

PUNJAB AND HARYANA HIGH COURT, CHANDIGARH.

CM No. 1178 of 2010 and
LPA No. 85 of 2010.
Date of Decision: 31.03.2010.

Surjit Singh Versus State of Punjab and others.

**Coram: Hon:ble Mr. Justice Mukul Mudgal, Chief Justice;
 and
 Hob:ble Mr. Justice Jasbir Singh.**

Present: Shri C.M.Munjhal, Advocate, for the applicant-
 petitioner.

Mukul Mudgal, CJ (Oral)

For the reasons stated in the Civil Misc. application, the application is allowed and the appeal is pre-poned and taken up for hearing with the consent of counsel for the appellant.

The main grievance of the appellant in this appeal is that the rejection of the nominations for the elections to the Panchayat of Village Gatti Rahime Ki, was wrongly made as a result of which the entire election process had been vitiated. The learned Single Judge while dismissing the writ petition observed that the grievance of the petitioner could only be redressed through a validly instituted election petition and not in a writ petition, as found by a Division Bench of this Court in CWP No. 12643 of 2008 decided on 21.05.2008. The view taken in CWP No. 12643 of 2008 was considered by a subsequent Division Bench ruling and that has read down the dispensation made by the earlier Division Bench to mean the general superintendence of the Chief State Election Officer as not to be pervasive enough to include even a power to countermand an election.

The learned Single Judge accordingly dismissed the writ petition filed by

the appellant but allowed the writ petition filed by the elected persons.

We see no flaw in the reasoning given by the learned Single Judge which in fact is supplemented by Article 243-O which reads as follows:-

243-O.- Bar to interference by Courts in electoral matters.-

Notwithstanding anything in this Constitution-

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

(b) no election to any Panchayats 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".

However learned counsel for the petitioner placed reliance upon the judgment of the Supreme Court in *Danda Rajeshwari Versus Bodavula Hanumayamma 1996(3) RCR (Civil)* to contend that Single Bench ought to have given liberty to file election petition within a stipulated period relaxing the period of limitation prescribed for filing election petition. In this regard he placed reliance on para No.3 of the judgment which reads as under:-

"in view of this the High Court has rightly directed filing of the election petition within three weeks from the date of disposal of the writ petition and further directed the Tribunal not to go into the question of limitation and instead decide the matter on merits."

We have heard learned counsel and gone through the records.

In our view, there is no merit in the present appeal keeping in view the statutory provisions of Article 243-O of the Constitution of India, which

clearly debars such kind of petitions.

In so far as the principle of law annunciated by the Supreme Court in *Danda Rajeshwari's case* (supra) is concerned, the period of limitation provided in the Act cannot be nullified by Judicial pronouncement. In this regard the Hon'ble Supreme Court has observed as under:-

" The remedy is statutory remedy and limitation is one of the conditions to entertain election petition. By judicial order the limitation cannot be nullified. In support thereof, he placed reliance on the judgment of this Court in Union of India and another Vs. Kirloskar Pneumatic Co. Ltd., JT 1996(5) SC 26: 1996(4) SCALE 317. We find no force in his contention. It is not his case that the High Court lacks jurisdiction to entertain the writ petition against the election of a Sarpanch and declaration of the result of the election of a Sarpanch, etc. The High Court exercising its power under Article 226 of the Constitution declined to interfere in the election disputes since alternative remedy of filing election petition and adjudication has been provided in the relevant statutory rules. Far from saying that the High Court has no jurisdiction. High Court exercised self restraint in exercise of the power under Article 226 and directed the parties to avail of alternative remedy".

This apart, the result of the election was declared in the year 2008 and the learned Single Judge judgment is dated 10.12.2009. The present appeal was filed on 20.1.2010. For two dates, at the request of counsel for the petitioner the petition was adjourned and finally today it was effectively argued before this Court. In election petitions latches itself is ground enough not to interfere with the election result.

Accordingly, we see no reason to interfere with the judgment passed by the learned Single Judge. Dismissed.

(Mukul Mudgal)
Chief Justice

(Jasbir Singh)
Judge

March 31, 2010
Malik