of the respondents on the other hand, reliance was placed on *Mohanlal v. State of Rajasthan*,⁷ *Mohanlal v. State of Rajasthan (D. B. Civil Special Appeal (W))*⁸ and *Smt. Sushila v. The State of Rajasthan*⁹

42. We have gone through the judgments. In (second) Mohan Lal (supra), a Division Bench of this Court held that-

".....notwithstanding the remedy of election petition under Section 43 read with rules 80 and 81 of the election rules more particularly when such remedy is available only to the candidates at such election and such candidates may or may not invoke such remedy. Even if such remedy is invoked and election dispute is pending, it is no embargo against the competent Authority to take action under Section 39, otherwise the whole purpose and legislative intent of

Section 39 may be defeated and rendered otiose."

43. In *Sushila Devi* (supra) it was observed

"In our opinion, the controversy which has been sought to be raised is fully covered by the decision rendered by the Division Bench of the principal seat of the High Court at Jodhpur in the case of *Mohan Lal v. State of Rajasthan and others* (supra), wherein the Court has held that the disqualification suffered by the candidate at the time of election is a valid ground to be taken note of for taking action under Section 39 by the competent authority notwithstanding the remedy of election petition under Section 43 r.w. Rules 80 and 81 of the election rules and even if such remedy is invoked and election dispute is pending there is no embargo against the competent authority to take action under Section 39, otherwise the whole purpose and legislative intent of Section 39 may be defeated and rendered otiose. Inquiry under Section 39 is limited to the question of qualification or otherwise whereas the election dispute under Section 43 can be raised on other grounds as well. Section 39 is a special provision to take care of specific wrong and section 43 is a general provision to raise election dispute on more than one grounds and is available to the candidates at such election, this special provision takes care of the principle that every wrong has a remedy and no wrong can be left without remedy....."

44. In *Bheru Singh Rathore* (supra), another Division Bench of this Court however held to the contrary as under:-

"21. on the basis of decision of the Supreme Court in *Saka Venkata Rao's* case (AIR 1953 Supreme Court 210) (supra), it must be held that Article 243F of the Constitution read with Sections 19 and 39 of the Act 1994 on the one hand, dealing with disqualifications incurred before or after the election as a member of Panchayat and Article 243-O (b) on the other hand, dealing with challenge to election of any member of the Panchayat, stand independently of each other since they present different and separate remedies for dissimilar situations.....

23- Applying the ratio of the decision of Supreme Court in *Saka Venkata Rao's* case (AIR 1953 Supreme Court 210) and *K. Venkatachalam's* case (AIR 1999 Supreme Court 1723), we are of the view that Section 39(2) of the Act of 1994 covers a case where a member of a panchayat acquires disqualification after his election. Where a member was disqualified *initio* i.e. to say he was disqualified before the election, action under Section 39(2) of the Act of 1994

cannot be taken against him."

45. In view of the above discussions and for the reasons mentioned hereinbefore, we regret our inability to accept the decision in Mohan Lal or Sushila Devi and other cases taking similar view as correct. We endorse the views expressed in Bheru Singh Rathore and other cases.

46. The question framed at the outset is thus answered in the negative, and it is held that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules.

47. In the result, Special Appeal No. 236/2006 preferred by the successful candidate is allowed and the order of the learned single Judge impugned therein is set aside; while Special Appeal Nos. 276/2006 and 289/2006 by the complainant and the State are dismissed. The writ petitions may be listed before the single Bench for disposal in accordance with this judgment.

48. PER AJAY RASTOGI, J.:- (DISSENTING)- With respect, I find, myself, unable to agree with the view expressed by my brother, Hon'ble the Chief Justice, hence I consider to deliver my own judgment.

49. Question referred to the larger Bench for decision is as under:-

"Whether disqualification of the kind being a pre-election disqualification, election can be challenged by way of election petition under Section 43 of Rajasthan Panchayati Raj Act, 1994 read with Rule 80 of Rajasthan Panchayati Raj (Election) Rules, 1994 or by way of complaint U/S. 39(2) of the Act of 1994 read with Rule 23 of the Rajasthan Panchayati Raj Rules, 1996?"

