

RAJASTHAN HIGH COURT

Gopal Singh

Vs.

Election Tribunal-cum

D.B. Civil Special Appeal (W) No. 471 of 2008
(A.M. Kapadia and Sangeet Lodha, JJ.)

19.02.2009

JUDGMENT

Sangeet Lodha, J.

1. This special appeal is directed against order dated 20-4-2008 passed by the learned single Judge of this Court, whereby the writ petition preferred by the appellant assailing the validity of judgment and decree dated 3-1-2008 passed by the Election Tribunal (Additional Civil Judge (S.D.), No. 3), Jodhpur in Election Petition No. 15-A/05, stands dismissed. By aforesaid judgment and decree dated 3-1-2008 passed by the learned Election Tribunal, the election of the appellant as *Sarpanch* has been declared null and void and accordingly, the post of the *Sarpanch, Gram Panchayat, Anvana* has been declared vacant.

2. Briefly stated the facts of the case are that in pursuance of the notification issued by the Rajasthan Election Commission, the District Election Officer (*Panchayat, Jodhpur*) issued a public notice in exercise of the powers conferred under Rule 23 of Rajasthan Panchayati Raj (Election) Rules, 1994 (in short the "the Rules, 1994" hereinafter), calling upon the various panchayat circles to elect panchas and *Sarpanch* within the time specified in the notice. As per the programme notified, the last date for presentation of nominations was fixed as 30-1-2005 and the scrutiny of nomination papers was to be made on the same day. The poll, if necessary was to be taken on 31-1-2005.

3. The appellant so also the respondent No. 2 presented their nomination in the prescribed form before the returning officer on the date fixed. The appellant raised an objection to the nomination of the respondent No. 2 on the ground that since the cognizance has been taken by the Court of competent jurisdiction against him for

commission of offences u/Ss. 420, 467, 466, 468, 471, 474, 120-B of Indian Penal Code, 1908 (in short "IPC" hereafter) which are punishable with imprisonment for life/ten years therefore, he is disqualified for contesting the election to the office of the *Sarpanch*.

4. After examining the nomination papers and considering the objection raised, the returning officer rejected the nomination of the respondent No. 2 holding him disqualified for election by passing an order in the following terms :-

(Vernacular matter omitted... Ed.)

5. The elections were held as per the programme notified on 31-1-2005, wherein the appellant was declared elected as *Sarpanch*. The validity of the election of the appellant as *Sarpanch* was assailed by the respondent No. 2 by way of election petition preferred under Section 43 of Rajasthan Panchayati Raj Act 1994 (in short the "the Act of 1994" hereinafter) read with Rule 80 of the Rules, 1994 before the Election Tribunal, solely on the ground that the rejection of his nomination form by the returning officer was *ex facie* illegal and arbitrary inasmuch as he was not disqualified for contesting the election, in terms of the provisions of Section 19(gg) of the Act of 1994. It was contended on behalf of the respondent No. 2 that he had not incurred the disqualification as alleged inasmuch as, no charges were framed against him by the Court of competent jurisdiction of any offence punishable with the imprisonment of five years or more and mere taking cognizance of the offence, does not satisfy the conditions of disqualification in terms of provisions of Section 19(gg) of the Act of 1994.

6. The election petition was contested by the appellant, the returned candidate, contending that for holding a person disqualified from contesting the election, it is not necessary that the charge should be framed by the Court of competent jurisdiction. It was contended that as soon as the cognizance of commission of offence punishable with the imprisonment of five years or more is taken against the person to be nominated as candidate for election as Panch/*Sarpanch*, he incurs the disqualification within the meaning of Section 19(gg) of the Act of 1994. It was urged that the words "has taken cognizance of offence and framed the charge against him" used in Section 19(gg) of the Act of 1994 need to be read as "has taken cognizance of the offence or framed the charges against him". Precisely, the case of the appellant before the Election Tribunal was that the charges are framed only after taking the cognizance therefore, the word "cognizance" used in Section 19(gg) shall render redundant if the

word "or" is not read in place of "and" between the word "cognizance" and "framing of the charges". It was submitted that the intention of the legislature is that a person with criminal background should not be permitted to contest the election there fore, any other interpretation shall frustrate the very purpose of the provision incorporated.

