by the Registrar that the approval of his election had been kept in abeyance under orders of the Chancellor till the Committee appointed by the Syndicate under Regulation 42 (Chapter II-B) at pages 123-24 of the Punjab University Calendar Volume I, 1971, has taken a decision on the petition made by Shri S. P. Choda, Department of Botany, Panjab University, Chandigarh, Regulation 42 in the Punjab University Calendar, Volume I, 1971, is *pari materia* with Regulations 17.1, 17.2 and 17.3 of Chapter II-B of the Calendar. The Chancellor had no right to withhold the approval on the grounds stated in the letter of the Registrar, dated October 31, 1972 (Annexure 'A'). In these circumstances, in our view, the approval has been illegally withheld by the Chancellor which he could not do. We are also of the opinion that sub-section (2) of section 13 is not *ultra vires* as contended by the learned counsel for the petitioner. In case, the approval could not be withheld by the Chancellor, he had also no grounds for not notifying the name of the petitioner under section 35 of the Act which is merely a formality.

(11) For the reasons recorded above, we accept this petition with costs and hold that Regulations 17.2 and 17.3 of Chapter II-B of the Calendar are *ultra vires* the Act and quash the order of the Chancellor, respondent No. 2, conveyed to the petitioner by the Registrar,—*vide* his letter dated October 31, 1972 (Annexure 'A'). Counsel's fee Rs. 200.

B.S.G.

APPELLATE CIVIL

Before Harbans Singh, C.J., and B. R. Tuli, J.

RAM NATH,—*Appellant.*

versus

RAMESH, ETC.,—*Respondents.*

L.P.A. No. 596 of 1972.

May 28, 1973.

Punjab Municipal Act (III of 1911)——Section 12-B—Constitution of India (1950)—Article 226—Co-option of woman members to a Municipal Committee invalid—Meeting of the Municipal Committee for election of its President—Co-opted woman members taking part in the election—No objection to their participation by the candidates to the office of the President—Such candidate—Whether can

challenge the validity of the co-option of the woman members in writ proceedings after his defeat—Municipal Election Rules (1952)—*Rules* 2(*i*), 52 *and* 63—*Co-option of members—Whether can be contested by election petition.*

Held, that remedy by way of writ proceedings under Article 226, Constitution of India is a special remedy and a party may by his conduct preclude himself from claiming the writ *ex debito justitiae,* no matter whether the proceedings which he seeks to quash are void or voidable. Where the co-option of woman members to a Municipal Committee is invalid, but they take part in the meeting of the committee held for the election to the office of its President and the candidate for this office does not object to their participation, such a candidate cannot challenge the validity of the co-option of the woman members in writ proceedings in the High Court after his defeat in the election. With the full knowledge of their co-option and presence in the meeting, he contested the election and took his chance for being elected or being defeated. Having been defeated he cannot challenge that that meeting was illegally convened or that the two woman members, who attended the meeting, had no right to attend the same because their co-option was illgal or invalid.

Held, that under rule 2(*i*) of Punjab Municipal Election Rules, 1952, election includes co-option of a member and, therefore, the co-option can be contested by way of election petition as provided in rule 52. The grounds on which an election can be challenged are stated in rule 63, one of them being any material irregularity in the holding of the election. Where there is material irregularity in the co-option of the members an election petition is competent to challenge the co-option.

Letters Patent Appeal under Clause 10 *of the Letter Patent from the judgment of Hon'ble Mr. Justice Rajendra Nath Mittal, dated the* 10*th October,* 1972, *passed in Civil Writ No.* 2687 *of* 1972.

H. S. Sawhney, Advocate, *for the appellant.*

S. C. Goyal and O. P. Goyal, Advocates, *for respondent* 1 only.

JUDGMENT

Judgment of the Court was delivered by:—

TULI, J.—Elections to the Municipal Committee, Hariana, in the district of Hoshiarpur, took place on June 18, 1972, and the first meeting of the elected members of the Committee was held on

July 8, 1972, for the administration of oath and the co-option of two women members and one member of the Scheduled Castes. Proposals were invited for co-option of two women members under the provisions of section 12-B of the Punjab Municipal Act, 1911, as amended, hereinafter called the Act, and thereafter voting was held by secret ballot. All the members were supplied two ballot papers each on which the names of all the four contesting women candidates were written. The result of the polling was that three of the candidates got four votes each and the fourth candidate got three votes. Three ballot papers were rejected. The convener of the meeting was of the opinion that the members of the Committee have not been able to co-opt two women members and, therefore, reported to the Government for nomination of two women members under section 12-E of the Act. The Government nominated Shri mati Sohan Kaur and Shrimati Harbans Kaur as members of the Municipal Committee, Hariana, by a notification which appeared in the Punjab Government Gazette dated July 28, 1972. Thereafter, a meeting of the Committee was held on August 4, 1972, for the election of President and Vice-President. In that meeting, the two women candidates nominated by the Government were administered oath of allegiance and thereafter the elections for the offices of the President and Vice-President were held. Ramesh, respondent No. 1, contested the election for the office of the President against Ram Nath appellant but got defeated. He then filed Civil Writ No. 2687 of 1972 in this Court challenging the co-option of the two women members and the consequent election of the President and the Vice-President. That petition was contested by Ram Nath on various grounds but was accepted by the learned Single Judge on October 10, 1972. The present appeal under clause X of the Letters Patent is directed against that judgment.

