(1993) 07 CAL CK 0035

Calcutta High Court

Case No: None

In Re: Radhapada Biswas and 11 Ors.		APPELLANT
	Vs	
		RESPONDENT

Date of Decision: July 2, 1993

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227, 329(b)
- West Bengal Panchayat Act, 1973 - Section 204

Citation: 98 CWN 75

Hon'ble Judges: Altamas Kabir, J

Bench: Single Bench

Judgement

Altamas Kabir, J.

These matters have been taken up together for hearing as they involve common questions of law and the reliefs prayed for therein will to a large extent be dependant on the answers to the said questions. Furthermore, the Court has also benefitted from the assistance of the several counsels appearing on behalf of the respective parties to arrive at a decision on the issues involved.'' These writ applications are the aftermath of the Panchayat elections conducted in the State on 30th May, 1993, and the challenges thrown to the conduct of the elections in some of the constituencies, though varied are more or less uniform in nature. Some of the cases relate to the alleged refusal of the Presiding Officer or the Returning Officer to entertain the applications alleged to have been made for recounting of votes, while others relate to directions given by the State Government for holding repoll. In some such cases, the election results had been declared and Certificates of Election in Form 24 had already been issued to the successful candidates when repoll was ordered.

2. The factual aspect apart, the common question of law involved in the majority of these cases is whether the High Court could or should at all interfere in these matters under Article 226 of the Constitution when an alternate and presumably efficacious remedy has been provided for u/s 204 of the West Bengal Panchayat Act, 1973. Accordingly, this question will have to be decided first, before we proceed to the other points involved in each of the cases.

3. Appearing on behalf of some of the writ petitioners, Mr. J. Islams submitted that, although, the facts involved in the different cases being heard together may differ, some common questions of law emerge which will have a bearing in the disposal of the various writ petitions filed challenging different aspects of the Panchayat election recently held in the State.

4. Mr. Islam submitted that one of the facets on the basic question relating to the competence of the High Court to interfere in election disputes under Article 226 of the Constitution when a specific provision in that regard had been made in Section 204 of the West Bengal Panchayat Act, 1973, is the High Court''s power to interfere in writ jurisdiction in cases of violation of statutory provisions by the executive authorities in the discharge of their statutory duties, Mr. Islam submitted that in the case of Radhapada Biswas, despite an objection beign made by the counting agent of the candidate to the Presiding Officer, Booth No. 86/92. Dhakuria Zilla Parishad Constituency, on 31st May, 1993, regarding violation of the provisions of Rules 65 and 66 of the West Bengal Panchayat (Election) Rules, 1974, hereinafter referred to as the "said Rules", relating to the manner in which the counting sheets had been forwarded unsealed to the Returning Officer, no steps had been taken by the concerned authority although, the election stood vitiated in view of such irregularity.

5. Mr. Islam submitted that in such circumstances involving a departure from the statutory provisions by the authorities, who were themselves creatures of such statute, the High Court would be completely justified in invoking its powers under Article 226 of the Constitution to remedy such breach. Mr. Islam urged that such remedy would be available to a litigant, notwithstanding the specific provisions made in a statute for remedial measures against arbitrary and unfair acts on the part of the statutory authorities, as the powers of the High Court under Article 226 of the Constitution could not be fettered by statutory provisions.

6. In support of his aforesaid contention, Mr. Islam referred to and relied upon various decisions of the Supreme Court and also this Court.

7. Mr. Islam firstly referred to the decision of the Supreme Court in the case of S. Baldev Singh vs. Teja Singh Swatantra, reported in AIR 1975 S.C. at Page 693, wherein speaking for the Supreme Court, Krishna Iyer J. (as His Lordship then was), inter alia, observed that in matters relating to the Conduct of Election Rules, 1961, the Returning Officers should not unreasonably or frivolously refuse a candidate''s prayer for recounting of the votes, particularly where the margin of difference is

minimal and a plea for a second inspection is made on the spot.

8. The next case referred to by Mr. Islam in this regard and strongly relied upon by him is that of Sajder Rahman vs. Election Officer and Others, reported in 87 C.W.N. at page 1112, wherein while considering questions similar to those raised in the present writ applications under the West Bengal Panchayat (Election) Rules, 1974, B.C. Ray J. (as His Lordship then was) held that statutory rights are to be exercised in the mariner laid down and omission to follow the procedure will render the order honest and invalid in law. In such circumstances, the learned Judge directed the concerned Returning Officers to produce all the ballot papers before the Registrar, Appellate Side, in whose presence and in the presence of the learned advocates of the parties, a recounting was to be conducted.