Since facts, in details, have already been stated in the judgment delivered by my brother, Hon'ble the Chief Justice, I consider to narrate facts, in brief, in which dispute arises for consideration.

50. Writ petitions were filed before learned single Judge for quashing of inquiry initiated by Chief Executive Officer, Zila Parishad and the incumbent was informed that in preliminary inquiry it was *prima facie* established that third child was born after 27-11-1995; hence was called upon to appear for personal hearing before competent authority to examine dispute/complaint in exercise of powers under Section 39(2) of Rajasthan Panchayati Raj Act, 1994 ("Act, 1994") and in other set of matter, at the stage when inquiry was pending, writ petitions were filed before learned single

Judge for setting aside very notice served upon writ petitioner in holding inquiry by authority under Section 39(2) of the Act, wherein since learned single Judge dismissed prayer for interim relief, Special Appeal have been filed before Division Bench where a question arose as to whether if one has been elected as Sarpanch or Member of Panchayati Raj Institutions, can pre-election disqualification, if any, attached to him be examined on a complaint by authority under Section 39(2) of the Act, 1994.

51. Since the learned single Judge was of the view that there were clear conflicting views expressed by two Division Benches of this Court, particularly (1) in a common judgment delivered on 29th November, 2001 in *Mohanlal v. State*¹⁰ and *Mohanlal v. State*¹¹ as also in *Sushila Devi v. State*¹² wherein it was of the view that pre-election disqualification can be examined by the authority on complaint under Section 39(2) of the Act; whereas divergent view was expressed by another Division Bench in *Bheru Singh Rathore v. State*¹³

52. Constitution of India is *suprema lex*. Part IX of the Constitution of India was inserted by Constitution (73rd Amendment) Act, 1992. Article 243-B mandate that there shall be constituted in every State, *Panchayats* at the village, intermediate and district levels in accordance with Part IX, which speaks of composition of *Panchayats* (Article 243-C), reservation of seats (Article 243- D), and duration of *Panchayats* (Article 243-E). Article 243-F provides for disqualifications for membership which Article 243-O of the Constitution of India imposes a bar to interference by Courts in electoral matters.

53. Article 243-F states:

"243-F. Disqualification for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) if he is so disqualified by or under any law for the time being in force for the purpose of elections to the Legislature of the State concerned. Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such a authority and in such manner as the legislature of a State may, by law, provide."

54. Article 243-O of the Constitution provides-

243-O. Bar to interference by Courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State."

55. Pursuant to the constitutional mandate as noticed, *ibid*, the State of Rajasthan enacted the Rajasthan Panchayati Raj Act, 1994 by Rajasthan Act No.13 of 1994. Under scheme of Panchayati Raj, its institution has been defined in Clause (xvii) of Section 2 to mean an institution of self-Government established under the Act, 1994 for rural areas, whether at the level of the village or a block or a district. Various institutions to be established under the Act, 1994 are Panchayat, Panchayat Samiti, Zilla Parishad and function of each of these Panchayati Raj Institutions and respective powers and duties ordained for persons holding various offices under such institutions have been separately defined under various provisions.

56. Chapter IV of Act, 1994 deals with powers of State Government in the matter of superintendence over functions of Panchayati Raj Institutions. Section 2(vii) defines "competent authority" to mean such officer or authority as the State Government may, by notification in the Official Gazette, appoint to perform such function and exercise such powers of a competent authority with respect to such provisions of this Act and in relation to such Panchayati Raj Institutions as are specified in the notification.

57. Section 19 though deals with qualifications but lays down certain disqualification for election as a Panch or a member with which we are presently concerned, are provided under Clause (1) of Section 19 is reproduced below :

"19. Qualifications for election as a Panch or a member.- Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person-

(a) is disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State of Rajasthan :

(aa) to (k) xxx xxx xxx

(1) has more than two children :

(m) to (p) xxx xxx xxx

Provided that-

(i) to (iii) xxx xxx xxx

(iv) the birth during the period from the date of commencement of this Act, hereinafter in this proviso referred to as the date of such commencement, to 27th November, 1995, of an additional child shall not be taken into consideration for the purpose of the disqualification mentioned in Clause (1) and a person having more than two children (excluding the child, if any, born during the period from the date of such commencement to 27th November, 1995) shall not be disqualified under that clause for so long as the number of children he had on the date of commencement of this Act does increase:

Explanation.- For the purpose of Clause (1) of Section 19, where the couple has only one child from the earlier delivery or deliveries on the date of commencement of this Act and thereafter, any number of children born out of a single subsequent delivery shall be deemed to be one entity."