7. On the basis of the pleading of the parties, the learned Election Tribunal framed the issues. The parties to the petition led their evidence. After hearing both the parties, the learned tribunal arrived at a categorical finding that the nomination of the respondent No. 2 could not have been rejected on the ground that the cognizance for commission of offences punishable with imprisonment for five years or more has been taken by the competent Court against him. The Election Tribunal held that the illegal rejection of the nomination of the respondent No. 2 by the returning officer renders the election of the appellant as *Sarpanch, Gram Panchayat, Anvana* null and void. Accordingly, by judgment and decree impugned in the writ petition while declaring the election of the appellant as null and void, the office of *Sarpanch, Gram Panchayat, Anvana* has been declared vacant by the Election Tribunal.

8. It was contended on behalf of the appellant before the learned single Judge that the judgment and decree passed by the Election Tribunal suffers from error apparent on the face of record inasmuch as in terms of the provisions of Section 19(gg), the returning officer is empowered to reject the nomination form of any candidate against whom the cognizance of commission of offences punishable for a period five years or more has been taken by the competent Court. It was submitted that the provision regarding the disqualification in terms of Section 19(gg) of the Act of 1994 has been incorporated so as to prevent entry of the criminals in the political institution there for, the same should be interpreted in the manner which subserve its purpose. While reiterating the stand taken before the Election Tribunal, it was contended on behalf of the appellant that the word "cognizance" used in Section 19(gg) is not superfluous and in the context it has to be read as either taking cognizance or framed the charges. It was submitted that in the nomination paper filed, the respondent No. 2 had clearly disclosed that a criminal case is pending trial against him, wherein cognizance for commission of offences u/Ss. 420, 466, 467, 468, 471, 474 and 120-B, Indian Penal Code has already been taken by the competent Court therefore, the returning officer has committed no illegality in rejecting his nomination.

9. Replying the arguments advanced on behalf of the appellant, it was contended on behalf of the respondent No. 2 before the learned single Judge that the scope of interference by this Court under Article 227 of the Constitution of India is very limited

and the Election Tribunal having found the rejection of nomination form to be illegal holding that mere taking of cognizance would not render any candidate disqualified under Section 19(gg), there is no reason as to why the order passed by the Election Tribunal adhering to the provisions of Section 19(gg) should be interfered with. It was contended that the word "and" used in between the words "cognizance" and "framing the charge" cannot be read as "or" and a candidate shall incur the disqualification in terms of Section 19(gg) only when after taking cognizance, charges are framed against him by the competent Court.

10. After due consideration of the submissions of the parties, the learned single Judge arrived at a categorical finding that in terms of Section 19(gg) of the Act of 1994, a candidate shall incur the disqualification from contesting the election only when charges are framed against him of any offence punishable with imprisonment for five years or more. In this regard, the learned single Judge relied upon a decision of the coordinate Bench in the matter of "*Bhiva Ram v. State*",¹ The learned single Judge opined that the word "and" used in Section 19(gg) as aforesaid cannot be read as "or" as suggested on behalf of the returned candidate. Accordingly, the writ petition has been dismissed. Hence this appeal.

11. In the first instance, it is contended by the learned counsel for the appellant before us that the respondent No. 1 was not a duly nominated candidate at the election therefore, in terms of the provisions of Section 43 of the Act of 1994 read with Rule 80 of the Rules, 1994, he had no *locus standi* to maintain the election petition so as to challenge the election of the appellant as *Sarpanch* on any ground. According to the learned counsel as per the provisions of Section 43 of the Act of 1994 read with Rule 80 of the Rules, 1994, the election of an elected candidate may be called in question by any candidate at such an election and none else. It is submitted by the learned counsel that the nomination form of the respondent No. 2 having been rejected by the returning officer, he cannot be treated to be a duly nominated candidate at the election inasmuch a person can be said to be a candidate at such election only when after scrutiny his nomination form is found to be in accordance with law by the returning officer and he does not withdraw the same. In this regard, the learned counsel had drawn our attention to the provisions of Section 43 of the Act of 1994 and Rules 27(2)(a), 27(3)(a), 28, 29, 56(4) of the Rules, 1994. In support of his contention raised as aforesaid, the learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the matters of "*Raj Krishna Bose v. Binod Kanungo*",² "*Charanlal v. Gyani Jail Singh*",³ and a decision of the Punjab High Court in "*Mool Chand v. Rulia Ram*