(2) One of the points argued before the learned Single Judge was that the method adopted by the Convener of the meeting on July 8, 1972, for the co-option of two women members under the provisions of Section 12-B of the Act by distributing two ballot papers containing the names of all the four candidates to the members for casting their votes instead of one ballot paper containing the names of all the contesting candidates, was illegal being against the rules. The learned Single Judge accepted this contention in view of his judgment in *Narinder Kumar and others* v. *State of*

Punjab and others (1), wherein a similar procedure had been adopted by the Convener which was declared illegal by him. He consequently declared the co-option of respondents Nos. 4 and 5 to the appeal, nominated by the Government, as illegal. He also accepted the plea that the election of the President and the Vice-President held on August 4, 1972, was illegal as respondents Nos. 4 and 5, who were not entitled to attend that meeting, attended that meeting and cast their votes, in view of his own judgment in *Ram Niwas* v. *State of Punjab* (2). The learned Judge did not accept the plea of the appellant that the writ petitioner, after the co-option of the two women members by the Government under section 12-B of the Act, took part in the election of the President and, therefore, was estopped from filing the writ petition. Consequently, the writ petition was accepted and the co-option of respondents Nos. 4 and 5 and the elections of the President and Vice-President were quashed.

(3) It has been argued by the learned counsel for the appellant that the learned Single Judge erred in law in not accepting his plea that the writ petitioner was estopped from challenging the co-option of the two women members, respondents Nos. 4 and 5, and the elections of the President and Vice-President held on August 4, 1972, on the ground that he knowingly, after the co-option of the two women members, not only took part in the meeting held on August 4, 1972, but also contested the election for the office of President. Reliance is placed on a Division Bench judgment of the Bombay High Court in *Gandhinagar Motor Transport Society* v. *State of Bombay* (3), in which the difference between the scope of ordinary legal remedies and extraordinary legal remedies under Article 226 of the Constitution has been vividly pointed out. The relevant observations are contained in paras 4 and 5 of the report which bear reproduction and are, therefore, reproduced. The observations are,—

> "(4) Now, as we shall presently point out, the English Courts have taken the view, and in our opinion rightly, that before a question of jurisdiction is raised on a petition, objection to jurisdiction must be taken before the tribunal whose order is being challenged. It is not as if by the petitioner not challenging the jurisdiction of the Tribunal

(1) C.W. No. 2734 of 1972 decided on 18th September, 1972.
(2) C.W. No. 2674 of 1972 decided on 3rd October, 1972.
(3) A.I.R. 1954 Bom. 202.

that he confers jurisdiction upon that tribunal if that tribunal has no jurisdiction. But what the English Courts have said is that the High Court has been asked to exercise a special jurisdiction, not an ordinary jurisdiction, and the High Court is entitled to know what the tribunal has to say on the question of jurisdiction which the petitioner wants to agitate before the Court. There is another principle underlying this view, and that is that the tribunal which is brought before the Court should itself be given an opportunity to decide that it has no jurisdiction, before the High Court is called upon to give its decision.

It must be borne in mind that in exercising its jurisdiction under Articles 226 and 227 the High Court is not exercising an ordinary jurisdiction. It is always open to a petitioner to assert his rights in a suit properly filed, but when he chooses to assert his rights by calling upon the High Court to exercise its special jurisdiction, the High Court must itself lay down certain principles for the exercise of that jurisdiction and must not make the exercise of that jurisdiction a matter of ordinary occurrence. A suit may well be filed within the period of limitation, the Judge trying the suit does not non-suit the plaintiff because he came to Court towards the end of the period of limitation; but this Court tells the petitioner 'you must come to this Court expeditiously'.

Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction up to the stage of the Privy Council or the Supreme Court, yet if the Court has no jurisdiction, the highest Court in the land will allow the point to be raised and decide it in favour of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner; 'It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ.'