58. Section 39 deals with cessation of membership - sub-section (2) whereof is reproduced below:

"39. Cessation of membership.- (1) A member of a Panchayati Raj Institution shall not be eligible to continue to be such member, if he-

(a) is or becomes subject to any of the disqualifications specified in Section 19; or

(b) has absent himself for three consecutive meetings of the Panchayati Raj Institution concerned without giving information in writing to such Panchayati Raj Institution; or

(c) is removed from the membership; or

(d) Resigns from the membership; or

(e) Dies; or

(f) fails to make the prescribed oath or affirmation of the office of membership within three months from the date of election or appointment;

(2) Whenever it is made to appear to the competent authority that a member has become ineligible to continue to be a member for any of the reasons specified in sub-section (1), the competent authority may, after giving him an opportunity of being heard, declare him to have become so ineligible and thereupon he shall vacate his office as such member."

59. Section 43 dealing with determination of disputes as to election is reproduced

below:

"43. Determination of disputes as to elections.- (1) An election under this Act or the rules made there under may be called in question by any candidate at such election by presenting in the prescribed manner to the District Judge having jurisdiction a petition in this behalf on the prescribed grounds and within the prescribed period."

and in terms of Article 243-O (b) of Constitution of India, Section 117 of Act, 1994 envisages a bar to interference by Courts which has been enacted in the same terms as under:-

"117. Bar to interference by Courts in certain matters.- Notwithstanding anything contained in this Act,-

(a) the validity of any law relating to the delimitation of constituencies or wards or the allotment of seats of such constituencies or wards made or purporting to be made under this Act, shall not be called in question in any Court; and

(b) no election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act."

60. The State Government in exercise of its powers under Section 102 read with other provisions of the Act, 1994 has framed the Rajasthan Panchayati Raj Rules, 1996 whereby mechanism with regard to removal of a Member of Panchayati Raj Institutions in case of disqualification, under Rule 23 of Rules, 1996 while as regards election disputes, its procedure and manner are provided under Chapter XIII of Rajasthan Panchayati Raj (Election) Rules, 1994 ("Election Rules, 1994"). Rule 23 of Panchayati Raj Rules, 1996 reads as under:-

"23. Procedure for removal in case of disqualification.- (1) Whenever it is represented to, or otherwise brought to the notice of the Chief Executive Officer in a case on Pancha/Sarpanch and to the State Government in case of Pradhan/Up-Pradhan, Pramukh/Up-Pramukh or member of Panchayati Raj Institution, who has been declared to be duly elected as such or who has been appointed as such under any provision of the Act, was not qualified, or was disqualified, for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified for continuing as such member, the competent authority shall draw up clearly and precisely the alleged disqualification or disqualifications forming the subject of the representation made to it, or otherwise brought to its notice, and shall forthwith

issue a notice to such member, which shall:-

- (i) set out the gist of the allegations against him,
 - (ii) fix a date, not less than fifteen day after the date of issue of the notice, on which the inquiry shall be made,
 - (iii) require him to show cause, for personal appearance or in writing, why his seat should not be declared by the State Government to be or to have become vacant on the ground of his having been not qualified or disqualified, as alleged,
 - (iv) call upon him to produce, in denial of the allegations, such documentary or other evidence as may be in his possession, and
 - (v) Invite him to appear personally, if he so desired, on the date fixed by the notice, and a copy of the notice shall be sent also to the informant, if any.
- (2) On the date fixed by the notice, the Chief Executive Officer or the State Government as the case may shall hear the informant, if any, as well as the member if he appears before him and requests for a personal hearing, shall consider the document and other evidence produced by them in proof or disproof of the allegation or allegations, shall make such further inquiry as he may think necessary, shall record a finding as to the alleged disqualification or disqualifications and shall either order the proceedings to be dropped or declare the seat of such member to have become vacant or make such other order as may be proper in the circumstances of the case under Section 39 of the Act."

