

---

*Before Swatanter Kumar & Amar Dutt, JJ*

S. ALWINDERPAL SINGH PAKHOKE,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents*

C.W.P. NO. 9389 OF 2004

12th August, 2004

*Sikh Gurdwaras Act, 1925—Ss. 45 & 47—Sikh Gurdwara Board Election Rules, 1959—Rls. 13(1) & 19(4)—Notification dated 1st June, 2004 issued by the Government of India—Election to the S.G.P.C.—Petitioner defaulter in paying the fee in respect of his daughter to a Medical Institute—Challenge to the acceptance of nomination papers of petitioner—D.C. declaring the petitioner ineligible to contest the election—Chief Commissioner, Gurdwara Elections setting aside the order of D.C.—D.C. directing not to implement orders of the C.C.—C.C. countermanding the election in the said constituency—Rl. 19(4) vests the D.C. with a specific power to entertain and decide a petition presented to him against the order of the R.O.—No specific provisions in the Act or the Rules which specifically give right to an aggrieved party to file an appeal or revision against the order of the D. C. passed in exercise of his powers under Rl. 19(4)—Whether the C.C. has vested with general or residue powers to set aside the order of D.C.—Held, yes—C.C. has powers under section 47-A read with Rule 58—Order of C.C. neither lacks inherent jurisdiction nor excessive jurisdiction—Power of D.C. to declare a person ineligible only in case if he is declared as ‘undischarged insolvent’ and D.C. cannot extend his jurisdiction and embark upon an enquiry in this regard—Order of C.C. countermanding the election is justified and needs no interference—Order of D.C. directing not to implement order of C.C. is without jurisdiction and violates the settled canons of judicial propriety.*

*Held*, that order of the Deputy Commissioner dated 23rd June, 2004 is without jurisdiction and suffers from unwarranted comments. In fact the order lacks inherent jurisdiction. It was not even the allegation of the petitioner before him that the petitioner herein had been declared as an undischarged insolvent by any competent Court

---

or any other appropriate forum. Furthermore, the Deputy Commissioner has specifically noticed in his order that Shri Dilmeg Singh, Secretary of the Shiromani Gurdwara Prabhandhak Committee had issued a 'No Due Certificate' in favour of the petitioner but had refused to accept the summons. In other words, even the 'No Due Certificate' from the S.G.P.C. had been produced on record. In face of such a certificate it probably would be entirely unfair to hold that the petitioner was suffering the ineligibility of being an undischarged insolvent. Secondly, the amounts, even if were due, were from Ms. Kirandeep Kaur and not from the petitioner. It is not disputed before us that at all relevant times Ms. Kirandeep Kaur was capable of entering into contract and was adult. The mere fact that she was daughter of the petitioner in law would not render the petitioner liable for consequences of any default committed by her. It is also not disputed that if the amounts were not paid, the student would not be permitted to continue her medical course. Viewing it from any angle, we fail to understand how could the Deputy Commissioner fastened the consequences of default of the daughter on the father i.e. the petitioner and rendered him ineligible for contesting the election.

(Paras 26 and 32)

*Further held*, that reasoning given by the Chief Commissioner, Gurdwara Elections in his order dated 26th June, 2004 are well founded and are in consonance with the established principles of law. The Chief Commissioner has not attempted to exercise any authority or power which can be termed as legislative in its nature or even contrary to the statutory provisions of the Act. In fact he has attempted to protect free and fair election process. Such would, in any case, be his duty and obligation as enshrined in the provisions of Section 47-A of the Act. Thus, the order of the Chief Commissioner neither lacks inherent jurisdiction nor excessive jurisdiction. In fact the Deputy Commissioner can declare a person ineligible only if he is declared as undischarged insolvent and cannot extent his jurisdiction and embark upon an enquiry in this regard. Taking of such proceedings by the Deputy Commissioner may not be permissible in law in exercise of his powers under Rule 19(4) of the Rules.

(Para 33)

---

*Constitution of India, 1950—Art. 226—Sikh Gurdwaras Act, 1925—Ss. 45 & 47—Election to S.G.P.C.—Rejection of nomination papers of petitioner—Process of the election commenced—Petitioner failing to avail of an alternative remedy—Whether the High Court has jurisdiction to entertain a petition—Held, yes—Jurisdiction of the High Court under Art. 226 is not ousted merely by the fact that petitioner could take recourse to another effective remedy by filing an election petition.*

*Held*, that where-ever a Tribunal and even a Court acts without jurisdiction or in violation of the statutory provisions, such an order would obviously be amenable to writ jurisdiction. The power of judicial review under Article 226 of the Constitution of India can never be completely ousted and that too to an extent that where the error of jurisdiction or illegality is apparent on the face of the records, the Court should not decline to entertain a writ petition. Thus, the present writ petition is not liable to be dismissed for availability of an effective alternative remedy of election petition.

(Paras 17 and 18)

H. S. Mattewal, Senior Advocate with R. S. Riar, Advocate,  
*for the petitioner.*

Daya Chaudhary, Advocate, *for Union of India.*

M. L. Saggarr, Advocate *for respondent No. 2.*

C. M. Munjal, Addl. A.G., Punjab.

S. C. Kapoor, Senior Advocate with Ashish Kapoor, Advocate.

M. S. Khaira, Senior Advocate with Anjali Kukkar, Advocate.

Navkiran Singh, Advocate.