Panna Lal, ⁴ On being pointedly asked by this Court that no such objection was ever raised on behalf of the appellant at any stage i.e. before the Election Tribunal or before the learned single Judge therefore, how the appellant can be permitted to raise such objection at the appellate stage before this Court, the learned counsel submitted that the consideration of the question raised does not involve any factual dispute and it is a pure question of law which goes to the root of the matter therefore, the same can be permitted to be raised at any stage.

12. It is next contended by the learned counsel for the appellant that the Election Tribunal so also the learned single Judge has seriously erred in arriving at the conclusion that a candidate will incur the disqualification in terms of Section 19(gg) only when the charges are framed against him for the commission of the offence. The learned counsel submitted that the intention of legislature in incorporating the provision is to debar the persons with a criminal background from taking over the various offices in a public institution by way of election. It is submitted by the learned counsel that the cognizance is always taken of the offence and not of the person who has committed the offence therefore, a person against whom the cognizance is taken cannot be permitted to contest the election. The learned counsel submitted that the word "and" cannot always be understood as denoting a conjunctive sense and if the context demand then "and" is capable of being read as "or". According to the learned counsel so as to fulfill the object for which the said provision providing for disqualification has been incorporated by the legislature, it is absolutely necessary that the word "and" used in between the words "cognizance" and "charges framed" in Section 19(gg) of the Act of 1994 should be read as "or" else the provision shall stand nugatory. In support of his contentions as aforesaid, the learned counsel has relied upon the decisions of the Hon'ble Court in the matters of "*Sameer Khan v. Bindu Khan*" ⁶ "*Joint Director of Mines Safety v. Messrs Tandur and Nayandgi Stone Quarries (P) Ltd*" ⁷ and "*Fakir Mohd (dead) by L.Rs. v. Sita Ram*", ⁸ Accordingly, it is submitted by the learned counsel that though the charges were not framed against the respondent No. 2, the cognizance having been taken against him for the commission of offences punishable with imprisonment for a period more than five years, his nomination form has rightly been rejected by the returning officer.

13. Lastly, it is contended by the learned counsel for the appellant that during the pendency of this special appeal before this Court, the charges have already been framed against the respondent No. 2 by the competent Court therefore, obviously, the respondent No/2 stands disqualified for contesting the election, in this view of the

matter, there is no reason as to why the election of the appellant as *Sarpanch, Gram Panchayat, Anvana* should be set aside at his instance. The learned counsel submitted that in view of the subsequent event when the appellant is not in position to contest the election, it will be unnecessary burden on the public exchequer if the fresh elections are held for the office of the *Sarpanch* for the short tenure left out.

14. Per contra, the learned counsel appearing on behalf of the respondent No. 2 submitted that the appellant cannot be permitted to raise any objection regarding the *locus stand* of the appellant to maintain the election petition before the Election Tribunal at this stage before this Court. The learned counsel submitted that the appellant having failed to raise any objection in this regard before the Election Tribunal, even the writ Court could not have permitted such objection being raised there for the question of permitting any such objection at the appellate stage does not arise. The learned counsel submitted that it is absolutely misconceived on part of the appellant to contend that a person whose nomination form has been rejected cannot be considered to be a "candidate" within the meaning of the provisions of Section 43 of the Act of 1994 read with Rule 80 of the Rules of 1994 so as to make him entitle to assail the validity of the election by way of election petition. The learned counsel submitted that as a matter of fact, the word "candidate" stands defined by explanation attached to sub-rule (7) of rule 79 of the Rules of 1994 and accordingly, the person who stood for or was nominated for, the election to which an election petition pertains, stands included within the word "candidate". It is submitted by the learned counsel that a person who has presented the nomination form at election is always treated to be a candidate at such election and if his nomination form is wrongly rejected then the election can always be called in question by him by way of election petition. The learned counsel submitted that the improper rejection of the nomination form is a ground specified for setting aside the election therefore, it goes without saying that the election can always be challenged by a candidate whose nomination has been improperly rejected by the returning officer.