9. Mr. Islam submitted that where the concerned authorities had acted contrary to the provisions of the statute, their actions stood vitiated, and the High Court has ample reason to interfere in such matters under Article 226 of the Constitution. Mr. Islam urged that in matters relating to refusal by the authorities in holding recounting of the votes, similar orders as the one passed in Sajdar Rahaman''s case could also be made and recounting could be held either before the Registrar, Appellate side, or some other responsible officer of the Court.

10. Mr. Islam then arged that, as had been repeatedly held by the Supreme Court and this Court, alternative remedy was no bar to the moving of a writ application, in as much as, the powers of the High Court under Article 226 of the Constitution could not be circumscribed or curtailed by statute. Mr. Islam urged that the mere existence of an alternate remedy could not oust the jurisdiction of the High Court under Article 226 of the Constitution, if a person''s fundamental right was threatened or infringed.

11. In this regard, Mr. Islam referred to and relied upon two decisions of the Supreme Court in the case of K.K. Kochunni Vs. State of Madras, reported in AIR 1959 S.C. at page 725, and in the case of Dr. Smt Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, reported in AIR 1987 S.C. at page 2186, wherein the Supreme Court observed that alternative remedy was not an absolute bar to the maintainability of a writ petition and that where an authority has acted without jurisdiction, the High court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternate remedy.

12. Similar sentiments have been expressed by this Court in the case of Sm. Marchhia Sahun & Anr. vs. The State of West Bengal & Ors., reported in AIR 1979 Calcutta at Page 94.

13. Mr. Islam also contended that administrative orders, not otherwise justiciable, could also be examined by the High Court in its writ jurisdiction, if the same were issued malafide or in colourable exercise of power, even though such orders may not violate any Constitutional or statutory provision. Mr. Islam urged that in

appropriate cases, writ could also lie against a private individual or body, if such private individual or body violated the fundamental rights guaranteed under the Constitution or discharged functions of a public nature.

14. In support of his above contention. Mr. Islam relied on a Single Bench decision of this Court in the case of N.N. Singh and Others vs. General Manager, Chittaranjan Locomotive Works and Others, reported in 77 C.W.N. at Page 334.

15. In this context, Mr. Islam also referred to the decision of the Supreme Court in 1) Shri. Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust vs. V.R. Rudani, reported in AIR 1969 S.C. at page 1607, 2) Sanjoy Place Group Housing Association vs. Agra Development Authority, reported in AIR 1992 S.C. at page 1598, and 3) People''s Union for Democratic Rights and Others vs. Union of India and Others reported in 1982 (3) S.C.C. at Page 235.

16. Mr. Islam''s next contention was that while statutory authorities had been vested with discretionary powers, such powers were to be exercised judiciously and without any trace of arbitrariness, inasmuch as, as held by the Supreme Court in Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and Others, reported in AIR 1991 S.C. at page 101, the absence of arbitrary power is the first essential of the rule of law on which our Constitution is based.

17. Mr. Islam then submitted that even if disputed questions of fact were involved in a particular case, that by itself would not deprive the High court of its jurisdiction under Article 226 of the Constitution, and the High Court had the right to try issues of law and fact in a writ proceeding, should such need arise. In this regard, Mr. Islam referred to the decision of the Supreme Court in the case of Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot and Others, reported in AIR 1974 S.C. at Page 2106.

18. Mr. Islam concluded his submissions on the legal aspect with reference to the celebrated decision of the Supreme Court in Union of India vs. Anglo Afghan Agencies, reported in AIR 1968 S.C. at Page 718, wherein while considering the concept of promissory estoppel, the Supreme Court held that even in the matter of implementation of administrative duties and functions, the Courts have the power to compel performance of administrative obligations, in appropriate cases. Mr. Islam contended that if the concerned authorities failed to act in accordance with administrative instructions and guidelines issued to give effect to statutory porvisions, the writ Court would have jurisdiction to cause such administrative instructions and guidelines to be implemented.

19. Mr. Islam submitted that notwithstanding the alternate remedy provided u/s 204 of the West Bengal Panchayat Act, 1973, a writ petition for similar reliefs would also be maintainable and the jurisdiction of the writ Court would not be ousted merely because of the existence of such alternate remedy.

20. Mr. L.C. Bihani, representing another set of petitioners, adopted Mr. Islam''s submissions, but added certain new dimensions to the question relating to the High Court''s powers of interference in writ jurisdiction in disputes arising out of the Panchayat elections, in view of the specific remedy provided u/s 204 of the said Act. Referring to Subsection (8) of Section 204 of the said Act, Mr. Bihani contended that the bar imposed thereunder, was a negative assertion of the High Court''s powers to interfere under Article 226 of the Constitution, as a litigant could not be without a remedy in law.

21. Mr. Bihani also urged that the existence of a lis was a precondition for attracting the provisions of Section 204 of the said Act. Where, however, the facts, as alleged, were admitted, a person aggrieved could not be asked to pursue his remedy u/s 204 of the said Act, and he would be wholly justified to invoking the High Court''s powers under Article 226 of the Constitution.

