IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.26 OF 2021

1. Karmaveer Tulshiram Autade)
Age about 33 yrs., Occ.Agriculturist)

2. Santosh Gajanan Mane)
Age about 35 yrs., Occ. Service)

3. Rajaram Hariba Dudhal)
Age about 36 yrs., Occ.Agriculturist)

4. Shankar Khandu Bhagare)
Age about 52 yrs. Occ.Agriculturist)

5. Vijay Anand Lohar)
Age about 34 yrs., Occ.Agriculturist)
All are R/o. Village Bhose,)
Tal.Mangalwedha, Dist. Solapur) ...Petitioners

versus

1. The State Election Commission)
office at New Administrative Bldg.)
Madam Cama Marg, Mumbai – 32)
Through its Secretary)

2. The Collector, Solapur,)
Collector Compound, Solapur)

3. Tahasildar, Mangalwedha,)
Tahasildar Office, Mangalwedha)
District – Solapur)

4. Returning Officer,)
Grampanchayat, Bhose,)
Tal.Mangalwedha, Dist.Solapur)

5. Grampanchayat, Bhose,)
Taluka – Mangalwedha Dist: Solapur)
Through its Village Development)
Officer, Mr.Avinash U. More.)

6. Grampanchayat, Bhose,)
Taluka: Mangalwedha, Dist-Solapur)
Through its In-charge Village)
Development Officer, Mr.Dattatray)
A. Ingole, Notice to be served through)
Mudhavi Grampanchayat,)
Tal.Mangalwedha, Dist: Solapur)

7. Sakhubai Bajirao Nagane)
aged about 56 yrs., Occ.Household)

8. Vimal Bharat Lohar)
Aged about 43 yrs., Occ.Household)

9. Dada Bajarang Mahadik)
Aged about 54 yrs. Occ. Agriculturist)

10. Jyoti Ravidas More)
Aged about 27 yrs. Occ.Household)
Nos.7 to 10 are R/o.Bhose,)
Tal.Mangalwedha, Dist.Solapur) ...Respondents

AND

WRIT PETITION NO.28 OF 2021

1. Bhagyashree Mahadeo Gaikwad,)
Age about 29 years, Occ: Household,)

2. Suhasini Karmveer Autade,)
Age about 31 years,)
Occupation : Household)

3. Rajaram Hariba Dudhal,)
Age about 33 years,)
Occupation : Agriculturist,)

4. Santosh Gajanan Mane,)
Age about 35 years,)
Occupation : Household,)

5. Rakhi Atul More,)
Age about 27 years,)
Occupation : Household,)

6. Jyotsna Nandkumar More,)
Aged about 41 years,)
Occupation : Household,)
All are R/o. Village Bhose,)
Tal. Mangalwedha,)
District : Solapur.)… Petitioners.

VERSUS

1. The State Election Commission,)
Office at New Administrative Bldg.)
Madam Cama Marg, Mumbai – 32.)
Through its Secretary,)

2. The Collector, Solapur,)
Collector Compound, Solapur,)

3. Tahasildar, Mangalwedha,)
Tahasildar Office, Mangalwedha)
District; Solapur.)

4. Returning Officer,)
Grampanchayat, Bhose,)
Tal. Mangalwedha, Dist.: Solapur.)

5. Grampanchayat, Bhose,)
Taluka: Mangalwedha)
District : Solapur.)

Through its Village Development)
Officer, Mr. Avinash U. More,)

6. Grampanchayat, Bhose,)
Taluka: Mangalwedha,)
District : Solapur.)
Through its In-charge Village)
Development Officer,)
Mr.Dattatray A. Ingole,)
Notice to be served through)
Mudhavi Grampanchayat,)
Tal. Mangalwedha,)
District : Solapur.)

7. Sakhubai Bajirao Nagane,)
Aged about 56 years,)
Occupation : Household,)

8. Vimal Bharat Lohar,)
Aged about 43 years,)
Occupation : Household,)

9. Dada Bajarang Mahadik,)
Aged about 54 years,)
Occupation : Agriculturist,)

10. Jyoti Ravidas More,)
Aged about 27 years,)
Occupation : Household,)
Nos. 7 to 10 are R/o. Bhose,)
Tal. Mangalwedha,)
District : Solapur.)… Respondents.

Mr. Dilip Bodake with Mr.Sharad T.Bhosale and Shraddha Pawar, for the petitioners in both matters.

Mr.A.V.Anturkar - (Amicus Curiae) with Mr.Prathamesh B. Bhargude, Mr.Sugandh B. Deshmukh, Mr.Yatin Malvankar, Mr.Shubham Misar and Mr.Ajinkya Udane.

Mr.A.A. Kumbhakoni-Advocate General with Mr.P. P. Kakade-Government Pleader, Mr.Akshay Shinde - 'B' Panel Counsel and Ms.Nisha Mehra-AGP for State in WPST/26/2021.

Mr.A.A. Kumbhakoni-Advocate General with Mr.P. P. Kakade-Government Pleader, Mr.Akshay Shinde-'B' Panel Counsel and Mr.B.V.Samant-AGP for State in WPST/28/2021.

Mr.Sachindra B. Shetye with Mr.Ajit Kadethankar, Mr.Irfan Shaikh, Ms.Priyanka Chavan and Ms.Sarika Shetye for (State Election Commission).

Mr. Mahesh Deshmukh h/f Mr. Shailendra Gangakhedkar from Aurangabad Bench.

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CORAM : DIPANKAR DATTA CJ.,
A.S. GADKARI &
G.S. KULKARNI, JJ.

Judgment Reserved on : January 11, 2021.

Judgment Pronounced on : January 13, 2021.

JUDGMENT:

1. A Division Bench of this Court was hearing these Writ Petitions, the subject matters of which pertain to the Gram Panchayat Elections. The orders impugned in these petitions are passed by the Returning Officer for Bhose Gram Panchayat whereby the nomination forms of the petitioners to contest the Gram Panchayat elections stand rejected. The prayers in the petitions are, *inter-alia*, for issuance of a writ of mandamus for setting aside the orders of the Returning Officer rejecting the nomination forms of

the petitioners and for a further direction that the petitioners be allowed to contest the Gram Panchayat elections from their respective wards. There is a further substantive prayer for writ of mandamus to be issued under Article 226 of the Constitution to direct the State Election Commission to cancel the election programme and for issuance of a fresh election programme. A prayer is also made for direction on the official respondents to take appropriate action, civil or criminal, against the respondents 7 to 10 (complainants) for producing false and fabricated certificates leading to the rejection of the petitioners' nomination forms. Pending the hearing of the petitions, a prayer is made for stay of the orders rejecting nominations and for directions to permit the petitioners to contest the elections and/or stay the further election programme of the Gram Panchayat elections.

2. When the writ petitions were taken up for admission hearing before the Division Bench, an objection was raised on the maintainability of these petitions, on behalf of the State Election Commission, referring to the Division Bench decision of this Court in **Vinod Pandurang Bharsakade Vs. Returning Officer, Akot and Anr.** reported in 2003(4) Mh.L.J. 359. It was contended that any grievance that the petitioners may have, in relation to the orders

rejecting their nominations, ought to be raised after the elections are over by raising appropriate election dispute. Per contra, relying on two decisions of co-ordinate Benches of this Court in **Sudhakar s/o. Vitthal Misal Vs. State of Maharashtra & Ors.** reported in 2007(6) All MR 773 and **Smt. Mayaraju Ghavghave vs. Returning Officer for Gram Panchayat, Dhamangaon and Anr.** reported in 2004(4) ALL MR 258, it was contended on behalf of the petitioners that the writ petitions are maintainable.