## JUDGMENT

**SWATANTER KUMAR, J.**

(1) Chief Commissioner, Gurdwara Elections, while exercising the powers vested in him under Section 47 of The Sikh Gurdwaras Act, 1925, hereinafter referred to as the Act, read with Rule 13(1) of the Sikh Gurdwara Board Election Rules, 1959, hereinafter referred to as the Rules,—*vide* notification dated 1st June, 2004, notified the election programme declaring the dates on, by or within which various

---

stages of the election in each constituency of the Shiromani Gurdwara Prabandhak Committee (Board), as notified by the Government of India, are to be carried out. In terms of this notification the candidates were required to present nomination papers between 1st to 8th of June, 2004, which were to be scrutinised on 11th June, 2004. The revisions could be preferred between 14th to 15th of June, 2004 against the orders of scrutiny. By 21st June, 2004 the candidates could withdraw their candidature. On 23rd June, 2004 the polling stations were posted. On 11th July, 2004 election was to be held, the results thereof were to be declared on 15th July, 2004. Sardar Alwinder Singh Pakhoke, the petitioner filed his nomination papers to this election on 7th June, 2004. In terms of the notification the nomination papers were scrutinised on 11th June, 2004 and according to the petitioner his nomination papers stood accepted. Shri Joginder Singh, respondent No. 6, filed a revision under Section 19(4) of the Rules before the Deputy Commissioner, Amritsar, making grievance against the acceptance of the nomination papers of the petitioner by the Scrutinising Officer. This revision was preferred by the said respondent on 17th June, 2004. The parties were heard and on 18th June, 2004 the Deputy Commissioner, Amritsar, while exercising the powers vested in him, declared the petitioner ineligible to contest the election of the Board. Aggrieved from this order of the Election Tribunal-cum-Deputy Commissioner, Amritsar, the petitioner filed a petition, being petition No. 3 of 2004 before the Chief Commissioner, Gurdwara Elections, Government of India, at Chandigarh. After hearing the parties, the order of the Deputy Commissioner, dated 18th June, 2004, was set aside and the order of the Returning Officer, dated 11th June, 2004, was restored by the Chief Commissioner,—*vide* his order dated 22nd June, 2004. The order also contained a direction with name of the petitioner in the final list of valid allotment papers and for allotment of symbol as per the claim. However, these directions were not carried out and they were declined by the Deputy Commissioner,—*vide* his order, dated 23rd June, 2004, wherein he had directed the Returning Officer to implement his order, dated 18th June, 2004, as the order of the Chief Election Commissioner was not in consonance with law and further directed that a symbol be not issued to the petitioner.

(2) Keeping in view the order of the Deputy Commissioner, dated 22nd June, 2004, as well as certain other events as noticed by the Chief Commissioner, Gurdwara Elections, in the order dated 26th

---

June, 2004, he countermanded the election in the constituencies No. 93—Tarn Taran, District Amritsar, 108—Dhariwal, District Gurdaspur and 109—Gurdaspur, District Gurdaspur. It will be materially relevant to reproduce, for the purposes of convenience and otherwise, the relevant part of the order, dated 26th June, 2004, as under :—

“Whereas in the wake of the sequence and totality of the circumstances stated above, there is no option but to conclude that the Constitutional Machinery in connection with the Shiromani Gurdwara Parbhandhak Committee election has miserably failed and there are absolutely no chances for holding fair and free election in these three constituencies i.e. Constituencies Nos. 93—Tarn Taran, District Amritsar and 108—Dhariwal, District Gurdaspur and plural constituency 109—Gurdaspur, District Gurdaspur :

Whereas unprecedented grave constitutional crisis have developed due to the above referred conduct of the election machinery on deputation with the Commission under section 47-A of the Act, frustrating the entire process of conducting S.G.P.C. election in a fair, free and peaceful manner.

Now, therefore, by virtue of the powers vested in me under Section 47-A of the Sikh Gurdwaras Act, 1925, and, all other powers enabling me in this behalf, I being of the considered view that there is no escape except to countermand the election in the constituencies Nos. 93—Tarn Taran, District Amritsar, 108—Dhariwal, District Gurdaspur and 109—Gurdaspur (plural) District Gurdaspur hereby countermand with immediate effect, the election in the aforesaid three constituencies till congenial atmosphere for holding the election in these constituencies in a free and peaceful manner is created.

A copy of this order be conveyed to the Government of India in the Ministry of Home Affairs, New Delhi and to the Chief Secretary to Government of Punjab for information.”

---

(3) In this order the Chief Commissioner took note of the conduct of the Deputy Commissioner, Amritsar and other officers and also issued show cause notice to them. It is the case of the petitioner that on 22nd June, 2004 itself the Chief Minister issued a press statement cautioning the Chief Commissioner, Gurdwara Elections, against interfering in the functions of the State. The petitioner claims that there was a complete arbitrariness in the action of the Deputy Commissioner who was acting at the dictum of the State and was interfering in the proper and fair conclusion of the elections.

(4) On these premises the petitioners prays that the order passed by the Deputy Commissioner dated 18th June, 2004 be quashed, the name of the petitioner be ordered to be included in the list of the valid nomination papers, a symbol be allotted to him in relation to election of S.G.P.C. from constituency No. 93 and the order passed by the Chief Commissioner, Gurdwara Elections dated 22nd June, 2004 and the order of the Deputy Commissioner, Amritsar, causing hurdle in implementation thereof be also quashed. Lastly, the petitioner prays that the order of the Chief Commissioner, Gurdwara Elections, dated 26th June, 2004, Annexure P/8 to the writ petition, countermanding the election in that constituency be quashed and he be directed to hold election in that constituency. The challenge to the impugned orders passed by different authorities, by the petitioner is purely on legal grounds as well as on mis-interpretation of the rules in light of the facts and circumstances of the case.

(5) The main arguments raised on behalf of the petitioner are :—

- (a) The order dated 18th June, 2004 passed by the Deputy Commissioner, Amritsar, is apparently beyond the scope and ambit of the provisions of Rule 19(4) read with Section 45 of the Act. In support thereof it is contended that the petitioner had earned no disqualification under the provisions of Section 45 (i) (ii) of the Act, as such his nomination could not be rejected under Rule 19(1) (a) by the Deputy Commissioner while exercising his power under Rule 19(4) of the Rules, as he was not as undischarged insolvent.