15. The learned counsel submitted that the contention of the appellant that the rejection of the nomination form could have been challenged by the respondent No. 2 only by way of writ petition before this Court immediately after the rejection is devoid of any merit in view of the specific bar contained in Article 243-O of the Constitution of India. In this regard, the learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of "*Manda Jagannath v. K. S. Rathnam*",⁹

16. The learned counsel submitted that the nomination form of the respondent No. 2

was rejected on 30-1-2005 and the elections were held on 31-1-2005 therefore, otherwise also the respondent No. 2 had no occasion to question the rejection of his nomination form till the elections are over.

17. The learned counsel submitted that the contention of the appellant that a person shall incur the disqualification in terms of the provisions of Section 19(gg) even on cognizance being taken by the Court of competent jurisdiction against him regarding commission of offence punishable with imprisonment for a period five years or more is also fallacious. The learned counsel submitted that from the plain reading of the Section 19(gg), the intention of the legislature is manifestly clear and no person can be held disqualified for contesting the election for any Panchayat unless the charges are framed against him for the commission of offence punishable with imprisonment for five years or more. The learned counsel submitted that the provision contained in Section 19(1)(gg) providing for disqualification to contest the election shall operate only when the person concerned is under trial in the competent Court. The learned counsel submitted that it is settled law that in warrant case, the trial starts from the framing of the charges, prior to it, the proceedings are only an inquiry. The reliance is placed in this regard by the learned counsel on decision of the Hon'ble Supreme Court in the matter of "*Ratilal Bhanji Mithani v. State of Maharashtra*", ¹⁰ and in the matter of "*Common Cause*", a registered Society through its *Director v. Union of India*", ¹¹

18. The learned counsel submitted that the words "taken cognizance of the offence" and "framed the charges" have to be read conjunctively inasmuch as, the words used are plain and unambiguous and bound to be construed in their ordinary sense. The learned counsel submitted that intention of the legislature in incorporating the provision as aforesaid is apparently that a person should not be disqualified from contesting the election unless the charges are framed against him by the Court of competent jurisdiction for commission of offences punishable with imprisonment for a period five years or more. The learned counsel submitted that the substitution of the word "and" by "or" will amount to altering the provision capable of giving plain meaning which is not permissible. In this regard, the learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the matters of "*Nasiruddin v. State Transport Appellate Tribunal*", ¹² and "*Paras Ram v. State of Haryana*", ¹³

19. Replying the contention of the appellant that the charges having been framed against the respondent No. 2 presently he is disqualified to contest the election therefore, the election of the appellant, a returned candidate, should not be set aside, it is submitted by the learned counsel that the question of disqualification has to be

determined with reference to the date of election and the subsequent event in no manner can validate the election of the returned candidate which is held to be null and void. In this regard, he has relied upon the decision of the Hon'ble Supreme Court in the matter of "*K. Prabhakaran v. P. Jayarajan*", ¹⁴

20. Lastly, the learned counsel submitted that the jurisdiction of the Hon'ble Court under Article 227 of the Constitution of India is limited to seeing that the inferior Court or tribunal functions within the limits of its authority, and not to correct an error apparent on the face of record much less an error of law. It is submitted that the order passed by the learned tribunal is absolutely in conformity with the provisions of Section 19(gg) of the Act of 1994 therefore, there is absolutely no reason as to why the said order which stands affirmed by the learned single Judge should be interfered with by this Court in this intra Court appeal.

21. We have considered the rival submissions and perused the record.

22. In the first instance, it will be appropriate to consider the contentions raised by the learned counsel for the appellant with regard to *locus stand* of the respondent No. 2 to maintain the election petition before the Election Tribunal questioning the validity of the election of the appellant, the returned candidate.