3. In the above circumstances, the Division Bench passed an order dated 4 January 2021, prima facie, observing that if the petitioners are considered to have called in question the elections to the Gram Panchayat, the writ petitions may not be maintainable having regard to the provisions contained in Article 243-O(b) of the Constitution; if not, and if the relief, they have claimed is to facilitate completion of the election process, it is only then they could claim judicial review of the impugned orders of the Returning Officer. The Court noting the above decisions as relied on behalf of the parties, observed that there was clear conflict of opinion of the two different Division Benches on the point, namely, as to whether writ petitions under Article 226 of the Constitution would be maintainable challenging the orders of rejection of nomination

forms. The Division Bench in paragraphs 6 and 7 observed as under:-

> 6. Prima facie, we are of the view that if the petitioners are considered to have called in question the elections to the Gram Panchayat(s), the writ petitions may not be maintainable having regard to the provisions contained in Article 243-O(b) of the Constitution; if not, and if the relief that they have claimed is to facilitate completion of the election process, they could claim judicial review of the impugned orders of the Returning Officer.
>
> 7. We have read the decisions that have been placed before us. In all such cases, rejection of nomination forms was under challenge. In Vinod Pandurang Bharsakade (supra), a view has been taken to the effect that once the election process starts, it has to be completed in accordance with the provisions of the relevant statute and that the law contemplates only one attack in election matters and that too, after the election is over. The decision in Sudhakar s/o. Vitthal Misal (supra) held that the writ petition was maintainable since the petitioner did not 'call in question the election' but that he had really asserted his right to contest the election. In Smt. Mayaraju Ghavghave (supra), the view taken is that indulgence shown to the petitioner sub-serves the progress of election, in other words it facilitates completion of election since she was the sole candidate and would be declared elected; and in the facts of the case, the challenge does not amount to 'calling in question the election'.

4. Considering that the issues need to be settled, the Division Bench thought it appropriate to refer the following issues for the decision by a larger Bench, as noted in the above order:-

(i) Does allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection, amount to intervention, obstruction or protraction of the election or is it a step to facilitate the process of completion of election?

(ii) Whether rejection of nomination form would attract the provisions of Article 243-O(b) of the Constitution of India?

(iii) Are the views expressed by the Division Benches of this Court in the cases of (i) Sudhakar s/o. Vitthal Misal vs. State of Maharashtra and Ors., reported in 2007(6) All MR 773, and (ii)Smt. Mayaraju Ghavghave vs. Returning Officer for Gram Panchayat, Dhamangaon and Anr., reported in 2004(4) ALL MR 258, correct, or does the decision in the case of Vinod Pandurang Bharsakade vs. Returning Officer, Akot and Anr., reported in 2003(4) Mh. L.J. 359, represents the correct view in law?"

5. Thus, this larger Bench has been constituted to answer the above three questions.

6. We have before us Mr.Kumbhakoni, learned Advocate General appearing for the State who, at the outset, stated that he is assisting the Court considering the issue of law involved and Mr.Anil Anturkar, learned senior counsel who has been appointed as amicus curiae to assist the Court, Mr.Dilip Bodake, learned Counsel appearing for the petitioners, Mr. Sachin Shetye and Mr. Kadethankar, learned counsel appearing for the State Election Commission. Mr. Deshmukh, learned counsel joined the proceedings

online and made submissions pursuant to notice displayed on the official website of this High Court inviting views/submissions from interested parties.

7. Before we deal with the respective submissions, it would be appropriate to note the relevant provisions. As the elections in question are in relation to Gram Panchayats, the provisions in Part IX of the Constitution dealing with "Panchayats" have to be looked into. The provisions being Article 243-B providing for 'Constitution of Panchayats', Article 243-C providing for 'Composition of Panchayats', Article 243-K provision for 'Elections to the Panchayats', Article 243-O providing for 'Bar to interference by courts in electoral matters', Part XV of the Constitution dealing with Elections and Article 329 providing for 'bar to interference by courts in electoral matters' are relevant. These provisions read thus:-

> "**243B. Constitution of Panchayats.** - (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.
>
> (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.
>
> **243C. Composition of Panchayats.** - (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

….

243K. Elections to the Panchayats. -

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

....

....

[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 243K, shall not be called in question in any curt;

(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 [2][***]]

(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 327 or article 328, shall not be called in question in any court;

(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.

8. We may note that Part IX of the Constitution was incorporated in the Constitution containing Articles 243, and 243 A

to 243-O by the Constitution (Seventy-third Amendment) Act,1992 with effect from 24 April 1993 on a Bill popularly known as 'the Panchayati Raj Bill'. Consequent to the incorporation of Part IX, the Bombay Village Panchayat Act [Act No.3 of 1959], now the Maharashtra Village Panchayats Act, 1959 (for short "the MVP Act") also came to be substantially amended, inter-alia, by incorporation of section 10A providing for State Election Commission by Maharashtra Act No.52 of 1994 and section 15A providing for bar to interference by Court in electoral matters by Maharashtra Act No.21 of 1994. Section 15, which existed in the MVP Act prior to amendment, dealing with the determination of validity of election also needs to be referred. The relevant provisions read thus:-

> "**10A. State Election Commission**.- The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the Panchayats shall vest in the State Election Commissioner.
>
> (2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Tahsildar.
>
> (3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of Panchayats under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.
>
> (4) Notwithstanding anything contained in this Act and the rules, the Commissioner may issue such

special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections.

….

15. Determination of validity of elections; enquiry by Judge; procedure. - (1) If the validity of any election of a member of a panchayat is brought in question by [any candidate at such election or by] any person qualified to vote at the election to which such question refers [such candidate or person] may, at any time within fifteen days after the date of the declaration of the result of the election, apply [***] to the Civil Judge (Junior Division) and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereafter, in each case referred to as "the Judge") having ordinary Jurisdiction in the area within which the election has been or should have been held for the determination of such question.

(2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive.[If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11 [***].]

(3) All applications received under sub-sections (1) -(a) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question; shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any

pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is bona fide and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of subsection (6) [***] he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under [sub-section (2)] and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that, for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person known or unknown, in giving or obtaining it:

Provided further that, after such computation if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) A person shall be deemed to have committed a corrupt practice,-

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of

individual profit, or holds out any threat of injury to any person, or

(b) who with a view to inducing any to stand or not to stand or to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

(c) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station:

Provided that, the hiring of a vehicle or vessel by a voter or by several voters at their joint cost for the purpose of conveying him or them to or from any such polling station shall not be deemed to be corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that, the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation 1 - A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2 - "A promise of individual profit" does not include a promise to vote for or against any particular measure which may come before a panchayat for consideration, but subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested.

Explanation 3 - The expression "vehicle" means any vehicle used or capable of being used for the

> purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicle or otherwise.
>
> (7) If the validity of any election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made in this behalf under section 176 read with sub-section (2) of section 10 and section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.
>
> **15A. Bar to interference by Court in electoral matters.** - No election to any Panchayat shall be called in question except in accordance with the provisions of Section 15; and no Court other than the Judge referred to in that Section shall entertain any dispute in respect of such election."

9. Learned Advocate General has advanced submission on the purport of the provisions of Article 243-O(b) and Article 329(b) of the Constitution and section 15A of the MVP Act. He would contend that there are four facets flowing from these provisions which are required to be taken into consideration, as under:-

> (i) As to what would be the interpretation of the words "notwithstanding anything in this Constitution" as used in clauses (b) of Articles 243-O and 329 of the Constitution and whether this non-obstante clause would include in its ambit Article 226 of the Constitution?
>
> (ii) As to what would be the true meaning of the word "election" in clauses (b) of Articles 243-O and 329?
>
> (iii) As to what would the meaning of the words "called in question" as used in clauses (b) of Articles 243-O and 329?
>
> (iv) What is the meaning to be attributed to the words "under any law made by the Legislature"?

10. Learned Advocate General has addressed the above points on the primal issue of maintainability of writ petitions under Article 226 of the Constitution challenging the orders passed by the Returning Officer rejecting the petitioners' nomination papers, in view of a remedy provided for under section 15 of the MVP Act to challenge the elections and the bar, as created by section 15A.

11. The thrust of the arguments of the learned Advocate General is that the doors of the Court under Article 226 of the Constitution even in the matter of challenge to the rejection of nomination of the candidates who intend to contest are required to be kept open. He submits that the Court should refrain from taking a view that the doors for such proceedings are permanently closed. He submits that this Court may hold that the petition is maintainable, but in individual facts the Court may not entertain such petition. In support of such contention, learned Advocate General has placed reliance on the recent decision of the Supreme Court in **Laxmibai Vs. Collector, Nanded & Ors.**, reported in 2020 SCC OnLine SC 187**; Maharashtra Chess Association Vs. Union of India & Ors.**, reported in 2019 SCC OnLine SC 932; **Election Commission of India through Secretary Vs. Ashok Kumar & Ors.**, reported in (2000)8 SCC 216**,** and the decisions of

the Division Benches of this Court in **Bhosale Deepak Manikrao & Ors. Vs. The State of Maharashtra & Ors.**, reported in (1998)2 Bom. CR 352; and **Mohd. Talib s/o. Mohd. Sadique (Dr.) Vs. Dr. A.S. Kuchewar**, reported in 2007(4) Mh.L.J. 557.