- 
- (b) The order of the Deputy Commissioner dated 23rd June, 2004. Annexure P/6 to the writ petition, is without jurisdiction, suffers from the vice of arbitrariness and in fact is a glaring example of judicial or administrative impropriety.
  - (c) That the orders of the Deputy Commissioner are based upon incorrect facts, misappreciation of facts and law and are opposed to the very concept of pure and fair election process.
  - (d) The order countermanding the elections and their postponement by indefinite period is contrary to law and as such the order passed by the Chief Commissioner, Gurdawara Elections, dated 26th June, 2004, is liable to be quashed.

(6) Two different written statements have been filed on behalf of distinct respondents. Where, respondents No. 1, 2 and 4 have filed a common written statement through the Deputy Commissioner, Amritsar, there written statement on behalf of Chief Commissioner, Gurdwara Elections has also been filed.

(7) In the written statement filed on behalf of respondents No. 1, 2 and 4, a preliminary objection has been taken that the present writ petition is not maintainable as the remedy for the petitioner is to file an election petition against the orders of the concerned forum. According to the respondents, the petition is an abuse of the process of law. It is also averred that the petitioner had earned the disqualification and as such was not eligible to file his nomination. The order of the Returning Officer accepting nomination of the petitioner was totally incorrect in law and on facts. Sri Guru Ram Dass Institute of Medical Science and Research, Amritsar, has been established by the Shiromani Gurdwara Prabhandhak Committee and the Institute is being managed by the aforesaid Committee. During the year 2000-2001 under the N.R.I. Scheme, the daughter of the petitioner namely Bibi Kirandeep Kaur was admitted to the said course. A total sum of Rs. 35.53 lacs was to be paid and out of this amount the petitioner only paid Rs. 1.10 lacs as first instalment. Thereafter, the petitioner did not make the remaining payment. The petitioner being the President of S.G.P.C. misused his status and became a defaulter of lacs of rupees and as such he has become an undischarged insolvent and was not eligible to contest the election. Other facts are not in dispute. It is stated that after issuing notice to the authorities concerned, the Deputy

---

Commissioner rightly exercised his jurisdiction under Rule 19(4) of the Rules and rejected the name of the petitioner. The respondents are also supporting the order of the Deputy Commissioner dated 23rd June, 2004,—*vide* which he had passed comments upon the order of the Chief Commissioner, Gurdwara Elections, as it was based on the legal advice received from the office of Advocate General, Punjab. To this a specific affidavit has been filed by the Deputy Commissioner. Further more, it is also averred that the petitioner was an undischarged insolvent within the mischief of Section 45(1) (ii) of the Act and the order of the Deputy Commissioner is valid. In fact the Chief Commissioner, Gurdwara Elections had no jurisdiction to pass the order, dated 22nd June, 2004 which is *void abinitio* having no sanctity in the eyes of law and the same is a nullity. Reference has been made in the written statement itself to the judgments in the case of **A.C. Jose versus Sivan Pillai and others (1)**, **Lakshmi Charan Sen and others versus A.K.M. Hassan Uzzaman and others (2)** and **Union of India versus Association for Democratic Reforms and another (3)**.

(8) In the written statement filed on behalf of the Chief Commissioner, Gurdwara Elections it has been averred that the Deputy Commissioner acted in violation of known canons of law. The petitioner could not be declared as undischarged insolvent and the order passed by the Deputy Commissioner was ineffective in law and without any basis. The Chief Commissioner exercised his powers under Section 47A of the Act in passing the order, dated 22nd June, 2004 and as the Deputy Commissioner completely disobeyed the orders and created much obstruction in completion of the election process, the Chief Commissioner was left with no alternative but to issue show cause notice to the Deputy Commissioner dated 23rd June, 2004 and had also recommended the transfer of the Deputy Commissioner, Amritsar. In view of the fact that the Government did not adhere to the instructions of the Chief Commissioner Gurdwara Elections and the fact that there were specific and general obstructions raised by the Deputy Commissioner in completion of the election process, the Chief Commissioner, Gurdwara Elections, passed the order countermanding election in this constituency. We may also notice that in reply to the

---

(1) AIR 1984 S.C. 921

(2) AIR 1985 S.C. 1233

(3) AIR 2002 S.C. 2112



---

letter written by the Chief Commissioner, Gurdwara Elections the Government had supported the orders passed by the Deputy Commissioner and had, for reasons stated therein, declined to effect transfer of the Deputy Commissioner and other officers, as according to the letter of Chief Secretary, Punjab the acts complained were of not such glaring acts of insubordination and misconduct on the part of these officers which would require their transfer and their transfers were unwarranted. It was also stated that transferring them at this juncture when the election process is already under-way could be counter productive.

(9) On the above pleadings, the arguments raised by learned counsel appearing for different respondents can be summed up as under :—

- (i) The present writ petition is not maintainable as the petitioner has equally efficacious alternative remedy of filing an election petition under the provisions of the Act as the process of election has already commenced.
- (ii) The order of the Deputy Commissioner, dated 18th June, 2004 is in exercise of the powers vested in him under Rule 19(5) and is an order which is final and not questionable in any case before the Chief Commissioner, Gurdwara Elections.
- (iii) The order of the Chief Commissioner, Gurdwara Elections dated 26th June, 2004 is entirely without jurisdiction and there is no power vested in the said authority to disturb the order of the Deputy Commissioner passed under Rule 19(4) and rejecting order accepting a nomination.
- (iv) The order of the Deputy Commissioner dated 23rd June, 2004 is justifiable and has been passed in consonance with the principles of law. The order of the Chief Commissioner, Gurdawara Elections, dated 26th June, 2004 being without jurisdiction, is a nullity and as such could be ignored by all concerned including the Deputy Commissioner. As such in law the Deputy Commissioner has not committed any error. Of course, the language of the order is not desirable.