23. It is settled law that right to elect, right to be elected and right to remove an elected representative is neither fundamental nor common law right but, only a special right created by a statute therefore, such right must originate out of the statute. An election petition is statutory proceedings which is regulated by those Rules which statute makes and applies, (vide *Jyoti Basu v. Devi Gosai*,). ¹⁶ Therefore, election of an elected representative must be challenged only in the manner provided in the relevant statute.

24. It is true that the question with regard to right of the respondent No. 2 to assail the validity of the election of the returned candidate was not raised by the appellant before the Election Tribunal or before the learned single Judge of this Court, but then, the determination of the question sought to be raised by the learned counsel for the appellant as aforesaid first time before this Court does not require any inquiry or investigation into the question of facts. It is a pure question of law which goes to the root of the matter inasmuch as if ultimately, it is found that the respondent No. 2 whose nomination has been rejected by the returning officer cannot be treated to be a candidate at election within the meaning of Section 43 of the Act of 1994 then obviously, the election petition itself will fall. Therefore, keeping in view the settled

position of law as noticed above and the importance of the question, we find it appropriate to consider the contention raised on behalf of the appellant as aforesaid, on its own merits, even at this belated stage.

25. As noticed above, while questioning the right of the respondent No. 2 to maintain the election petition before the Election Tribunal, it is contended on behalf of the appellant that the election petitioner was not a duly nominated candidate therefore, he had no right to maintain the election petition inasmuch as under the provisions of Section 43, an election petition questioning the election of elected Panchas/*Sarpanch* can be presented only by a candidate at such election and none else. According to the learned counsel, the only remedy available to the election petitioner against alleged illegal rejection of the nomination form was to assail the validity thereof before this Court by way of writ petition and having failed to avail the remedy at the appropriate stage, he cannot be permitted to assail the election of the appellant by way of election petition de hors the provisions of Section 43 of the Act of 1994.

26. It is fairly well settled that the word "election" embraces in itself the entire process of election which consist of several stages right from issuing the notification calling for election, till the declaration of the result. It is equally well settled that the election process once started should not be held up or interfered with at the intermittent stage and adjudication of all dispute with regard to the election which has affected the ultimate result of the election should wait till the election process is over. Moreover, Article 243-O(b) of the Constitution of India which bars interference by the Court in electoral matters of the *Panchayats* specifically provides that no election to any *Panchayat* shall be called in question except by an election petition to such authority in such manner as is provided for by or under any law made by the legislature of the State.

27. In "*N. P. Ponnuswami v. Returning Officer, Namakhal*",¹⁷, assailing the validity of the rejection of nomination, the candidate filed a writ petition under Article 226 of the Constitution of India. The petition was rejected by the High Court on the ground that High Court had no jurisdiction to interfere with the order passed by the Returning Officer rejecting the nomination form in view of the provisions of Article 329(b) of the Constitution of India, which bars interference by the Court in the matters of election to either House of the Parliament or either House of the Legislature of State except by way of election petition. The validity of the decision of the High Court was assailed by the candidate whose nomination was rejected before the Hon'ble Supreme Court *inter alia* on the ground that the Article 329(b) of the Constitution of India did not bar or

exclude the jurisdiction of the High Court under Article 226 of the Constitution of India. The Hon'ble Supreme Court upheld the dismissal of the writ petition and opined that the word "election" as used in Article 329(b) comprehends the entire process of election starting from the notification calling upon the constituency to elect a member and culminating in the candidate being declared elected. The Hon'ble Supreme Court held that a person aggrieved by any of these stages has to wait till the result is declared and the election of the returned candidate can be questioned only thereafter by way of an election petition. The Court categorically held that anything done with the process is not open to the writ jurisdiction of the High Court.

28. The view taken by the Hon'ble Supreme Court as aforesaid has been followed in Manda Jagganath's case (AIR 2004 Supreme Court 3600) (supra) relied upon by the learned counsel appearing on behalf of the respondent No. 2. In the said case, While considering the maintainability of the writ petition against the illegal rejection of the nomination form, the Hon'ble Supreme Court observed as under :-

"12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.