12. Learned Advocate General has also contended that Article 226 of the Constitution has been held to be part of the basic structure of the Constitution; hence, such remedy to the aggrieved persons ought to be available. It is also submitted that if a relief is not granted to such intending candidates in the proceedings under Article 226 of the Constitution, an irreparable prejudice is likely to be caused in a given situation inasmuch as such aggrieved intending candidates would be required to be relegated to the remedy of filing election petition to challenge the election even in respect of minor causes. According to him, this would bring about harsh consequences on such candidates.

13. Mr.Dilip Bodake, learned counsel for the petitioners has made submissions to contend that the petitioners have correctly invoked the jurisdiction of this Court under Article 226 of the Constitution by filing the writ petitions in question. He adopted the arguments of the learned Advocate General to contend that the petitions need to be entertained. He has also drawn our attention

to the election programme as also the provisions of Article 243-K of the Constitution to contend that life of a Panchayat is five years and if the petitions under Article 226 are not entertained, the filing of election petition under section 15 is not an efficacious remedy for the petitioners whose nomination forms stand rejected. According to him, in such a situation, challenge to the entire election would not be an appropriate remedy.

14. Mr.Deshmukh, learned counsel for the petitioners in the batch of petitions filed before the Aurangabad Bench would contend that section 15 is not the appropriate alternate remedy in assailing the rejection of nomination. To support this contention, he refers to the provision of sub-section (5) of section 15 to contend that section 15 is applicable only in the cases which are contemplated in sub-section (5), namely, when a candidate is found to have committed a corrupt practice. He also refers to the provisions of sub-section (7) of section 15 to contend that if the validity of any election is brought in question only on the ground of an error made by the Returning Officer or any irregularity or informality not corruptly caused, the Judge exercising jurisdiction under section 15 would not set aside the election. Hence, his submission is that it is imperative that a petition under Article 226 ought to be held

maintainable and be entertained against rejection of nomination forms by the Returning Officer.

15. Mr.Anturkar, learned amicus curiae at the outset has submitted that the decision of the Constitution Bench of the Supreme Court in **N.P. Ponnuswami Vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem Dist. & Ors.**, reported in AIR 1952 SC 64, which a decision of a Bench of six Hon'ble Judges, in terms has laid down that a petition under Article 226 of the Constitution challenging improper rejection of nomination cannot be entertained.

16. Mr. Anturkar would submit that the decision in **N.P.Ponnuswami** (supra) is a direct judgment on the point of rejection of nomination paper and is good law as of today. He submits that the subsequent decisions in **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.**, reported in (1978) 1 SCC 405, and the decision in **Ashok Kumar** (supra) are not judgments directly on the point of rejection of nomination papers, hence, the decision in **N.P. Ponnuswami** (supra), which directly decides the issue, is required to be preferred as it is a settled principle that the judgment is an authority on the point which it decides. He would submit that an inference, even a

logical inference, drawn from some observations in the judgment will not be part of the ratio.

17. Mr.Anturkar would next submit that a careful perusal of paragraph 36 of the decision of the Supreme Court in **Mohinder Singh Gill** (supra) shows that a writ petition being not maintainable is different from the writ petition not being entertained. Further Mr.Anturkar refers to paragraph 79 of the decision to contend that the Court has identified as to what has actually been held in the said decision. He also referred to paragraph 92 to contend that there cannot be any doubt that the decision in **Mohinder Singh Gill** (supra) confirms as to what has been held in **N.P. Ponnuswami** (supra) in regard to writ petitions under Article 226 of the Constitution, not being maintainable against rejection of nomination. It is submitted that perusal of the decision in **Mohinder Singh Gill** (supra) would also clearly indicate that the argument of the petitioners that a window is kept open as seen from the observations in paragraphs 27, 28 and 29, cannot be accepted, for the reason that these observations are about anything in the direction towards completion of election process and not on the subject matter before the Court in the decision in **N.P.Ponnuswami** (supra), which concerned rejection of the

nomination paper. It is submitted that the decision in **Mohinder Singh Gill** (supra) cannot be interpreted to mean that rejection of the nomination paper can be challenged in a writ petition and/or such remedy would sub-serve progress of the election and facilitate completion of election. It is submitted that challenging the rejection of nomination, even if no stay is sought for, would have the tendency to obstruct and protract the election when law allows only one challenge to the election, and that too post election.

18. Mr.Anturkar has submitted that the decision in **Ashok Kumar** (supra) does not take a different view, as rejection of nomination paper and challenge to the same cannot by any stretch be described as "sub-serving the progress of election and facilitating the completion of election". It is submitted that in fact in both the decisions, i.e., **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra), the observations that Article 329 (b) pushes out Article 226 stands confirmed.

19. Mr.Anturkar has also sought to argue a converse proposition as to what can be a legal position if the writ petition under Article 226 is held maintainable against the rejection of nomination form by the Returning Officer. He would intend to make good this submission by referring to paragraph 20 of the decision in

N.P. Ponnuswami (supra) and contend that such observations cannot also be inferred to mean that the Supreme Court in **N.P. Ponnuswami** (supra) has not laid down as a proposition of law that the remedy under Article 226 is barred against rejection of nomination form.

20. Furthering such converse argument, Mr. Anturkar has next submitted that it may be considered that the judgment in **N.P. Ponnuswami** (supra) has been explained and amplified in paragraphs 28, 29 and 30 the decision in **Mohinder Singh Gill** (supra) and further explained in **Ashok Kumar** (supra), which is of three Judges Bench and lastly considered by the Supreme Court in its decision in **Benedict Denis Kinny Vs. Tulip Brian Miranda,** reported in 2020 SCC OnLine SC 802. It is submitted that the decisions in **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) be read that a writ petition would be maintainable against rejection of nomination but whether to entertain it is in the discretion of the Court. It is submitted that the Seven Judges Bench of the Supreme Court in **L. Chandra Kumar Vs. Union of India**, reported in AIR 1997 SC 1125, has held that a right to seek judicial review under Article 226 is part of the basic structure of the Constitution. Hence, this principle is required to be applied even to

the petitions which are filed by the candidates whose nomination to contest election stand rejected. It is submitted that this position is also recognized by the Supreme Court in **Manda Jagannath vs. K.S. Ratnam**, reported in (2004) 7 SCC 492.

21. Mr.Anturkar has submitted that in respect of rejection of nomination form it be inferred that a petition under Article 226 can be filed in the following cases:

(1) Where the rejection is, on account of, really insignificant ground, which is covered by the provisions of the Bombay Village Panchayat Election Rules, 1955.

(2) Where the rejection of the nomination paper is on the ground extraneous to the grounds on which, the rejection can be made, namely, not covered by the statutory provisions.

(3) Where the rejection is made on the ground outwardly included in the provisions of the Rules framed under the provisions of the MVP Act, even then, there is *ex facie* violation of fundamental right of the petitioner, namely where the rejection is made on the grounds prohibited by the Constitution of India, namely, discrimination has been made on the ground of religion, race, caste, sex, place of birth, or any of them.

(4) Where the rejection is made on the ground, *intra vires* of the provisions of the Rules, but the issue involved is only

relating to interpretation of the provisions and not based upon the appreciation of any evidence.

22. It is submitted that in these cases care is required to be taken to ensure that no interim relief should be granted under any circumstances as the grant of any interim relief will result in postponing, interfering and obstructing the flow of election. It is submitted that even if in the above categories the Court is convinced that without granting a stay interference would not be worthwhile, then such writ petition should not be entertained by the Court. In support of his submission, Mr. Anturkar has placed reliance on the decision in regard to principle of interpretation of decision which would be referred to in the later part. Mr. Anturkar would also submit that strict construction of these provisions and the application of law as laid down by the Supreme Court in the decisions in **N.P. Ponnuswami** (supra) and **Mohinder Singh Gill** (supra) is likely to have a hard effect on the candidates whose nomination forms are rejected by the Returning Officer. In this context, Mr.Anturkar would submit that a gloss which is added to the decision of the Supreme Court in the decision in **Mohinder Singh Gill** (supra) be explored and a possibility that some window to be kept open for candidates to approach this Court in its jurisdiction under Article 226 of the Constitution can also be

considered. To make good this submission, Mr. Anturkar placed reliance on the observations made by the Supreme Court in paragraphs 20, 21, 22, 25 to 30 of the said decision.