- 
- (v) The non-payment of the dues by the daughter of the petitioner makes him a defaulter while attracting provisions of Section 45(1)(ii) and even a 'Patit' in terms of the order of the Deputy Commissioner. As such the petitioner has no enforceable right to the reliefs claimed in the writ petition.
- (vi) The respondents do not support the order of countermand passed by the Chief Commissioner, Gurdawara Elections, of this constituency (However, we may notice that none of the respondents has filed any writ petition challenging the said order dated 26th June, 2004 passed by the Chief Commissioner, Gurdawara Elections, countermanding the election).

(10) Having noticed the rival contentions raised by the learned counsel appearing for the respective parties and the basic facts pleaded by them, now we will proceed to discuss our conclusions on the matters in issue.

**Maintainability of the writ petition :**

(11) Learned counsel appearing for the respondents vehemently contended that the writ petition is not maintainable in view of the statutory alternative and efficacious remedy being available to the petitioner under the relevant laws, by filing an election petition. In this regard reliance was placed upon Rule 3 of the Sikh Gurdwaras Election Enquiries Rules, 1925, under which a candidate to an election from a constituency has a right to file an election petition once the process of election has begun. It is also the submission of the respondents while relying upon the judgments of the Hon'ble Supreme Court in the cases of **Mohinder Singh Gill and another versus The Chief Election Commissioner, New Delhi and others (4)** ; **S.T. Muthusami versus K. Natarajan and others (5)**; **Lakshmi Charan San and others versus A.K.M. Hassan Uzzaman and others (supra) and Manda Jaganath versus K.S. Rathnam and others (6)** that the election process had commenced and even if the nomination filed

---

(4) AIR 1978 S.C. 851

(5) AIR 1988 S.C. 616

(6) JT 2004 (5) S.C. 8

---

by the petitioner has been rejected correctly or otherwise, the appropriate remedy for the petitioner is to file an election petition. While relying upon the judgment of the Supreme Court in **Ram Phal Kundu versus Kamal Sharma (7)** it is also contended that once the remedy is provided to file an election petition after the election is over, the petitioner cannot invoke the writ jurisdiction of other remedy at intermediate stage.

(12) In order to meet this argument of the respondents and to contend that the writ petition filed by the petitioner is maintainable and in fact is the appropriate remedy available to the petitioner, the counsel for the petitioner relied upon the judgments of the Supreme Court in the case of **State of U.P. versus Mohammad Nooh (8)**; **Mewa Singh and others versus Shiromani Gurdwara Prabhandhak Committee (9)** and **Election Commission of India versus Ashok Kumar and others (10)** in support of his contention. The counsel also relied upon a Full Bench judgment of this Court in the case of **Lal Chand versus State of Haryana (11)** and another judgment of a Division Bench of this Court in the case of **Nachhattar Singh and another versus State of Punjab and others (12)** to argue that inspite of availability of an alternative remedy of an election petition. The jurisdiction of the High Court to interfere is not ousted. The argument is that there is no specific bar or prohibition stated in regard to various election processes under Article 243(2)(g) relating to elections of Municipalities as well as under Article 329 which would by use of specific language oust the jurisdiction of the High Court under Article 226 of the Constitution of India.

(13) The most pertinent aspect of the present case is that the Chief Commissioner, Gurdwara Elections,—*vide* his order dated 26th June, 2004 countermanded the election of three constituencies including Constituency No. 93 in District Tarn Taran, subject-matter of the present writ petition. The order of countermand has not been challenged by any of the respondents by filing any writ petition, as

---

(7) 2004 (2) S.C.C. 759

(8) AIR 1958 S.C. 86

(9) 1999 (2) S.C.C. 60

(10) 2000 (8) S.C.C. 216

(11) 1988 (3) R.C.R. 255

(12) 1993 PLJ 428

---

such the respondents can hardly question the correctness or otherwise of the said order in the present writ petition. As far as the petitioner is concerned, he has half-heartedly challenged the validity or otherwise of the order or countermand passed by the Chief Commissioner, Gurdwara Elections. Shortly, we would proceed to discuss the legality and validity or otherwise of the said order and for those reasons we are of the considered view that the order of countermand cannot be stated to be illegal and in any case, in the peculiar facts and circumstances of the present case, can hardly be interfered with, as it has not caused any prejudice to the petitioner and for that matter even to the respondents. The election was countermanded,—*vide* order dated 26th June, 2004 as a result whereof the State accepted the said order and no election was held in the three constituencies. As such the process of election has been reverted back to the stage at which it was at the time of passing of the order i.e. acceptance/rejection of the nomination papers. In other words, even the process of election has not entered its significant area of declaration of the list of valid nomination, allotment of symbols, casting of votes, counting thereof and declaration of result.

(14) We have to apply the principles enunciated by the Supreme Court and Larger Bench of this Court as afore-referred in light of the above undisputed facts. It can hardly be stated as an absolute rule of law that in all cases where the process of election has commenced by means of issuance of a notification simplicitor, the jurisdiction of the High Court under Article 226 of the Constitution of India shall stand ousted. No doubt in some of the afore-referred cases it has been held by the Hon'ble Supreme Court that election petition is an effective alternative remedy and the High Court should not interfere at intermediary stage. In a very recent judgment in the case of Manda Jaganath (*supra*) the Hon'ble Supreme Court while clarifying the above principles and emphasizing the specific prohibition in Article 329(b) of the Constitution of India observed that election petition to be presented before the forum provided under the Representation of Peoples Act is the proper form and could be invoked by aggrieved person within the provisions of that Act. However, the following conclusions of their Lordships can be usefully referred to at this stage :—

“Of course, what is stated by this Court herein above is not exhaustive of a returning officer's possible erroneous actions which are amenable to correction in the writ

---

jurisdiction of the courts. But the fact remains such errors should have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by an erroneous order conduct of the election is not hindered then the courts under Article 226 of the Constitution should not interfere with the orders of the returning officers remedy for which lies in an election petition only.”