13. It is to be seen that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. The Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b) no other than such forum constituted under the R.P. Act can entertain a complaint against any election."

29. It is to be noticed that the Article 243-O of the Constitution of India is in *pari materia* to Article 329(b) so far as the bar to interference by the Courts in electoral matters is concerned. Thus, in view of the bar contained in Article 243-O(b) of the Constitution of India and the position of law settled by the Hon'ble Supreme Court law as above, the validity of any election under the provisions of the Act of 1994 can be called in question only by way of election petition before the Election Tribunal under the provisions of Section 43 of the Act or 1994 and the Rules made there under. Thus, the contention of the learned counsel for the appellant that the respondent No. 2 could have challenged alleged improper rejection of his nomination by way of writ petition

under Article 226 of the Constitution of India before this Court is devoid of any merit.

30. The next question needs to be examined is as to whether the respondent No. 2 can be considered to be a candidate at the election so as to make him entitle to call in question the election of the appellant, the returned candidate by way of election petition under Section 43 of the Act of 1994 read with Rule 80 of the Rules, 1994.

31. Section 43 of the Act of 1994 which deals with determination of disputes as to election by way of election petition in prescribed manner reads as under :-

"43. Determination of dispute 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."

32. It cannot be disputed that once a person is elected for an office of *Panchayat* can be removed from the office strictly in accordance with the procedure laid down under the provisions of the Act of 1994. A bare perusal of the provisions of Section 43 makes it abundantly clear that only a candidate at election can question the declaration of result by filing an election petition on the prescribed ground and in the prescribed manner before the Election Tribunal. An elector or any other person who is not a candidate at election is not entitled to file an election petition under Section 43 of the Act of 1994.

33. Admittedly, the word "candidate" has not been defined under the provisions of the Act of 1994 or the Rules, 1994.

34. In Black's Law Dictionary, the candidate has been defined as "an individual seeking nomination, election or appointment to an office membership or like title or status/a candidate for election becomes a nominee after being formally nominated."

35. In the Representation of Peoples Act, 1951 (in short "the Act of 1951" hereinafter), the provisions as to dispute regarding elections are given in part VI

thereof. The definition of the word "candidate" as set out in Section 79 (b) of the said Act reads as under :-

"(b) "Candidate" means a person who has been or claims to have been duly nominated as a candidate at any election".

Thus, under the provisions of the Act of 1951 for the purpose of dispute regarding elections even a person who claim himself to be a duly nominated candidate is also considered to be a "candidate" at election.

36. Rules 25, 26 and 27 of the Rules, 1994 which deals with the presentation of the nomination form, procedure upon delivery of nomination papers and scrutiny of the nomination papers refer the person submitting the nomination paper as candidate. Rule 28 of the Rules, 1994 which deals with withdrawal from candidature *inter alia* provides that any candidate may withdraw his candidature by notice in writing in duplicate signed by him or bearing his thumb impression and delivered in person to returning officer. After scrutiny of the nomination form, a list in Form V showing the names of the candidates whose nomination form have been accepted and have not been withdrawn is prepared by the returning officer in terms of Rule 29 of the Rules, 1994. Thus, all the relevant provisions dealing with the election of the Panchas/*Sarpanch* of *Panchayat* refer the person presenting the nomination form as "candidate". Moreover, the explanation attached to the sub-rule (7) of Rule 79 of Rules, 1994 clarifies in unequivocal terms that the word "candidate" means for the purpose of the said Rule and so also for Rules 80 to 89, the person who stood for or was nominated for, the election to which an election petition pertains. It is relevant to mention here that Rule 80 of the Rules, 1994 deals with the manner of challenging an election under the Act of 1994 and Rule 81 makes the provision as to who may present the election petition.

Thus, the conjoint reading of various provisions of Rules, 1994 referred above, makes it abundantly clear that who has presented the nomination form shall be treated to be a candidate at such election.