23. Mr. Shetye learned counsel for the State Election Commission has made the following submissions :

Election is a creature of the statute. The right to vote as also right to contest election are statutory rights and in the present case are governed by the MVP Act and the Bombay Village Panchayat Election Rules, 1959. It is neither a civil right nor the fundamental right of the petitioners, even to raise a grievance by approaching this Court under Article 226 of the Constitution. The Constitutional provisions of Article 243-O (b) read with section 15A of the MVP Act are clear in as much as there is a bar to interference by the Courts in electoral matters. Clause (b) of Article 243-O is *pari materia* with Article 329 (b), to the effect that the jurisdiction of the High Court under Article 226 of the Constitution cannot be invoked by the petitioners to assail rejection of their respective nominations. The decision of the Supreme Court in **N.P. Ponnuswami** (supra) as subsequently followed in several decisions, leaves no manner of doubt that a writ petition under

Article 226 of the Constitution is not maintainable against rejection of nomination paper by the Returning Officer.

24. Referring to sub-rule (2A) of Rule 11 of the Rules, he has submitted that the Returning Officer exercises proper caution in undertaking scrutiny of the nomination papers. The Returning Officer is under a mandate not to reject any nomination paper on the ground of defect, which is not of a substantial character. It is his submission that the other issues which would remain after rejection of nomination are of a disputed nature and the same can be assailed only by way of an Election Petition, which can be filed under clause (b) of Article 243-O; in the present context, under the provisions of section 15 of MVP Act. It is submitted that there are 14244 villages which are already at an advanced stage of the election process. In such light of the matter, it is his submission that if rejection of nominations are made subject matter of challenge under Article 226 of the Constitution, it would not only be contrary to the Constitutional mandate and the statutory scheme but also in the teeth of what has been laid down by the Constitution Bench of the Supreme Court in **N.P. Ponnuswami** (supra), as followed in the subsequent decisions. It is also his submission that the alternative argument as urged on behalf of the State that a

window for a writ petition to be filed under Article 226 of the Constitution should be kept open, ought not to be accepted as there is no scope in law, whatsoever, for accepting such an argument. It is submitted that certain enactments like Maharashtra Municipal Corporation Act, the Maharashtra Zilla Parishad and the Panchayat Samitis Act provide for an appeal to any authority against rejection of nomination; however, the MVP Act has categorically avoided to provide for such an appeal against such rejection.

25. Mr.Shetye has placed reliance on the following decisions:

(i) **Jyoti Deepak Chavan Vs. Election Commissioner State Election Commission**, reported in 2019 SCC Online Bom 1212;

(ii) **Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and Others.**, reported in (2006) 8 SCC 352;

(iii) **Umaji Manglu Borse Vs. Returning Officer, Nashik And Others.**, reported in 2010 (1) Mh.L.J. 909;

(iv) **Mattulal Vs. Radhe Lal**, reported in (1974) 2 SCC 365;

(v) **Union of India and Others. Vs. K.S. Subramanian**, reported in (1976) 3 SCC 677;

(vi) **Shri H.V. Rangaswamy & Another Vs. The State of Maharashtra & Another.**, reported in 1998 SCC Online Bom. 149**;** and

(vii) **Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another**, reported in (2005) 2 SCC 673**.**

26. Mr. Kadethankar, learned advocate for the State Election Commission, who appears in the petitions filed before the Aurangabad Bench, has supported the submissions as made by Mr.Shetye. He has also submitted written notes of arguments to that effect.

27. Although 3 (three) questions have been referred by the Division Bench for being answered by the larger Bench, upon hearing the parties and the learned amicus curiae and on perusal of the authorities cited at the Bar as well as the statutory provisions governing the elections in question, we are of the considered view that the answer to a solitary fundamental question arising for determination before us would guide us to answer the questions referred without much ado. The fundamental question is, whether a writ petition before the Bombay High Court exercising jurisdiction under Article 226 of the Constitution would be maintainable if the petitioner seeks to challenge an order of rejection of his nomination paper (to contest a Gram Panchayat election) by the Returning Officer/the competent authority having regard to the provisions in

Article 243-O of the Constitution as well as section 15-A of the MVP Act read with section 15 thereof?

28. We have been referred to several decisions by learned counsel for the parties the learned amicus curiae, which we propose to take note in chronological order of dates of delivery of the judgments before considering its effect and import on the fundamental question as formulated above.

29. **N.P. Ponnuswami** (supra), a decision rendered at the dawn of the Constitution by a Bench of 6 (six) Hon'ble Judges of the Supreme Court, is considered to be the parent decision relating to the laws of election. The Court was urged to examine a challenge to a judgment and order of the Madras High Court whereby the writ petition of the appellant was dismissed as not maintainable. The appellant had filed his nomination paper for election to the Madras Legislative Assembly from the relevant constituency. The Returning Officer for that constituency while undertaking scrutiny of the nomination papers filed by various candidates rejected the appellant's nomination paper on certain grounds. The Supreme Court observed that such grounds need not be set out as they are not material to the point raised in the appeal. The appellant thereupon unsuccessfully moved the High Court under Article 226 of

the Constitution praying for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the appellant's application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Article 329(b) of the Constitution. The appellant's contention in the appeal was that the view expressed by the High Court is not correct, that the jurisdiction of the High Court is not affected by Article 329(b) of the Constitution and that he was entitled to a writ of certiorari in the circumstances of the case.

30. Let us now note the law laid down in **N.P. Ponnuswami** (supra) in some detail.

31. The decision of the High Court was assailed on the following grounds:

> (1) that the conclusion arrived at by the High Court does not follow from the language of Article 329(b) of the Constitution, whether that article is read by itself or along with the other articles in Part XV of the Constitution; and
>
> (2) that the anomalies which will arise if the construction put by the High Court on Article 329(b) is accepted, are so startling that the courts should lean in favour of the construction put forward on behalf of the appellant.

32. The Court disposed of the second argument briefly at the outset. It stated that what the appellant chooses to call anomaly can be more appropriately described as hardship or prejudice.

33. While considering the arguments advanced touching the first point, the Court remarked that the main controversy in the appeal centred round the meaning of the words "no election shall be called in question except by an election petition" in Article 329(b), and the point to be decided was whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, "no election shall be called in question". The appellant's case was that questioning something which has happened before a candidate is declared elected is not the same thing as questioning an election. Such argument was outrightly rejected. The notable observations from the said decision read as follows:

> "13. *** That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.
>
> 14. It was argued that since the Representation of the People act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that

the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words 'notwithstanding anything in this Constitution'. I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

…..

17. I may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commecement6 of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the constitution. If Part XV of the Constitution is a code by itself i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all 'electoral matters'.

18. The conclusions which I have arrived at may be summed up briefly as follows:

> (1) Having regard to the import functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, to that

> the election proceedings may not be unduly retarded or protracted.
>
> (2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."
>
> (emphasis supplied)

34. The conclusion recorded in the ultimate paragraph of the judgment is so very relevant in the present context that the same needs to be reproduced too. It reads as under:

> "28. We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed.***"

35. **N.P. Ponnuswami** (supra), soon after it was rendered, came up for consideration before 2 (two) Constitution Benches: first, in **Durga Shankar Mehta vs. Thakur Raghuraj Singh**, reported in AIR 1954 SC 520, and then in **Hari Vishnu Kamath vs. Ahmad Ishaque**, reported in AIR 1955 SC 233.

36. Durga Shankar Mehta (supra) was rendered by a Bench of 5 (five) Hon'ble Judges. It was held therein that the non-obstante clause in Article 329 of the Constitution prohibits challenge to an election either to Parliament or any State Legislature, except in the manner laid down in clause (2).