(15) From the above decision it is clear that jurisdiction of the High Court under Article 226 of the Constitution of India is not ousted or displaced merely by the fact that complainant party could take recourse to another effective remedy by filing an election petition, probably this would have to be examined keeping in view the facts and circumstances of each case. Further more, in the case of Ashok Kumar (*supra*) a Three Judges Bench of the Hon'ble Supreme Court clearly enunciated the principles which will govern the different domains controlled for invocation of judicial remedy during the pendency of election as well as the sphere entirely controlled by filing the election petition. Their Lordships held as under :—

“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 that analysis made by us hereinabove :

xx

xx

xx

- (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 of 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 through 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."

(16) Wherever a Tribunal and even a Court acts without jurisdiction or in violation of the statutory provisions, such an order would obviously be amenable to writ jurisdiction. The power of judicial review under Article 226 of the Constitution of India can never be completely ousted and that too to an extent that where the error of jurisdiction of illegality is apparent on the face of the records, the Court should not decline to entertain a writ petition. In the case of Ashok Kumar (*supra*) it has been stated that the judicial intervention at initial stage if is likely to interrupt, obstruct or protract the election proceedings, then it should be deferred. The Court must be very circumspect and act with caution while entertaining any election dispute. Subject to these limitations, the orders of the Election Commission are open to judicial review on the well settled parameters and particularly, when a case is made out that such authority has acted *mala fide* or arbitrary or even in breach of law.

(17) In the present case a specific stand has been taken by the petitioner that order of the Deputy Commissioner upsetting the order of the Returning Officer and accepting nomination papers of the petitioner is in complete breach of relevant provisions of law and is

*ex-facie* arbitrary. The order of the Deputy Commissioner criticising and directing to his subordinates by passing the order dated 23rd June, 2004 that order of the Chief Commissioner, Gurdwara Elections be not implemented is a matter which would render his order amenable to writ jurisdiction. To add to all this, the order passed by the Chief Commissioner countermanding the election has rendered this question academic to a large extent. In its wisdom the State Government has acted upon that order and did not challenge the same. By passing conflicting orders, a stalemate has been created in the progress and completion of the election process. The hindrance created by different authorities which compelled the Chief Commissioner to pass an order countermanding the elections further necessitates intervention by this Court to sustain the rule of law and expeditious conclusion of the election process in these constituencies.

(18) In view of the above reasoning, we hold that the present writ petition is not liable to be dismissed for availability of an effective alternative remedy of election petition. The arguments of the respondents in this regard are, thus, rejected.

**Whether the order of the Chief Commissioner, Gurdwara Elections dated 26th June, 2004 calls for any interference by this Court and also whether the order passed by the Deputy Commissioner, dated 23rd June, 2004 is sustainable in law ?**

(19) The detailed facts giving rise to this controversy have already been noticed by us above, Suffice it to note at the cost of repetition that this order is the result of definite conflict of opinion and activity between the Chief Commissioner, Gurdwara Elections on the one hand and the Deputy Commissioner, Amritsar on the other. The said order has not been assailed by any of the respondents to the petition by filing an independent writ petition. The petitioner has challenged the said order of countermand half-heartedly. We are not very certain as to the correctness of the observations made in the order by the Chief Commissioner that "there was unprecedented grave constitutional crisis which have developed" due to the conduct of the election machinery on deputation with the Commission and it was frustrating the entire process of conducting Shiromani Gurdwara Prabhandhak Committee's elections in a fair, free and peaceful manner. The other facts noticed in the order are record based. Reference has

---

been made to the conduct of the Deputy Commissioner and other staff which was on deputation to the Commission for holding of elections and even reference has been made to the comments made by the Chief Minister of the State on 25th June, 2004 in a Press Conference. We would have expected the State authorities as well as the Election Commission to maintain a better harmony and achieve the object of fair and free election in an expeditious manner.

(20) There can be no doubt that under the provisions of Section 47-A of the Act, the superintendence, direction and control of the election process is vested in the Sikh Gurdwara Election Commission. Under sub-section (3) of Section 47-A the staff made available to the Commission for conduct of elections under the provisions of the Act shall be deemed to be on deputation to the Chief Commissioner, Gurdwara Elections. Once the staff was on deputation to the Election Commission, then they are under the direct control of the said Election Commission and are expected to discharge their duties and functions with utmost regard to the orders passed by the Chief Commissioner, Gurdwara Elections-cum-Gurdwara Election Commission. The Deputy Commissioner, in our opinion, ought not to have passed the order dated 23rd June, 2004 adversely commenting upon the order passed by the Chief Commissioner, Gurdwara Elections and prohibit its implementation in accordance with law. It would have been more appropriate for the said Deputy Commissioner as part of the Executive looking after the interests of the State to challenge the said order in accordance with law before the competent Court in the event the State or any other authority was aggrieved from the order of the Chief Commissioner, Gurdwara Elections and more particularly when the Deputy Commissioner himself would be exercising the powers under Rule 19(4) of the Rules as part and parcel of the election machinery provided under the provisions of the Act. It was not even proper for the Deputy Commissioner to express his views in the order dated 23rd June, 2004 in a manner which certainly need to be checked in no uncertain terms, in the interest of judicial administration and harmony in administrative hierarchy. The following part of the said order was entirely uncalled for :—

“Therefore, if the decision of the Gurdwara Election Commission is implemented it will be a violation of the decision of the Hon’ble Supreme Court. It may even



---

constitute contempt of Court. The decision dated 18th June, 2004 of the undersigned be implemented and the election symbol be not allotted to Sh. Alwinder Pal Singh Pakhoke.”