22. While referring to the provisions of Rules 55 and 57 of the West Bengal Panchayat (Election) Rules, 1974, relating to fresh repoll in the circumstances mentioned therein, Mr. Bihani contended that in the light of the report submitted by the Presiding Officer to the Returing Officer with regard to the chaotic conditions created by supportes of the C.P.I. (M), in Biswanath Dolui''s case, it was incumbent on the District Panchayat Election Officer to declare the poll at the concerned polling station to be void and to order a repoll. Mr. Bihani urged that since the concerned authorities had failed to discharge their statuory duties, the writ petitioners were entitled to move the writ Court, particularly when the facts were admitted. and consequently the provisions of Section 204 of the said Act were not attracted in the said case.

23. In support of his aforesaid contentions, in addition to those made by Mr. Islam, Mr. Bihani firstly relied on the decision of this Court in the case of Banamali Guria vs. State of West Bengal reported in 1988 (2) C.L.J. at page 238, wherein a learned judge of this Court held that the civil courts could not invoke their inherent power to overcome the bar imposed under sub-Section (8) of Section 204 of the said Act in granting injunctions. Mr. Bihani reiterated that such bar was an assertion in the negative of the High Court''s powers to grant relief under Article 226 of the Constitution.

24. Mr. Bihani then contended that it was now well settled that all executive action must be fair and reasonable, devoid of arbitrariness and capable of being tested on the anvil of Article 14 of the Constitution. Mr. Bihani contended that! in ease of unfair and arbitrary exercise of power, the writ court would have every occasion to interfere and quash such arbitrary exercise of power.

25. In this behalf, Mr. Bihani referred to the views expressed by the Supreme Court in Mahabir Auto Stores and Others vs. Indian Oil Corporation and Others, reported in AIR 1990 S.C. at page 1013 and Kumari Shrilekha Vidyarthi vs. State of U.P. and

others, reported in AIR 1991 S.C. at page 537.

26. In conculding his submissions, Mr. Bihani referred to the decision of the Supreme Court in the case of A.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen & Others, reported in 1989 (1) S.C.C. at page 526, where it was observed that the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hindsight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petition on the there should before an order for recount of votes is actually made. It was also observed that unless the defeated candidate was able to provide sufficient material for recounting of the votes, the tribunal or court should not order the recount of votes.

27. Mr. Bihani urged that in the light of the aforesaid submissions, a writ petition concerning a dispute arising out of an election would be maintainable, despite the provisions of Section 204 of the West Bengal Panchayat Act, 1973.

28. Mr. Milan Bhattacharya, who represented some of the writ petitioners, mainly stressed upon the question involving alleged violation of the statutory provisions by the concerned authorities, which according to Mr. Bhattacharya was sufficient ground for the writ court to interfere, notwithstanding the provisions of Section 204 of the West Bengal Panchayat Act, 1973. Mr. Bhattacharya submitted that it was now well-settled that any order or instruction, direction or notification issued by the State, which is contrary to any statutory provision, is a nullity.

29. Supplementing the arguments advanced by Mr. Islam and Mr. Bihani, Mr. Bhattacharya firstly submitted that in the case of the petitioners whom he was representing, the provisions relating to scrutiny said rejection of ballot papers and counting and recounting of votes contained in Rules 61,62 and 64 of the West Bengal Panchayat (Election) Rules, 1974, had been deliberately and willfully violated by the Presiding Officer, which had vitiated the polls, as a consequence whereof, the declaration of the results was also vitiated and was liable to be declared as void.

30. In support of his submission Mr. Bhattacharya referred to three decisions of the Supreme Court in 1] A.V. Venkateswaran vs. Ramchand Sobhraj Wadhwani, reported in AIR 1961 S.C. at page 1506, 2) State of Sikkim vs. Dorjee Tshering Bhutia and Others, reported in 1991 3) Judgments Today at page 456, and 3) Dr. Smt. Kuntesh Gupta vs. Management of Hindu Kanya Mahavidalaya already referred to by Mr. Islam.

31. The aforesaid decisions are basically in support of the proposition that alternate remedy is no bar to the filling of a writ petition where the excutive authority has acted unfairly or arbitrarily or contrary to the provisions of the statute, rendering such action a nullity.

32. Mr. Bhattacharya next submitted that the writ Court would also be entitled to interfere when the Returning Officer clearly failed to exercise the jurisdiction vested in him by the statute. Violation of the provisions of a statute and failure to exercise jurisdiction under a statute would enable the aggrieved party to invoke the writ jurisdiction of the High Court in approriate cases.