37. Hari Vishnu Kamath (supra) is a decision of a Bench of 7 (seven) Hon'ble Judges. The Court held that an application under Article 226 of the Constitution challenging the validity of any of the acts forming part of the election process (commencing with issuance of a notification and terminating with the declaration of election of a candidate) would be barred being an instance of original proceedings and within the prohibition enacted in Article 329(b).

38. In so holding, the Court in both the aforesaid decisions approved **N.P. Ponnuswami** (supra).

39. Once again, a Bench of 7 (seven) Hon'ble Judges of the Supreme Court in **Dr. Narayan Bhaskar Khare vs. Election Commission of India**, reported in AIR 1957 SC, had the occasion to consider the law laid down in **N.P. Ponnuswami** (supra). The election of Dr. Rajendra Prasad as the President of India for the second term was under challenge. The Court proceeded to approach

the construction of Article 71 of the Constitution in the light of **N.P. Ponnuswami** (supra) and held, after considering sections 14 and 18 of the Presidential and Vice-Presidential Election Act, 1952, that no election, meaning the election of the President or the Vice-President, shall be called in question except by an election petition presented to the Supreme Court in accordance with the provisions of Part III of that Act and of the rules made by the said Court under Article 145. After referring to section 18, the Court proceeded to observe:

> "It is quite clear from the language of the section that any improper reception or refusal of a vote, or any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act or the improper acceptance or rejection of a nomination paper may be made a ground for challenging the election. This means that all doubts and disputes relating to any stage of the entire election process is to be canvassed by an election petition presented to this Court after the election in its wide sense is concluded."

40. Moving on from the view expressed in the fifties of the last century, it is now time to look at subsequent decisions of the Supreme Court rendered by Benches of at least 3 (three) Hon'ble Judges.

41. In **Nanhoo Mal vs. Hira Mal**, reported in AIR 1975 SC 2140, a Bench of 3 (three) Hon'ble Judges of the Supreme Court

was seized of an appeal relating to election to the office of the President of the Municipal Board in a district of Uttar Pradesh. Obliged as it was, to follow the decision in **N.P. Ponnuswami** (supra), the Court held that under the relevant election laws, the election itself could be questioned only on one or more of the three grounds available under the statute and the jurisdiction to decide the validity of the election was an exclusive one conferred on the District Judge; in such circumstances, there was no room for the High Court exercising its powers under Article 226 in order to set aside the election. In setting aside the election the High Court plainly erred because it did not consider whether the result of election had been materially affected by non-compliance with the rule in question; in any case that was a matter within the exclusive jurisdiction of the District Judge.

42. This decision was followed by the decision of the Supreme Court in **K.K. Shrivastava vs. Bhupendra Kumar Jain**, reported in AIR 1977 SC 1703. A 3 (three)-Judge Bench of the Supreme Court was considering a challenge to the validity of the elections to the Bar Council of Madhya Pradesh. We need to reproduce the words of Hon'ble V.R. Krishna Iyer, J. speaking for the Bench, for, in our view, the seeds were sown in this decision by

His Lordship in his inimitable style for expanding the law relatable to interference by the High Courts under Article 226 of the Constitution qua election matters. One cannot miss noticing the change of thought process that in exceptional or extra-ordinary circumstances, a petition under Article 226 could be entertained. It was held as follows:

> "3. It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. <u>While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition</u>***."
>
> (emphasis supplied)

43. Close on the heels of the aforesaid decision, a Bench of the Supreme Court comprising of 5 (five) Hon'ble Judges delivered its decision in **Mohinder Singh Gill** (supra). Hon'ble V.R. Krishna Iyer, J. spoke for Hon'ble M.H. Beg, CJ., Hon'ble P.N. Bhagwati, J. and himself, whereas a concurring judgment was delivered by Hon'ble P.K. Goswami, J. for himself and Hon'ble P.N. Shinghal, J. While the facts and circumstances in **K.K. Shrivastava** (supra) did

not provide the ground for Hon'ble V.R. Krishna Iyer, J. to expand the law, submissions of learned counsel for the parties in **Mohinder Singh Gill** (supra) allowed His Lordship to go beyond what **N.P. Ponnuswami** (supra) laid down and a permissible territory, albeit limited, for the High Courts to entertain writ petitions in relation to election matters was carved out. This is evident from paragraph 36 reading as follows:

> "36. Having held against the maintainability of the writ petition, we should have parted with the case finally. But counsel for both the candidates and, more particularly, the learned Addl. Solicitor-General, appearing for the Election Commission, submitted that the breadth, amplitude and implications, the direction and depth of Article 324 and, equally important, the question of natural justice raised under Article 324 are of such public importance and largely fallow field, going by prior pronouncements, and so strategic for our democracy and its power process that this Court must decide the issue here and now. Article 141 empowers and obligates this Court to declare the law for the country when the occasion asks for it. Counsel, otherwise opposing one another, insistently concurred in their request that, for the working of the electoral machinery and understanding of the powers and duties vested in the functionaries constituting the infrastructure it is essential to sketch the ambit and import of Article 324. This point undoubtedly arises before us even in considering the prohibition under Article 329 and has been argued fully. In any view, the Election Tribunal will be faced with this issue and the law must be laid down so that there may be no future error while disposing of the election petition or when the Commission is called upon to act on later occasion. This is the particular reason for our proceeding to decide what the content and parameters of Article 324

are, contextually limited to situations analogous to the present."

44. It would be appropriate, at this stage, to note the facts in **Mohinder Singh Gill** (supra) and the law laid down therein. The matter reached the Supreme Court on a reference under Article 145(3) of the Constitution. Shorn of unnecessary details, the appellant and the third respondent contested the parliamentary election of 1977 in respect of a parliamentary constituency in Punjab. The appellant's version was that he had all but won the election by a margin of 2000 votes when the panicked third respondent wreaked havoc and halted the consummation by muscle tactics. The postal ballot papers were destroyed. Consequently, the result was not declared. The Chief Election Commission was approached by the appellant to declare the result of the election which, in all probability, the appellant had won. However, the Commissioner allegedly passed a lawless and precedentless order cancelling the whole poll acting by hasty hunch and without rational appraisal of the facts. The Commissioner followed it up with a further order directing a fresh poll for the whole constituency to be held. Request made by the appellant to the Commissioner to reconsider this decision fell on deaf ears. A writ petition was moved before the High Court to void the orders of the Commissioner by the

appellant. Objection was raised that the High Court has no jurisdiction in view of Article 329(b) of the Constitution and the Commission had acted within its wide power under Article 324 of the Constitution. The writ petition failed. The High Court held that it had no jurisdiction, yet, proceeded to enter verdicts on the merits of all the issues virtually exercising even the entire jurisdiction which exclusively belonged to the Election Tribunal. The doubly damnified appellant thus carried the order of dismissal of his writ petition to the Supreme Court.

45. The Supreme Court noted in paragraph 24 that **N.P. Ponnuswami** (supra) was a landmark decision in election laws and its ratio has been consistently followed in several subsequent decisions including **Durga Shankar Mehta** (supra), **Hari Vishnu Kamath** (supra) and **Dr. Narayan Bhaskar Khare** (supra). Several paragraphs from the decision in **N.P. Ponnuswami** (supra) were quoted to agree with the proposition of law that in view of Article 329(b) of the Constitution, two attacks ~ one at the intermediary stage and the other after declaration of result of election ~ are not permitted in law. It was further held that Article 226 of the Constitution suffers eclipse in view of the bar created by Article 329(b). The Court having concurred with the view expressed

in **N.P. Ponnuswami** (supra), however, made the following observation :

> "There is a non obstante clause in Article 329 and, therefore, Article 226 stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed at but left unexplored in Ponnuswami."