(21) The stated precepts of law in regard to ignoring or disobeying an order which may be alleged to have been passed without jurisdiction or may be non-est in the eyes of law have undergone a considerable change by recent pronouncements of the Hon'ble Supreme Court. It is necessary to maintain judicial propriety and discipline in regard to not only pronouncement of orders, but even in regard to implementation of the orders passed by the higher Tribunals or Courts to which the authorities or Courts are subordinate. Propriety demands that the Deputy Commissioner should have either implemented the order of the Chief Commissioner Gurdwara Elections, which is stated to have been passed by him while exercising the powers under Section 47-A of the Act read with Section 59 of the Rules, or challenge the same in accordance with law. It will be travesty of justice and hierarchy in Tribunals if every forum may be even holding a duel status is permitted to derogatorily comment on the orders of the higher forum. In the case of **Sultan Sadik versus Samjay Raj Sabha and others**, (13) the Hon'ble Supreme Court took the view that an order even if not made in good faith is still an act capable of legal consequences. Unless proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeachable of orders. Once orders are passed and are accepted not only that but are even acted upon by the state as in the present case, the question of its being treated by some authorities as void or a nullity would be destructive of the very scheme of the provisions of the Act. Even in the case of **State of Kerala versus M.K. Kunhikanna Nambiar Manjeri Manikoth Naduvil (dead) and others**, (14) it was held that even an alleged voted order would be effective *inter se* the parties till it was set aside by the higher Court of competent jurisdiction.

(22) On facts of these cases we are of the view that the parties before the Chief Commissioner Gurdwara Election including the State Government did not leave much choice with the Commissioner but to countermand the elections. The request of the Commission for transfer

---

(13) 2004 (2) S.C.C. 377

(14) AIR 1996 S.C. 906

---

of the Deputy Commissioner and other was specifically declined by the State Government which added further impediment in the progress of the election process. We are compelled to observe that all this could have been avoided by all concerned quarters by exercising the jurisdiction vested in them with complete sense of responsibility in a circumscribed manner.

(23) During the course of arguments, the Deputy Commissioner had filed an additional affidavit explaining his position that he had acted on legal advice and he has also tendered an apology before the Court clearly stating that he holds the office of the Chief Commissioner in highest esteem and had no intention to show any disrespect or disregard to the order of the Chief Commissioner Gurdwara Elections. In view of the affidavit filed by the officer we would prefer to drop the matter rather than issue any further directions in that regard or direct any other action. In substance we are unable to accept the correctness or otherwise of the order passed by the Deputy Commissioner dated 23rd June, 2004 and would quash the same as being without jurisdiction and in violation to the settled canons of judicial propriety. He as well as the Chief Commissioner are discharging quasi-judicial functions of determining the rights and liabilities of the activities under the provisions of this Act. Further more we do not find any error and in fact nothing has been pointed out which would justify interference by this Court in the order of countermanding the elections dated 26th June, 2004 by the Chief Commissioner Gurdwara Elections. However, we would be issuing certain directions even in this regard at the end of the judgment.

**Correctness and/or validity of the order dated 22nd June, 2004 passed by the Chief Commissioner Gurdwara Elections, in light of the submissions made before us.**

(24) Normally we would have avoided any discussion on the validity or otherwise of the order dated 22nd June, 2004 as none of the affected parties have challenged that order. However, discussion in this regard has been necessitated for the reason that the petitioner has specifically claimed benefit of this order and prayed that the directions contained in this order be ordered to be implemented by the concerned respondents. We may also notice here that respondents have raised some objections with regard to the legality of this order in their written statement.

---

(25) *Vide* notification dated 1st June, 2004 Chief Commissioner, Gurdwara Elections has notified the election programme of elections to Shiromani Gurdwara Prabhandhak Committee. On 11th June, 2004 the nomination papers were scrutinised by the Returning Officer, who, in presence of the parties, accepted the nomination papers of the petitioner. Joginder Singh respondent No. 6 filed a revision before the Deputy Commissioner under Rule 19(4) of the Rules challenging the acceptance of nomination papers of the petitioner. The Deputy Commissioner,—*vide* his order dated 18th June, 2004 declared the petitioner ineligible to contest the election to the Board. The grounds stated by the Deputy Commissioner for passing the order appear to be two-fold— one that the petitioner was an undischarged insolvent and secondly, was a 'Patit' within the meaning of Section 45(i), (ii) and (iii) respectively. Against this order the petitioner had preferred a petition before the Chief Commissioner, Gurdwara Elections, who by a detailed order and while exercising the powers alleged to have been vested in this authority under Section 47-A of the Act read with Rule 58 of the Rules determined that the Deputy Commissioner had not exercised his jurisdiction in accordance with law and there was an apparent in the impugned order. It recorded a finding that the petitioner could not be termed as an undischarged insolvent and finally directed while setting aside the order of the Deputy Commissioner that the nomination papers submitted by the petitioner to be treated as valid and to be incorporated in the final list of valid nomination papers. This order of the Chief Commissioner was not given effect to by the Deputy Commissioner and other subordinates as already noticed by us above.