37. In Moolchand's case (AIR 1963 Punjab 516) (supra) relied upon by the learned counsel, the Hon'ble Supreme Court while dealing with the question as to who shall be treated to be "candidate" within the meaning of Section 79(b) observed as under :-

"It is obvious that a person who has been duly nominated as a candidate is a "candidate" within the definition of this word in this section. He remains a candidate even though after having been duly nominated he withdraws. The

words of the definition itself are clear and there is no manner of ambiguity in this respect."

38. In Charan Lal's case (AIR 1984 Supreme Court 309) (supra) relied upon by the learned counsel for the appellant, the Hon'ble Supreme Court while dealing with a matter relating to Presidential election observed that in the matter of claim to candidacy, a person who claims to have been duly nominated is on par with a person who in fact was duly nominated. But the claim to have been duly nominated cannot be made by a person whose nomination form is not subscribed by at least ten electors as proposers and ten electors as seconders in conformity with the provisions of Section 5-B(1)(a) of Presidential and Vice- Presidential Elections Act, 1952.

In our considered opinion, the ratio of the said decision of the Hon'ble Supreme Court does not help the appellant in any manner inasmuch as, it is nobody's case that in the instant case, the nomination paper submitted by the respondent No. 2 did not conform the requirement of the valid nomination or the same did not comply with any mandatory requirement for valid nomination under the provisions of the Act of 1994 and the Rules made there under.

39. In this view of the matter, we are unable to countenanced the submission of the learned counsel for the appellant that the respondent No. 2 cannot be treated to be a duly nominated candidate at election. The person who has filed the nomination form in conformity with the relevant provisions of the Rules, 1994 has to be treated the candidate at such election and even if his nomination form is rejected by the returning officer on any ground he shall not cease to be a candidate at such election in terms of Section 43 of the Act of 1994 and Rule 80 of the Rules, 1994. Consequently, a candidate whose nomination form has been improperly rejected by the returning officer has every right to question the election of the returned candidate by way of election petition.

40. This takes us to the last question as to whether the rejection of the nomination form of the election petitioner by the returning officer holding him disqualified for contesting the election in terms of the provisions of Section 19(gg) of the Act of 1994 is just and proper ?

41. It is settled law that the trial in a warrant case starts with the framing of the charge and prior to it, the proceedings are only an inquiry. Thus, a person in a warrant case can be said to be under trial only when the charges are framed against him by the competent Court. This aspect of the matter stands fortified from the decisions of the

Hon'ble Apex Court in Ratilal Bhaji Mithani's case (AIR 1979 Supreme Court 94) and Common Cause's case (AIR 1997 Supreme Court 1539) (supra) relied upon by the learned counsel for the respondent No. 2.

42. A perusal of Section 19(gg) reveals that it starts with the words "is under trial in the competent Court" which clearly denotes that the person shall incur the disqualification for election as a Panch or a member or a *Sarpanch* of a Panchayati Raj Institution only when the charges are framed against him and consequently the trial has commenced. The provision with regard to disqualification has been couched in the words aforesaid by the legislature obviously for the reason that it is only at the stage of the framing of the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused.

43. We find ourselves unable to agree with the contention of the learned counsel that the word cognizance used in Section 19(gg) of the Act of 1994 shall render redundant if the word "or" is not read in place of "and" in between the phraseology "cognizance of the offence" and "framed the charges". It is true that the word "and" does not necessarily be understood as denoting a conjunctive sense and in a given case if the context so require, the same can be read as "or", but then, it is well settled that if the words used are plain and unambiguous they are bound to be construed in their ordinary sense. Indisputably while construing the provision full effect should be given to the language employed therein and if the language used therein admits of no ambiguity and is clear then the Court cannot read something on the pretext that the intention of the legislature was different than what is borne out from the language used therein. Suffice it to say that since the words used in Section 19(gg) are capable of only one construction therefore, it is not open for the Court to adopt any other hypothetical construction on the pretext that such construction is more consistent with the alleged object of the Act. Thus, the contention of the learned counsel that so as to subserve the object of the provision incorporated, the word "and" used in between the words "cognizance of the offence" and "frame the charges" should be read as "or" also cannot be countenanced by this Court.