It is the special situations the Court perceived to have been left unexplored in **N.P. Ponnuswami** (supra) that really resulted in the Court tracing the power of the Election Commission under Article 324 of the Constitution and law being propounded that all approaches to the High Court under Article 226 of the Constitution in relation to electoral matters may not call in question an election; as a logical corollary, all writ petitions may not be barred. Paragraphs 28, 29 and 79 being relevant are quoted below :

> "28. What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to 'calling in question' an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation 'Anything done *towards the completion of the election proceeding* can by no stretch of reasoning be described as questioning the election.' Likewise, it is fallacious to treat 'a single step taken in *furtherance* of an election' as equivalent to election.
>
> 29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in

> furtherance of an election. So, the short question before us, in the light of the illumination derived from *Ponnuswami* is as to whether the order for re-poll of the Chief Election Commissioner is 'anything done towards the completion of the election proceeding' and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question'."
>
> ***
>
> "79. We have projected the panorama of administrative law at this length so that the area may not be befogged at the trial before the Election Court and for action in future by the Election Commission. We have held that Article 329(b) is a bar for intermediate legal proceedings calling in question the steps in the election outside the machinery for deciding election disputes. We have further held that Article 226 also suffers such eclipse. Before the notification under Section 14 and beyond the declaration under Rule 64 of Conduct of Election Rules, 1961, are not forbidden ground. In between *is*, provided, the step challenged is taken in furtherance of, not to halt or hamper the progress of the election."
>
> (italics in original)

46. The essence of the above discussion is that a writ petition could be barred if it seeks to call in question a step in election, but if the approach to the Court is to facilitate free and fair completion of election, such approach would not be barred.

47. Hon'ble V.R. Krishna Iyer, J. towards the conclusion of the judgment summed up in paragraph 92 as follows:

"92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is meet that we synopsize the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings:

(1) (a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

(2) (a) The Constitution, contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law, relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to

> see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full penoply but in flexible practicability. Whether it has been compiled with is left open for the Tribunal's adjudication.
>
> 3. The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidates if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law."

48. In the concurring judgment of Hon'ble P.K.Goswami, J. too, observations are made to the effect that Article 329 puts a ban on interference by the Court in electoral matters. The Court accordingly proceeded to dismiss the appeal.

49. We are not too sure, in the absence of any indication in the judgments in **K.K. Shrivasatava** (supra) and **Mohinder Singh Gill** (supra), but it may not be absolutely incorrect to assume that the dark days of the emergency of a not too bygone era could have had its effect on the Supreme Court to view things differently. This

assumes significance if one reads the short concurring judgment spreading over three paragraphs delivered by Hon'ble V.R. Krishna Iyer, J., albeit before the emergency era, in **Katikara Chintamani Dora v. Guntreddi Annamanaidu**, reported in (1974) 1 SCC 567 where His Lordship underscored the need to read precedents without forgetting the conditions and concepts which moved the Judges whose rulings are cited. The relevant passages read thus:

> "The judgment just delivered has my concurrence. But a certain juristic thought expressed therein and consecrated in an authoritative passage which has fallen from Bowen, L.J., in Reid v. Reid persuades me to break my silence not so much in dissent but in explanatory divagation. The proposition there expressed and here followed relates to the presumption against vested rights being affected by subsequent legislation. Certainly this legal creed of Anglo-Indian vintage has the support of learned pronouncements, English and Indian. But when we apply it in all its sternness and sweep, we err. Precedents should not be petrified nor judicial dicta divorced from the socio-economic mores of the age. Judges are not prophets and only interpret laws in the light of the contemporary ethos. To regard them otherwise is unscientific. My thesis is that while applying the policy of statutory construction we should not forget the conditions and concepts which moved the judges whose rulings are cited, nor be obsessed by respect at the expense of reason. …"
>
> 79. *** Legislative exercises directed towards distributive justice, as in the present case, cannot be considered in the light of a dated value system, though sanctified by bygone decisions of Courts.
>
> 80. *** Speaking generally, Courts have to be anchored to well-known canons of statutory construction and if they are out of time with the law maker's meaning and

> purpose the legitimate means of setting things right is to enact a new Interpretation Act."
>
> (emphasis supplied)

50. The next time a Constitution Bench of 5 (five) Hon'ble Judges of the Supreme Court was called upon to consider interference in the electoral process by a High Court is in the appeal of A.K.M. Hassanuzzaman. The short conclusions are recorded in **A.K.M. Hassanuzzaman vs. Union of India**, reported in (1982) 2 SCC 218, whereas the detailed judgment is found in **A.K.M. Hassanuzzaman vs. L.C. Sen**, reported in (1985) 4 SCC. Since constitutional validity of certain election laws were raised in the writ petition, the Court by a majority decision held that although the learned Judge of the High Court was within jurisdiction in entertaining the writ petition and issuing Rue Nisi, His Lordship was not justified in passing interim orders having the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Courts writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a

situation in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution.

51. The decisions in **N. P. Ponnusawami** (supra) and **Mohinder Singh Gill** (supra) were again considered by a Bench of 3 (three) Hon'ble Judges of the Supreme Court in **Ashok Kumar** (supra). In such case, the Court was not concerned with the rejection of nomination paper, as in **N.P. Ponnuswami** (supra) or cancellation of poll and direction for re-poll, as was the case in **Mohinder Singh Gill** (supra). The appeal was directed against an interim order passed by the High Court during the currency of the process of election, whereby the High Court stayed the notification issued by the Election Commission containing direction as to the manner of counting votes and made directions of its own on the subject. Upon consideration of the decisions, *inter-alia*, in **N.P. Ponnuswami** (supra) and **Mohinder Singh Gill** (supra), Hon'ble R.C. Lahoti, J. held that the law enunciated by the former was extensively dealt with by the latter, and amplified. Speaking for the Bench, His Lordship held as follows:

> "28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the

citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

29. *** The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination.

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words ‘no election shall be called in

question' in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to 'calling in question an election' if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

> (5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.
>
> 33. These conclusions, however, should not be construed as a summary of our judgment. These have to be read along with the earlier part of our judgment wherein the conclusions have been elaborately stated with reasons."

52. **Laxmibai (supra)** is one of the latest decisions of the Supreme Court rendered by a Bench of (3) three Hon'ble Judges. Considering **N.P. Ponnuswami** (supra), **Mahinder Singh Gill** (supra) and other decisions, the Court in paragraph 43 laid down as follows:

> "43. ….. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court….."

53. The common thread that emerges from a reading of the decisions in **N.P. Ponnuswami** (supra), **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) is that, in respect of challenge laid to an electoral process or any step connected therewith before the result of elections, covered by Part XV of the Constitution is declared, the door of the writ jurisdiction of a High Court would stand closed if any order were sought and rendered whiah has the tendency or effect of interrupting or posting a reasonable imminent poll. This is amply clear from our understanding of decisions of high authority as follows:

(i) Article 226 of the Constitution is **pushed out** by Article 329(b), as held in **N.P. Ponnuswami** (supra);

(ii) the jurisdiction of the High Court under Article 226 of the Constitution **suffers an eclipse** because of Article 329(b), as held in **Mohinder Singh Gill** (supra); and

(iii) if the petition presented to the Court 'calls in question an election', the **bar** of Article 329(b) **is attracted**; else it is not [as held in **Ashok Kumar** (supra)].

54. In all the aforesaid decisions, provisions of Part XV of the Constitution together with the provisions of the Representation of the People Act, 1951 were under consideration. The law laid down therein admits of no doubt that a petition under Article 226 of the

Constitution would not be maintainable if it calls in question a step in election and such questioning before the Court may have the effect of interrupting, obstructing or protracting the election.

55. Article 243-O is *pari-materia* with Article 329. While Article 329(b) as of necessity would have to be read with the Representation of the People Act, 1951, Article 243-O has to be read with sections 15 and 15-A of the MVP Act. We have noted above what sections 15 and 15-A provide. Applying the reasoning of the Supreme Court in relation to cases covered by Part XV of the Constitution, there could be no valid and justifiable reason for not applying the same reasoning to cases covered by Part IX of the Constitution relating to "The Panchayats" in which Article 243-O and the other Articles limiting the life of every Panchayat and ordaining periodic elections to the Panchayats find place. Thus, it would seem to be an open and shut case for recording that the writ petitions are not maintainable. However, the controversy has arisen in view of the Division Bench decisions in **Smt. Mayaraju Ghavghave** (supra) and **Sudhakar s/o Vitthal Misal** (supra) wherein views have been expressed, in contradiction to the view of an earlier Division Bench in **Vinod Pandurang Bharsakade** (supra). We may note here that in **Vinod Pandurang Bharsakade** (supra), Hon'ble

C.K. Thakker, CJ. speaking for the Division Bench had the occasion to look into all the relevant authorities and treatises on the point and returned a finding that the writ petition before the Division Bench challenging a step in the election was not maintainable.