61. Rules 80(a) and 81 of Election Rules, 1994 are reproduced below:

"80. Manner of challenging an election under the Act.- An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds :-

(a) that on the date of election, a returned candidate was not qualified or was disqualified, for such election, or"

"81. Who may present election petition.- (1) A petition under Rule 80 may be presented by any candidate at such election.

Explanation.- The petition shall be deemed to have been duly presented, if it is delivered by the person making the petition or any person authorized in writing in this behalf by the person making the petition."

Since submissions of either side have already been taken note of in the judgment delivered by my brother, I am not inclined to reiterate the same here.

62. Crux of the controversy is as to whether or not Section 39 of the Act, 1994, which empowers competent authority to declare a member of Panchayati Raj Institution to have become ineligible as a result of which he is required to vacate the office, transgresses Article 243-O(b) of the Constitution of India; and whether Article 243-O will at all come into play in regard to cases which fall within Sections 19/39 of the Act, 1994. Act, 1994 not only makes the provisions for declaration but also creates mechanism for cessation of membership of candidate under Section 39.

63. The foremost contention of counsel for petitioner/appellant is that Article 243-O(b) of the Constitution of India, itself, creates a bar against questioning an election in any manner than by way of election as provided in terms of Section 43 of the Act, 1994.

64. Contrary, thrust of the contention advanced by counsel for respondents is that taking action under the Act, 1994 particularly under Section 39(2) whereof it does not amount to setting aside election and inquiry provided therein is confined to examine qualification of the elected candidate alone, which is permissible as provided under law as enacted in terms of Article 243-F of the Constitution.

65. A constitutional provision is always to be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges.

66. The Constitution, itself, has taken note of situation while making 73rd Amendment and particularly Article 243-F empowers the legislature of the State to prescribe authority to determine as to whether a member of Panchayati Raj Institution has become subject to any of the disqualifications mentioned in Clause (1) thereof. On an analysis of Arts. 243-F and 243-O(b) of the Constitution of India it clearly emerges that both the articles deal with in different situation viz. when election of candidature is questioned; and when a question arises as to whether or not member of Panchayati Raj Institution is or has become subject to any of disqualifications. In both the situations, the Constitution provides separate remedy. In earlier situation, under Article 243- O(b), election can be questioned by way of election petition by a candidate to be presented to such an authority as provided under Section 43 of Act, the 1994 but latter situation is covered by Article 243-F where candidate becomes ineligible or has become ineligible to continue as a member in view of disqualifications as provided by laws under Section 19 of the Act, 1994. In fact,

Sections 19 and 39 of Act, 1994 derive power from Article 243-F for laying down disqualifications and for prescribing the mechanism by which his pre or post-election disqualification can be examined by authority competent under Section 39(2) of the Act, 1994 whereas Article 243-O(b) of the Constitution read with Section 43 of Act, 1994 where election of a candidate can be questioned by filing regular election petition. Provisions referred to in Arts. 243-F and 243-O(b) of the Constitution cover different situations and remedies are provided under law framed by legislature expressly under the Act, 1994.

67. Apart from disqualifications as provided under Section 19, Section 39(1)(a) and (b)-(f) specifies pre/post-election disqualification but such disqualification may be existing even at the time when the election contested or it has been acquired later on, in such cases, in terms of Section 39(2) of the Act, 1994, whenever it is made to appear to the competent authority that member is or has become ineligible to continue to be a member for any of the reasons specified in Section 19, competent authority may, after giving him an opportunity of being heard, declare him to have become so ineligible and thereupon he shall have to vacate his office as such member.

68. This has not been controverted by either of parties that petitioners have approached this Court at the stage when inquiry with competent authority under Section 39(2) of Act, 1994 was pending in regard to pre-election disqualification attached to an elected member as provided under Section 19 of the Act, 1994 and competent authority under Section 39(2) was holding inquiry in regard to question with regard to cessation of his membership.

69. As already observed (supra), framers of the Constitution while enacting 73rd Amendment in the Constitution has taken note of disqualification of membership which is to be provided under law made by legislature of the State and election disputes have been separately considered under Article 243-O (b) of the Constitution and in the light of constitutional amendment, pre- disqualifications have been provided by State Government by enacting a legislation by way of Act, 1994.