(5) Now this principle was very clearly and very emphatically laid down in—'*Rex* v. *Williams*: *Phillips, Ex parte* (4). There a person was disqualified from acting as a Justice of the Peace if he was concerned in the business of a baker. A baker who was alleged to have committed an offence under the Bread Act was put up before a bench of two Justices of the Peace and one Justice of the Peace was alleged to be disqualified from acting as a Justice of the Peace because he was concerned in the business of a baker, and the accused baker wanted to raise the question of the incapacity of one of the Justices of the Peace before the High Court by a petition, and the High Court refused to give him relief holding that as he had not taken the point before the bench of the Justices of the Peace, he had disentitled himself from obtaining any relief. Channel J. points out (p. 614) :

'.....A party may by his conduct preclude himself from claiming the writ '*ex debito justitiae*, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void, it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari. This special remedy will not be granted '*ex debito justitiae*' to a person who fails to state in his evidence on moving for the rule nisi that at the time of the proceedings impugned he was unaware of the facts on which he relies to impugne them.'

Therefore, this is a clear answer to the argument advanced by Mr. Gamadia that the fact that the petitioner did not challenge the jurisdiction of the Government, did not by consent or waiver confer jurisdiction upon the Government. As we have already pointed out, the question is not that if the Government's decision was without jurisdiction, it became a competent decision merely because the petitioners did not object to the jurisdiction. But the question is whether the petitioners not having challenged the jurisdiction of the Government, this Court will give them relief by exercising its very special and discretionary jurisdiction. Rowlatt J. in a very short judgment

(4) (1914) 1 K.B. 608 (A).

emphasises the fact that the rule that the Courts in England have adopted is a very salutary rule. This is what he says (p. 615) :

'.....It is a very salutary rule that a party aggrieved must either show that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so'.

We see no reason why in this particular case we should not give effect to this salutary rule."

This Bench relied on the judgment of the Bombay High Court in *Attar Singh and others* v. *State of Haryana and others* (5), which related to a meeting called for the co-option of members under section 5(2)(c) of the Punjab Panchayat Samitis (Co-option of Members) Rules, 1961. After setting out some of the observations from the Bombay judgment it was observed by us as under :—

"On the parity of reasoning it can be said in this case that the petitioners took a chance in the meeting of getting their nominees elected for co-option without any objection and having partly succeeded, after having taken full part in the proceedings of the meeting, they cannot now be heard to say that the proceedings of the meeting should be declared as illegal and invalid on the ground that the meeting had not been regularly summoned in accordance with the statutory rules."

(4) In the return filed by the appellant to the writ petition it was stated that on July 9, 1972, the writ petitioner had suggested two names to the Deputy Commissioner for being nominated as women members of the Municipal Committee, Hariana, under section 12-E of the Act. His recommendations were, however, not accepted and the Government made its own nominations. After nominations were gazetted and the co-opted women members took oath, he never objected to their presence in the meeting or their right to take part in the voting for the election of President and Vice-President. With the full knowledge of their co-option and presence in the meeting, he contested election to the office of the President and took his chance for being elected or being defeated. Having been defeated, he cannot challenge that that meeting was illegally convened or that the two women members, who attended

(5) 1973 P.L.J. 90.

the meeting, had no right to attend the same because their co-option was illegal or invalid. On the reasoning of the judgment in *Gandhinagar Motor Transport Society's case* (3), (supra), we hold that the writ petitioner had no right to file the writ petition in this Court and his petition should have been dismissed on that ground.

(5) The learned counsel for the appellant has taken another objection to the writ petition being allowed and that is, that the ordinary remedy by way of election petition provided in the Punjab Municipal Election Rules, 1952, had not been followed by the writ petitioner and by the time he filed the writ petition in this Court, his remedy by way of election petition had become barred by time. Reliance in support of this submission has been placed on our judgment in *Tarsem Lal* v. *Buta Ram and others* (6), decided on May 2, 1973. It has been admitted by the learned counsel for the writ petitioner that according to the amendment in rule 2(i) of the said Rules, election includes co-option of a member. The co-option of respondents 4 and 5 could, therefore, be contested by way of election petition as provided in rule 52. The grounds on which an election can be challenged are stated in rule 63, one of them being any material irregularity in the holding of the election. Clearly, there was a material irregularity in holding the co-option of two women members in the meeting held on July 8, 1972. According to rule 40(c) of the Rules, when three candidates had obtained equal number of votes, the election had to be decided by drawing lots and not by referring the case to Government for nomination under section 12-E of the Act. The Convener of the meeting had failed to draw lots and decide the result of the election on that basis. Evidently, the election petition was competent and for the filing of such a petition the time provided in rule 53 is fourteen days from the date on which the result of the election is declared. In the present case, the co-option of women members by nomination under section 12-E of the Act was announced on July 28, 1972, and, therefore, the remedy by way of election petition was barred on the date the writ petition was filed in this Court on August 17, 1972. The writ petition, therefore, deserves to be dismissed on this ground also.

(6) For the reasons given above, we accept this appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition. The parties will, however, bear their own costs throughout.

K.S.K.

(6) L.P.A. No. 135 of 1973 decided on 2nd May, 1973.