56. The point that has been sought to be canvassed before us by learned counsel who have advocated in support of maintainability of the writ petitions is that despite the decision in **N.P. Ponnuswami** (supra) creating a bar for entertainment of writ petitions under Article 226 of the Constitution, the decisions in **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) have opened up a small window for entertaining writ petitions by the High Court even during progress of elections and it is not the law that in all cases the Court would have to decline interference in view of the provision in Article 243-O(b), a like provision [329(b)] having been judicially interpreted in **N.P. Ponnuswami** (supra).

57. Does **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) express views that disagree or dissent from or doubt the decision in **N.P. Ponnuswami** (supra)? Having read the decisions with meticulous care, the answer has to be an emphatic “NO”.

58. We have been referred to the decision of the Supreme Court in **Central Board of Dawoodi Bohra Community** (supra)

rendered by a Bench of 5 (five) Hon'ble Judges. A Constitution Bench was considering, inter alia, the course permissible in case a smaller Bench of the Supreme Court doubts the view taken by a larger Bench. Hon'ble R.C.Lahoti, CJ. speaking for the Constitution Bench laid down the law in paragraph 12 as follows :

> "12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.
>
> (3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of

> exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh, (1989) 2 SCC 754 and Hansoli Devi,(2002) 7 SCC 273."
>
> (emphasis supplied)

59. It is not in dispute that the strength of the Bench deciding **N.P. Ponnuswami** (supra) is numerically superior than the strength of the Benches which decided **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra). Not only that, the ratio laid down in **N.P. Ponnuswami** (supra) has been approved by Benches of larger strength in **Hari Vishnu Kamath** (supra) and **Dr. Narayan Bhaskar Khare** (supra). If indeed the subsequent Benches in **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) were inclined to disagree or dissent from or doubt the view of law taken in **N.P. Ponnuswami** (supra), all that it could have done was to record the reasons for disagreement/dissent and refer the matter to the Chief Justice for constitution of a larger Bench. Far from adopting such procedure, the law laid down in **N.P. Ponnuswami** (supra) was approved and as the Court in **Ashok Kumar** (supra) says, **Mohinder Singh Gill** (supra) amplified the law in **N.P. Ponnuswami** (supra) to specify that in special situations, the writ remedy would be available. More than anything

else, one cannot overlook that both **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) dealt with challenges not akin to the challenge with which **N.P. Ponnuswami** (supra) was concerned. **N.P. Ponnuswami** (supra) being a direct authority on the point in respect of challenge mounted to an order of rejection of nomination form, it is such decision which would bind us notwithstanding that a limited area has been carved out by **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra) for entertainment of writ petitions instituted not to interrupt/obstruct/protract the election process in any manner, but intended to sub-serve the progress of election and to facilitate its completion. A distinction has to be drawn towards completing the election as against questioning the election.

60. We repeat, a reading of the decision in **Ashok Kumar** (supra) reveals that **Mohinder Sing Gill** (supra) amplified **N.P. Ponnuswami** (supra) rather than disagreeing therewith or dissenting therefrom or in any manner doubting the same. Insofar as rejection of a nomination form by the Returning Officer and challenge to such decision during the process of election before the High Court under 226 of the Constitution are concerned, where Article 329(b) is attracted, **N.P. Ponnuswami** (supra) is the decision which holds the field and binds us. The bar of Article 243-

O(b), on the same analogy, would spring in as and when the High Court is approached under Article 226 of the Constitution and urged to examine whether nomination form has been rejected in accordance with law in respect of an election covered by Part IX of the Constitution. Whatever be the reason for rejection of nomination, its quality ~ sub-standard or otherwise ~ is neither material nor relevant when the challenge is laid at an intermediate stage of the election by an intending candidate seeking orders from the Court to participate in the election though the Returning Officer has rejected his nomination. We hold so in view of the Court in **N.P.Ponnuswami** (supra) not even considering it necessary to refer to the grounds of rejection of the nomination paper of the appellant in view of the clear enunciation of law that the law of election does not contemplate an intermediary challenge when, by law, a forum is constituted and made available by any statute for resolution of an election dispute which would take within its fold validity of an election challenged on the ground of improper rejection of the nomination paper.

61. Insofar as paragraph 20 of the decision in **N.P. Ponnuswami** (supra) is concerned, from which Mr. Anturkar has sought to draw inspiration that the said decision has left a window

open to approach the High Court under Article 226/227 of the Constitution of India, we are of the view that paragraph 20 thereof has to be read in the light of the preceding paragraph wherein the Court referred to the Legislature vesting in a special tribunal an entirely new and unknown jurisdiction. What we gather from a conjoint reading of paragraphs 19 and 20 of the decision in **N.P. Ponnuswami** (supra) is that should the provision itself be questioned, the decision would have to be given on a proper occasion. Paragraph 20 cannot be read in isolation, for, if so read, the same would militate against other observations/ findings having the force of law being rendered nugatory. In any event, reading of paragraph 27 of the decision in **N.P. Ponnuswami** (supra) would not permit such interpretation of paragraph 20 as canvassed by Mr. Anturkar.

62. Mr. Anturkar has also contended, placing reliance on the decision in **L. Chandra Kumar** (supra) that judicial review is a basic structure of the Constitution and that even by provisions inserted in the Constitution the same cannot be taken away, not to speak of a statutory provision. He is right in so contending based on **L. Chandra Kumar** (supra). But the argument appears to us be unsound when considered on the touchstone of the original

Constitution and the amended Constitution. If the Preamble is the base of our Constitution, "Rule of Law", "Parliamentary Democracy", "Federalism", "Fundamental Rights" and "Independence of the Judiciary" are some of the pillars of the basic structure on which the Constitution rests. That judicial review is a facet of an independent judiciary cannot be disputed. Even then, Article 329 ~ starting with a *non-obstante* clause ~ was inserted in the Constitution by the framers. They must have been conscious of the legal position that in a given case, judicial review would have to stay at a distance in view of such *non-obstante* clause being inserted. While gathering the intent of the particular legislation, it would seem to be clear that the framers were not oblivious of the effect that a provision like Article 329 was bound to create, i.e., pushing out Article 226 or that Article 226 would stand eclipsed in given cases. Any restriction or limitation imposed on judicial review by an original enactment, thus, has to be distinguished from a restriction or limitation imposed by an amending provision. True it is, Article 243-O has been inserted in the Constitution by an amendment along with all other Articles in Part IX by a Constitution Amendment Act. However, nothing turns on it for two reasons. First, there is no decision of any Court holding Article 243-O ultra vires; second, and more importantly, Part IX has

been incorporated in the Constitution to achieve a specific object and having regard to the limited life of every Panchayat, the Parliament thought it fit and proper to borrow the wisdom of the framers of the Constitution and thus inserted a like provision which would bar the interference of Courts at an intermediary stage of an electoral process leaving it open for challenges to be thrown after declaration of the election results. The Constitutional justification for judicial review and the vindication of the Rule of Law though remaining constant in all the areas, the mechanism for giving effect to that justification could be varied, and has indeed been varied. If indeed section 15A of the MVP Act were a standalone provision, not much argument would have been necessary to declare it unconstitutional. However, section 15A has Article 243-O as its source and, therefore, so long Article 243-O stands, section 15A would also stand. We see no reason to accept the contention urged by Mr. Anturkar and while rejecting it, we make it clear that the aforesaid observations must be read in the context of the contention urged and dealt with.

63. At this stage, we may take note of a decision of recent origin of the Supreme Court in **Bharati Reddy Vs. State of Karnataka**, reported in (2018) 12 SCC 61. Respondents 6 to 9,

who were voters, unsuccessfully instituted a writ petition challenging the election of the appellant. The learned Judge dismissed the writ petition as not maintainable in view of the provision in Article 243-O read with Rule 7 of the relevant Rules of 1994 providing for resolution of election dispute by the jurisdictional District Judge. In appeal, the order was set aside and the writ petition remanded for fresh hearing. The Supreme Court upon consideration of Rule 7 found that the same permitted a challenge at the instance of a member of the Zilla Panchayat and not at the instance of those who were not such member. For the reasoning found in paragraph 15, the order under challenge was thus upheld keeping all points open for the writ petition to be decided afresh in accordance with law.