70. The words, "is or becomes subject to any of disqualifications specified in Section 19" used in Section 39(1)(a) certainly takes note of pre-election disqualification and even if it has not been repeated in sub-section (2) to Section 39 of the Act, 1994, yet the fact remains that provisions of Section 19 stand incorporated in Section 39(2) and it was not at all necessary for the legislature to reiterate the very words, *ibid*. Sub-section (2) of Section 39 uses the words, "a member has become ineligible for any of

reasons specified in sub-section (1)" and Section 39(1)(a) which mentions of Section 19, does not exclude the disqualification, from which the person has already been suffering at the time when the elections were held. Disqualification suffered by the candidate at the time of election is a valid ground to be taken note of initiating action under Section 39(2) by competent authority notwithstanding remedy of election petition under Section 43 read with Rules 80 and 81 of Election Rules, which is available to the candidate alone.

71. However, it is to be further considered that only a candidate at such election can file election petition and such a candidate may or may not like to invoke such remedy. But person attached with pre-election disqualification provided under Section 19 of the Act, 1994 can certainly be called upon for his explanation merely on a complaint or if it has been brought to the notice of State Government and after affording him an opportunity of being heard, as provided u/R. 23 of the Rules, 1996, competent authority can proceed to take action against him in accordance with procedure provided under the Act, 1994.

72. Procedure as provided to be adopted by competent authority in exercise of powers under Section 39(2) of the Act, 1994, and the dispute to be examined in election petition under Section 43, are two different remedies as provided under the Act, 1994, may be for examining dispute in regard to pre-election disqualification, and election dispute though include pre-election disqualification attached to a member of Panchayati Raj Institution, it can be one of grounds urged by defeating candidate at the election by way of election petition but that cannot be a ground which preclude State Government from examining complaint if received in regard to any of pre-election disqualifications attached to candidate/member in accordance with procedure and manner as provided under Section 39(2) of the Act, 1994 read with R. 23 of the Rules, 1996, otherwise the whole purpose and legislative intent to enact Section 39(2), in my considered opinion, will be defeated and will render it otiose.

73. Nature of inquiry provided under Section 39(2) of the Act, 1994 is limited to question qualification or otherwise, whereas election dispute can be raised on the grounds as available under Rule 80 of the Election Rules, which are illustrative but not exhaustive. Thus, Section 39 is a special provision which takes care of specific wrong and Section 43 is general provision to raise election dispute on one or more grounds available to a candidate at such election. Thus, to be more specific, inquiry under Section 39(2) of the Act, 1994 is limited to the question of qualification whereas Section 43 deals with election disputes, which might be raised merely by defeating

candidate on the grounds available to him as specified under Rule 80 of Election Rules. Thus, both the provisions (supra) deal with and provide remedies in different fields, but in my considered opinion, legislative intent to enact these provisions is in consonance with constitutional mandate under Articles 243-F and 243-O(b) of the Constitution of India.

74. A dispute specifically raised is that two different remedies cannot be provided for self-same election dispute. In fact, these are two separate remedies; but in fact, for pre-election disqualification, remedy is only provided under Section 39(2) of the Act and for all kinds of election disputes, remedy has been provided under Section 43 read with R. 80 of the Election Rules. While questioning election of an elected member of Panchayati Raj Institution, there can be one of grounds available for being raised by defeating candidate only.

75. Basic principle of law is that every wrong has a remedy and no wrong can be left without remedy. It is well settled that entire statute must be read as a whole. Relevant provisions of Constitution of India and so also those in the statute must be read harmoniously. If election petition is only to be considered as a remedy available to a contesting candidate under Section 43 of the Act, 1994, for examining pre-election disqualifications attached to member/candidate at the election, certainly gives a room to the persons to conceal and misrepresent Returning Officer while submitting nomination Form despite pre-election disqualifications being attached with him on the date when nomination Forms are filled and for such wrong, if only remedy available is by way of election petition, which can be filed only by one of defeating candidates and by none-else. In that eventuality, this fact cannot be ruled out in present scenario that process initiated in election petitions takes its own time and defeating candidate may or may not like to file election petition and in that situation, despite elected member holding pre-election disqualifications provided under Section 19 of the Act, 1994, yet no remedy will be available to cease him from the office of Panchayati Raj Institution despite legislative intent to hold inquiry under Section 39(2) of the Act, 1994; which, in my considered opinion, will frustrate legislative object with which specific provision has been enacted and certainly when remedy has been provided to examine pre or post-election disqualification attached with elected member, initiating action under Section 39(2) of the Act, 1994, has to be upheld.