(26) We may reiterate at the very outset of the discussion of this issue that order of the Deputy Commissioner dated 23rd June, 2004 is without jurisdiction and suffers from unwarranted comments. In fact the order lacks inherent jurisdiction. Thus, we have to examine the validity and merits thereof the order dated 22nd June, 2004, while completely ignoring the order of the Deputy Commissioner dated 23rd June, 2004. The order passed by the Deputy Commissioner on 18th June, 2004 was set aside by the Chief Commissioner. The jurisdiction as well as the reasoning given by the said authority is in question

---

before us. There is no dispute that nomination papers of the petitioner were accepted by the returning officer though on revision the Deputy Commissioner had set aside the order of the returning officer dated 11th June, 2004 with the obvious result that nomination papers filed by the petitioner were not accepted and his name was not included in the final list of the candidates to whom symbol was to be issued. We have already noticed the content of the order and it may be appropriate to examine the merit of the reasons given by the Deputy Commissioner even independent of the orders passed by the Chief Commissioner Gurdwara Elections. According to this order the nomination papers of the petitioner were liable to be rejected under Section 41(i)(ii) of the Act as the petitioner was not eligible to contest the elections. However, in the discussion of the order the Deputy Commissioner has relied upon two aspects and grounds which would render the petitioner ineligible for contesting such an election. There is no dispute before us that the Deputy Commissioner had the jurisdiction to pass an order upon revision under Rule 19(4) of the Rules. As such the basic jurisdiction of the Deputy Commissioner to deal with such matters has not been questioned and rightly so. Rule 19(4) of the Rules vests the Deputy Commissioner with a specific power to entertain and decide a petition presented to him against the order of the returning officer under sub-rule (3) of Rule 1 of the Rules. The Chief Commissioner while up-setting the order of the Deputy Commissioner,—*vide* his order dated 22nd June, 2004 relied upon Section 47-A of the Act read with Rule 58 of the Rules. It is also an undisputed case before us that there is no specific provisions in the Act or the Rules which specifically gives right to an aggrieved party to file an appeal or revision against the order of the Deputy Commissioner passed in exercise of his power under Rule 19(4) of the Rules. The order of the Deputy Commissioner has been given a kind of finality under sub-rule (5) of Rule 19. This concept of finality has been emphasized by learned counsel appearing for the respondents while pressing his arguments for quashing the order of the Chief Commissioner, Gurdwara Elections. Thus, first and fore-most question that requires attention of the Court is whether general or residue powers vested in the Commission under Section 47-A of the Act read with Rule

---

58 of the Rules can be exercised to correct an error in the order of the Forums or Tribunals working under an on deputation with the Chief Commissioner under the provisions of this Act.

(27) Section 47-A of the Act was introduced,—*vide* notification dated 15th December, 1995. The language of this provision is quite para-materia to the language of Article 324 of the Constitution of India. The obvious object of this Section of the Act is to vest powers of wide magnitude and scope in the Chief Commissioner, Gurdwara Elections. It is intended to give comprehensive complete control, superintendence and powers to issue directions over the entire election process. The election process cannot be given a meaning so as to curtail or limit its application to a part of the entire process either by implication or otherwise. The Commission will be well within its jurisdiction to exercise the powers vested in it right from the preparation of the electoral rolls to the declaration of result under the provisions of this Act. Hon'ble the Supreme Court in the case of **Union of India versus Association for Democratic Reforms, (supra)** explained the term "election" as well as described Article 324 of the Constitution as a reservoir of power to act for the abode purpose of having free and fair election. The Commission can issue necessary directions and fill up the lacuna or vacuum till there is legislation on the subject. Reference can be made to the judgment of **N.P. Ponnuswami versus The Returning Officer, Namakkal Constituency, Namakkal, Salem District and others, (15)**.

(28) The above precepts governing the election law in our country clearly show that there are various important stages in the process of election which may require issuance of directions by the Commission to correct the state of affairs which may be prejudicial to the parties as well as being not in conformity with the enunciated law and particularly when there is no specific provision to providing a remedy at that stage. It is a settled principle of law that recourse to residue or general powers can be taken by the authorities concerned only to aid the object of the Act for supplying any vacuum or lacuna in the legislative scheme of the Act and of course, cannot be exercised

---

contrary to the statutory provisions. In the present case the order of the Deputy Commissioner dated 18th June, 2004 was apparently not in conformity with the provisions of the statute and as such recourse to the wide powers vested in the Commission cannot be said to be erroneous or illegal. Another provision that is Rule 58 of the Rules further contemplates that if any dispute or a question arises regarding the interpretation of the Rules otherwise than in connection with the election petition, that has to be referred to the said authority, who may decide the same himself or refer the matter to the Central Government. Such decision has been given finality under this Rule. Role of an arbiter in addition to its quasi—judicial functions has also been given to the Chief Commissioner Gurdwara Elections. His views and decision taken under Rule 58 attains finality and it has to be given its due weightage. If the order of the Deputy Commissioner was suffering from an error of law and misapplication of statutory provisions, in that event it will not be appropriate to conclude that Chief Commissioner Gurdwara Elections is vested with no power of superintendence to correct the same during the course of election process.

(29) A person or authority to whom an extent order made by a superior Tribunal or Court applies, has a duty to obey it, notwithstanding that it is made without jurisdiction or is otherwise defective. The jurisdiction of a Court is its area of competence and authority and it derived directly or indirectly from the provisions of the law constituting such Tribunal. An interpretative presumption affords guidance arising out of the nature of legislation as to the Legislature's *prima—facie* intention regarding the legal meaning of the enactment (Reference Francis Bennion Third Edition). In the light of these principles which have been adopted by the Indian Courts while pronouncing different judgments, applied to the facts of the present case, clearly show that there is no prohibition, specific or by necessary implication, which can logically obstruct exercise of powers by the Chief Commissioner Gurdwara Elections under Section 47-A of the Act read with Rule 58 of the Rules to correct errors of law and jurisdiction. Certainly this power cannot be termed as a regular feature to be adopted in all cases without distinction. Every case would have to be examined on its own merits to determine the application of such power. Certainly the order of the Deputy Commissioner, as already discussed by us, suffers from a patent error of law and jurisdiction. We would express in no uncertain terms that the powers exercisable

---

by the Chief Commissioner Gurdwara Elections under Section 47-A of the Act and/or Rule 58 of the Rules, is not in any case equitable to the powers of an Appellate or a Revisional Court. Re-course to this power has to be restricted to such exceptional cases where the orders or actions questioned of the lower forum suffers from patent error of law or jurisdiction.