64. Having noticed the decision in **Bharati Reddy** (supra), we consider it appropriate to examine whether section 15 of the MVP Act provides a remedy to an aggrieved voter or any candidate who wishes to call in question the validity of any election of a member of a Panchayat; further, whether illegal/improper rejection of nomination paper of an individual seeking to contest an election could form a valid ground for invalidating the election of the successful candidate. Sub-sections (1) and (2) of section 15 of the

MVP Act, in our view, provides complete answers to the aforesaid questions. Under sub-section (1), validity of any election of a member could be brought in question by any candidate at such election or by any person qualified to vote for any election in the manner and before the authority (Judge) as ordained. Sub-section (2) provides the procedure to be followed by the Judge upon receiving an election petition and the extent of relief that could be granted by him. The Judge is vested with the power to conduct inquiry and to pass necessary order confirming or amending the declared result, or setting the election aside. The submission of Mr. Deshmukh, relying on sub-section (5), that the Judge has the power to interfere only if a corrupt practice has been committed by the successful candidate within the meaning of sub-section (6) does not appear to us to be sound. Though sub-section (5) refers to a particular contingency which could invalidate an election, sub-sections (1) and (2) are not controlled by sub-section (5). Sub-section (1) and (2), read together, are of wide import and would take within its fold a grievance raised against illegal/improper rejection of nomination paper. We, thus, conclude that the MVP Act, a complete code in itself in relation to Panchayati Raj in Maharashtra, does provide the necessary machinery for vindication

of *ubi jus ibi remedium* and for appropriate redressal of grievance of any disgruntled individual who perceives that he has been wronged by the Returning Officer. The decision in **Bharati Reddy** (supra) is, therefore, distinguishable on facts.

65. The next point that would require our consideration, in view of the decision in **Smt. Mayaraju Ghavghave** (supra) is, whether a challenge laid to rejection of nomination paper by the Returning Officer in a writ petition would be covered by sub-paragraph (2) of paragraph 32 of the decision in **Ashok Kumar** (supra). We have failed to comprehend as to how the view taken in **Smt. Mayaraju Ghavghave** (supra) that rejection of nomination paper and challenge laid to such rejection could, at all, be regarded as not "calling in question an election" but the decision sought from the Court would be to sub-serve the progress of the election and to facilitate its completion. The observation of the Division Bench that the earlier Division Bench which decided **Vinod Pandurang Bharsakade** (supra) failed to consider sub-paragraph (2) of paragraph 32 of the decision in **Ashok Kumar** (supra) does not commend to us to be proper, not only because the interpretation is erroneous but also because such a course was not available for the Division Bench to be taken. In view of the conclusions recorded in

paragraph 12 of the decision in Central Board of **Dawoodi Bohra Community** (supra), which apply with equal force to the decisions of the High Courts, we have no manner of doubt that the Division Bench while deciding **Smt. Mayaraju Ghavghave** (supra) erred in law as well as on facts in not being persuaded to follow the law laid down in **Vinod Pandurang Bharsakade** (supra).

66. In **Sudhakar s/o Vitthal Misal** (supra), three of the questions arising for the decision of the Division Bench were, (i) whether rejection of nomination could be challenged by a writ petition under Article 226; (ii) whether a writ petition would be maintainable due to availability of alternative remedy or because of the specific bar as contained in Article 243-O(b) of the Constitution and section 15-A of the Bombay Village Panchayat Act; and (iii) whether the bar, if any, as created by the above provisions is relaxable as contended on behalf of the petitioner. The Division Bench held that the petitioner had approached the Court to assert his “right to contest” and not to “call in question the election”. On facts of that case, the Division Bench observed that the prayer of the petitioner was not such which could have compelled the authorities to send the voters for second poll. The Division Bench recorded its conviction that the writ petition was not for the purpose

of interrupting, obstructing, protracting or stalling the election process and that the relief sought and rendered does not call in question the election but is intended to sub-serve the progress of the election. We find from paragraph 4 of the decision that a submission was advanced before the Division Bench that the decision in **N. P. Ponnuswami** (supra) had been diluted by the subsequent decision in **Mohinder Singh Gill** (supra), and it is so interpreted in **Ashok Kumar** (supra). The discussions in paragraph 7 of the decision would reveal that the submission was accepted and it was held that **N.P. Ponnuswami** (supra) has been explained and diluted to some extent. For the reasons discussed in the several paragraphs above, we hold that the finding arrived at by the Division Bench that the ban against entertaining writ petitions, as enunciated in **N.P. Ponnuswami** (supra), has been diluted is based on erroneous and incorrect reading of **Mohinder Singh Gill** (supra) and **Ashok Kumar** (supra).

67. It has been argued that the Returning Officers either because of ignorance of the relevant laws or because of extraneous considerations reject nomination papers citing reasons which are either absurd or border on Wednesbury unreasonableness and that having regard to the age old saying that ‘a stitch in time saves

nine', the Court may lay down situations where a writ petition could be entertained even against orders rejecting nomination papers to secure the rights of those who choose to participate in the elections but are deprived for reasons unsustainable in law. We do not feel that there is any room for such an argument or for any such consideration**.** We do not think that on the authority of **N.P. Ponnuswami** (supra), since approved by several Constitution Bench decisions, it would be permissible for us to accept such argument. If indeed, the issue is so serious that Returning Officers are inefficient and incapable of discharging the solemn duty entrusted to them, it is for the State Legislature to make appropriate provisions in the MVP Act for resolution thereof. We may profitably refer to the observation of the Division Bench of this Court in **Bhosale Deepak Manikrao & Others** (supra) in this behalf. In paragraph 16, the Division Bench observed as under:

> "16. Before we part with these cases, we wish to point out that looking to the number of village panchayats which go simultaneously to the poll, large number of officers are required to be engaged and there being likelihood of errors which the Returning Officer may commit, because of the ignorance of the meaning of law, it is necessary that an appeal is provided by the legislature against the rejection or acceptance of the nomination paper. Even if, the nomination paper of a candidate who may be inconsequential in a contested election is rejected, the election of a candidate who has nothing to do with the error of the Returning Officer, is

> set aside in an election petition, and in cases where a candidate who was not qualified is likely to be elected and enjoy the office for a considerable time till the election petition is decided. There was a provision of appeal formerly under the Bombay Village Panchayats Election Rules but the provision of appeal has now been deleted. In the statutes governing Municipal Council election in Maharashtra, an appeal to District Judge against the rejection and acceptance of nomination paper has been provided. It is not that similar provision should be there in all statutes but, even in village panchayats elections if a remedy of an appeal is provided for, it is likely that the error may be corrected in time and this stitching in time may save nine. Appeal against rejection of nomination paper is justifiable on another ground also. If in an election to a seat or seats of village panchayat, all the nomination papers are wrongly rejected, the error is likely to go uncorrected since there would not be an election which may be challenged. It is a matter for the State Legislature to consider."

The circumstance of the Legislature not having stepped in to fill in the breach, despite more than 2 (two) decades since that decision was delivered, has to be respected by the Court. After all, the Legislature expresses the will of the people through legislation enacted by it. An issue which could be dealt with by the Legislature cannot be solved by a judicial fiat, having regard to Article 243-O(b) of the Constitution read with the MVP Act.

68. For the reasons aforesaid, while agreeing with the view in **Vinod Pandurang Bharsakade** (supra), we answer the fundamental question as formulated in paragraph 27 in the

negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows:-

(i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to sub-serve the progress of election and/or facilitate its completion in the sense enunciated in **Mohinder Singh Gill** (supra) and explained in **Ashok Kumar** (supra) though it may not always amount to intervention, obstruction or protraction of the election;

(ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration; and

(iii) The law laid down in **Vinod Pandurang Bharsakade** (supra) represents the correct view of law; consequently, we hold that the decision in **Smt. Mayaraju Ghavghave**

(supra) and **Sudhakar s/o Vitthal Misal** (supra) do not lay down the correct law;

69. The reference is answered accordingly;

70. Let the writ petitions be now placed before the appropriate Division Bench for orders being passed thereon in the light of the answers to the referred questions.

71. We record our sincere appreciation for the able assistance offered by Mr. Anturkar as amicus curiae.

CHIEF JUSTICE

Jayant V. Salunke

Digitally signed by Jayant V. Salunke
Date: 2021.01.13 15:21:00 +0530

JUSTICE A.S. GADKARI

JUSTICE G. S. KULKARNI