76. In the existing democratic set up if their representative has been elected who suffers with pre-election disqualification, it can never be left at the mercy of the candidate at the election who alone can question by way of election petition,

particularly when a special mechanism has been intended by legislature to take note of such action for pre and post-election disqualification to inquire into under Section 39(2) of the Act, 1994, which in my opinion is the only irresistible conclusion come forward from provisions of Act, 1994 which is in consonance with the mandate of Constitution of India, as provided under Article 243-F, as well.

77. However, before parting with conclusions, I would like to express that in fact Division Bench of this Court in a common judgment rendered in *Mohan Lal v. State* (supra) at Principal seat Jodhpur, has specifically examine pre- election disqualification attached with an elected member as provided under Section 19 of the Act, 1994 and after taking note of entire scheme of Act, 1994 and so also constitutional mandate under Arts. 243-F and 243-O(b) of the Constitution of India, arrived at conclusion while holding that for pre-election disqualifications, competent authority can examine after holding inquiry under Section 39(2) of the Act, 1994; whereas in a latter judgment of Division Bench of this Court rendered in *Bheru Singh Rathore v. State* (supra) where divergent view came out on certain peculiar facts and circumstances, therein. In fact, it was a case wherein a list of wards/constituencies category of seats either reserved or unreserved was indicated and this list was notified as the first step before holding the elections for the year 2000 and against entry at Item No. 44 mentioning "Dhunwala Mandal" no reservation was stated while the seat was declared as a general seat. Accordingly process of election was initiated and finally "general" candidate was elected and he took oath of his office and thereafter when complaint was made that the seat on which election process was initially notified for a general candidate, in fact was erroneous and as per record available with them, the seat was reserved for Scheduled Caste candidate and on the said complaint, it was considered to be pre-election disqualification and process was initiated against elected member under Section 39(2) of the Act, 1994.

78. With all due respect, whether a seat on their record was reserved for "Scheduled Caste" or meant for "general" candidate became immaterial while it was once notified as of "General seat" and finally elections were held and an elected candidate took oath of office, then yet this question holds as to whether such an error, if any, committed by respondents authority while issuing notification of election, can be considered to be pre-disqualification under Section 19 of the Act, 1994. Thus, circumstances, in which Division Bench observed in latter judgment in *Bheru Singh Rathore v. State* (supra), did not relate to a situation of pre-disqualification in the light of observations made hereinabove. I am, therefore, of the considered view that judgment rendered by

Division Bench in *Mohan Lal v. State* (supra) has rightly examined and answered the question raised, with which I do concur.

79. Only conclusion which emerges, is that pre-election disqualifications as provided under Section 19 of the Act, 1994 can always be examined by competent authority under Section 39(2) of the Act, 1994 and as regards election disputes, a candidate at the election can always question by way of election petition as provided under Section 43 of the Act, 1994 read with R. 80 of the Election Rules which includes pre-election disqualifications also as one of grounds for questioning election of an elected candidate. The referred question stands answered accordingly.

Order accordingly.

Cases Referred.

1. AIR 1960 SC 610
2. AIR 1953 SC 210
3. AIR 1999 SC 1723: (1999) 4 SCC 526
4. 2001 (5) WLC (Raj) 42: (2001 AIHC 4903)
5. 2003(3) WLC (Raj.) 481
6. 2004 WLC (Raj) UC 129
7. 2000 (3) RLR 16
8. Nos. 530/2001 and 674/2001)
9. (D. B. Civil Special Appeal (W) No. 289/2002)
10. (SA (Writ) 674/2001)
11. (SA (Writ) 530/2001)
12. (SA (Writ) 289/02 decided on 11-4-2002)