(30) The nomination papers of the petitioner which were accepted by the Returning Officer were rejected by the Deputy Commissioner, as already noticed, on the strength of Section 45(i) (iii) of the Act. Apparently, that is the ground given. However, the Deputy Commissioner has made a reference in his order, to the petitioner being a 'Patit' which itself is another ground under Section 45(i)(iii) which renders a candidate ineligible for election as Member of the Board. The Deputy Commissioner declared the petitioner as undischarged insolvent and thus, ineligible. The premises on such declaration made was the daughter of the petitioner, namely, Bibi Kirandeep Kaur, who had been admitted to the M.B.B.S. Course under the N.R.I. scheme and was required to pay Rs. 35.53 lacs, while only first instalment of Rs. 1.10 lacs was paid and later amounts were due. The petitioner was stated to be a trustee of Sri Guru Ram Dass Charitable Hospital and, thus, had misappropriated the funds. This reasoning patently suffers from legal infirmities. Firstly it was for the Deputy Commissioner to declare the petitioner as an undischarged insolvent. Such proceedings could be taken only under the provisions of The Provincial Insolvency Act, 1920. The Hon'ble Supreme Court in the case of **Thampanoor Ravi versus Charupara Ravi and others**, (16) held as under :—

“In the present case, as we have explained earlier the scheme of the provisions of the Insolvency Act, the exclusive jurisdiction to deal with any question relating to insolvency could be adjudicated upon only by the Court constituted under that Act. In such a situation, it would not be possible to hold that the High Court had, while dealing with an election petition jurisdiction to decide a question as to whether a person is an undischarged insolvent or not. Admittedly, in this case, there is no such adjudication. Hence the High Court could not declare the appellant to be an “undischarged insolvent.”

---

(31) In the light of this judgment, it is nowhere necessary for us to discuss this point in any further elaboration. Suffice it to note that the Deputy Commissioner lacked inherent jurisdiction to determine such a question. It was not even the allegation of the petitioner before him that the petitioner herein had been declared as an undischarged insolvent by any competent Court or any other appropriate forum. Further more, the Deputy Commissioner has specifically noticed in his order that Shri Dilmeg Singh, Secretary of the Shiromani Gurdwaras Prabhandhak Committee had issued a 'No Due Certificate' in favour of the petitioner but had refused to accept the summons. In other words, even 'No Due Certificate' from the S.G.P.C. had been produced on record. In face of such a certificate it probably would be entirely unfair to hold that the petitioner was suffering the ineligibility of being an undischarged insolvent. Secondly, the amounts, even if were due, were from Ms. Kirandeep Kaur and not from the petitioner. It is not disputed before us that at all relevant times Ms. Kirandeep Kaur was capable of entering into contract and was adult. The mere fact that she was daughter of the petitioner in law would not render the petitioner liable for consequences of any default committed by her. It is also not disputed that if the amounts were not paid, the student would not be permitted to continue her medical course. Viewing it from any angle, we fail to understand how could the Deputy Commissioner fastened the consequences of default of the daughter on the father i.e. the petitioner and rendered him ineligible for contesting the election.

(32) The arguments with regard to 'Patit' were raised, but we find that no definite finding has been recorded by the Deputy Commissioner in his order in this behalf probably rightly so. Even if the averments made before the Deputy Commissioner were assumed to be of some significance, still on those basis the petitioner could not be declared as 'Patit' within the preview and scope of Section 45(i)(iii) of the Act.

(33) The reasoning given by the Chief Commissioner Gurdwara Elections in his order dated 26th June, 2004 are well founded and are in consonance with the established principles of law. The Chief Commissioner has not attempted to exercise any authority or power which can be termed as legislative in its nature or even contrary to



---

the statutory provisions of the Act. In fact he has attempted to protect free and fair election process. Such would, in any case, be his duty and obligation as enshrined in the provisions of Section 47-A of the Act. Thus, the order of the Chief Commissioner neither lacks inherent jurisdiction nor excessive jurisdiction. In fact the Deputy Commissioner can declare a person ineligible only if he is declared as undischarged insolvent and cannot extent his jurisdiction and embark upon an enquiry in that regard. Taking of such proceedings by the Deputy Commissioner may not be permissible in law in exercise of his powers under Rule 19(4) of the Rules.

(34) In view of our above reasoning, we are of the considered view that the order passed by the Deputy Commissioner dated 23rd June, 2004 is *Judicium a non suo judice datum nullium est momenti*. It is an order which suffers from lack of inherent jurisdiction and even transgresses permissible principles of judicial discipline and limitations. Thus, the order is hereby set aside. The orders passed by the Chief Commissioner Gurdwara Elections dated 22nd June, 2004 and 26th June, 2004 do not suffer from any patent error of law which would justify intervention by this Court under Article 226 of the Constitution of India. The writ petition of the petitioner is allowed in the above terms but with a specific direction to the Chief Commissioner Gurdwara Elections and the State Government of Punjab to ensure that free and fair election process is concluded in relation to this constituency, as early as possible, and in any case not later than three months from the date of pronouncement of this judgment. The State Government and the Chief Commissioner Gurdwara Elections essenatially must work in harmony to achieve the real object of holding free and fair elections to the Board and they must ameliorate discharge of their functions with mutuality, respect and acting in conformity to the provisions of the Act. We would express a pious hope that all possible attempts would be made by all concerned to overlook the trivial differences of opinion in the past for the sake of achieving the ultimate real object of a democraxy to hold a free and fair election in conformity with the basic rule of law.

(35) The writ petition is, accordingly, disposed of in the above terms, leaving the parties to bear their own costs.