Thus, in our considered opinion, a plain reading of the provisions of Section 19(gg), makes it abundantly clear that the intention of legislature was to debar a person from contesting an election to a statutory office of *Panchayat* only when against him after taking cognizance the charges have been framed for the offence punishable with imprisonment for five years or more and the trial has commenced.

44. It is to be noticed that in the instant case, in the nomination form prescribed a specific column has been incorporated with reference to Section 19(gg) of the Act of 1994 where under the information is sought as to whether any criminal case is pending trial against the candidate and whether the charges have been framed against him. Obviously, since mere taking cognizance of the offence does not disqualify the person from contesting the election therefore, no column for furnishing information in this regard is provided in the nomination form. It is pertinent to note that in the objections raised in writing before the returning officer, the appellant had mentioned that the cognizance of the offence has been taken against the respondent No. 2 by the competent Court and it was not even his case that the charges have been framed against him. Yet while rejecting the nomination form without there being any material on record, the returning officer had rejected the nomination form of the respondent No. 2 saying that the case has been filed in the Court and the charges have been framed against him. Thus, to say the least while rejecting the nomination form the returning officer has acted in most perfunctory manner and has not even cared to look into the relevant provision which governs the disqualification alleged. In this view of the matter, in our considered opinion, the Election Tribunal has committed no error in holding that the rejection of the nomination form of the election petitioner was improper. Consequently, the setting aside of the election of the appellant and declaration of the post of *Sarpanch* as vacant by the Election Tribunal cannot be faulted with.

45. We do not find any substance in the contention of the learned counsel that since the charges have now been framed against the respondent No. 2 and he stands disqualified to contest the fresh election to be held, therefore, it will not be in the public interest to set aside the election of the appellant. It is settled law that the disqualification of the person is to be determined with reference to the date of election or the date of scrutiny of the nomination form. The reliance in this regard may be placed on the decision of the Hon'ble Supreme Court in "K. Prabhakaran's case (AIR 2005 Supreme Court 688) (supra), relied upon by the learned counsel for the respondent No. 2. The subsequent event cannot wipe out the disqualification from the back date and similarly the disqualification incurred subsequently shall not relate back to the date of election or scrutiny of the nomination form. In this view of the matter, the disqualification incurred by the respondent No. 2 subsequently has no effect whatsoever so far as the validity of the election of the appellant to the office of *Sarpanch* is concerned.

46. A fortiori, an election petition is a statutory proceeding to which neither the common law nor the principles of equity apply and no person can claim to continue in the elected office who is found to be elected in flagrant violation of the provisions of the relevant statute governing such election. The improper rejection of the nomination paper of any candidate duly nominated renders the election null and void therefore, the question of continuing the appellant in the statutory office of *Sarpanch* on the pretext that the respondent No. 2 has now incurred disqualification and cannot participate as candidate in the fresh election to be held, does not arise.

47. For the aforementioned reasons, we do not find any error in the order impugned passed by the learned single Judge affirming the order passed by the Election Tribunal warranting interference by this Court in this intra Court appeal.

48. In the result, the special appeal fails, it is hereby dismissed. No order as to costs.

Appeal dismissed.

Cases Referred.

1. 2000 (3) RLW 1667: (AIR 2000 Raj 407)
2. AIR 1954 SC 202
3. AIR 1984 SC 309
4. AIR 1963 Punjab 516
5. (1998) 7 SCC 59: (AIR 1998 SC 2765)
6. (1987) 3 SCC 208: (AIR 1987 SC 1253)
7. (1987) 3 SCC 208: (AIR 1987 SC 1253)
8. (2002) 1 SCC 741: (AIR 2002 SC 433)
9. AIR 2004 SC 3600
10. AIR 1979 SC 94
11. AIR 1997 SC 1539
12. AIR 1976 SC 331
13. AIR 1993 SC 1212
14. AIR 2005 SC 688
15. AIR 1982 SC 983
16. AIR 1982 SC 983
17. AIR 1952 SC 64