33. In this regard, Mr. Bhattacharya referred to a decision of the Supreme Court in the case of Ambika Prasad Dubey vs. District Magistrate, Allahabad and Others, reported in AIR 1991 S.C. at Page 1106, wherein the Supreme Court was considering an order passed by the Allahabad High Court dismissing the writ petition filed by the appellant on the ground that the District Magistrate had correctly exercised the powers vested in him under the U.P. Panchayat Raj Rules in ordering a repoll holding that the said order of repoll was not justified under the circumstances, the High Court had erroneously dismissed the writ petition since it was a clear case of failure on the part of the Returing Officer to exercise the jurisdiction vested in him.

34. Mr. Bhattacharya then submitted that in its writ jurisdiction the High Court was competent to issue a writ in the nature of Quo Warranto in appropriate cases and in such cases the maintainability of such writ applications could not be called into question. In this connection, Mr. Bhattacharya derived support from a decision of the Rajasthan High Court in the case of Narendra Kumar vs. State of Rajsthan and Others, reported in AIR 1984 Rajasthan at Page 29.

The other decisions cited by Mr. Bhattacharya are not really relevant for our purpose, as they relate to the powers of the writ court to mould the relief to be given according to the circumstances and joinder of parties.

Mr. Bhattarcharya urged that the powers of the writ Court flowed forom the Constitution and could not be circumscribed by any statutory provisions, and the writ Court had ample powers to intervene in matters where the executive authority exeeeded the limits provided by the statue or failed to exercise the jurisdiction vested in it by the statute, irrespective of the remedy provided for in the statute itself.

Mr. Chittaranjan Bag, who appeared in support of some of the writ petitions, adopted the arguments advanced by Mr. islam, Mr. Bihani and Mr. Bhatlarchya, with regard to the maintainability of the writ petitions, notwithstanding the provisions of Section 204 of the said Act, and referred to the decision of the Rajasthan High Court in the case of Narendra Kumar vs. State of Rajasthan and Others, earlier referred to by Mr. Milan Bhattacharya. In the said case, involving provisions of the Rajasthan Panchayat Act, 1953, while considering the issuance of a writ in the nature of Quo Warranto, the Rajasthan High Court held that a writ petition challenging the election of a Prodhan of a Panchayat Samity was maintainable, through the writ court should not ordinarily interfere in the matter of conduct of an election except for strong and compelling reasons.

35. Mr. Bag also referred to Rule 53 of the writ rules framed by this Court, in support of his submission that the writ court was competent to go into questions of fact and, if necessary, take evidence in appropriate cases.

36. Mr. Santimoy Panda, who appeared in support of some of the writ applications, adopted the submissions of Mr. Islam, Mr. Bihani and Mr. Bhattacharya and also referred to the case of Ambika Prosad Dubey vs. District Magistrate, Allahabad and Others (surpa), which had been referred to by Mr. Milan Bhattacharya.

37. Mr. Ashoke Sengupta, appearing for one of the writ petitioners, also adopted the submissions of Mr. Islam, Mr. Bihani and Mr. Bhattacharya with regard to the High Court''s powers of interference in writ jurisdiction in cases of violation of statutory provisions by the excitive authorities.

38. Mr. Saradindu Samanta, who appeared for many of the writ petitioners, added a few points of his own while adopting the submissions of Mr. Islam, Mr. Bihani and Mr. Bhattacharya with regard to the High Court''s powers of interference under Article 226 of the Constitution in cases of violation of statutory provisions and in cases where alternate remedy had been specifically provided for in the statutes.

39. After referring to the various provisions of the West Bengal Panchayat (Election) Rules, 1974, with particular reference to Rule 55 thereof, Mr. Samanta urged that in the absence of proper compliance with the provisions of Rule 55, the State Government was not competent to order a repoll. Mr. Samanta also urged that in cases where recounting had been prayed for, but had not been entertained, either by the concerned Presiding Officer or the Returing Officer, the provisions of Section 204 of the said Act where not attracted, as there was no dispute involving the process of election. What was involved was a matter of simple mathematics based on the votes polled by the candidates.

40. Mr. Samanta further submitted that the remedy provided for in Section 204 of the said Act was illusory as no time limit had been provided for disposal of election petitions filed thereunder. Referring to Rule 75 of the said Rules, Mr. Samanta submitted that it had simply been mentioned that election disputes are to be enquired into as early as may be in accordance with the provisions of the CPC relating to the trial of suits. Mr. Samanta submitted that the remedy contemplated u/s 204 was not as equally efficacious as in proceeding under Article 226 of the constitution, because of the delay involved.

41. Upon a comparison of the language of Article 329(b) of the Constitution and that of Section 204, Mr. Samanta submitted that while Article 329(b) imposed a total bar on a remedy relating to election to the Lok Sabha or the Legislative Assemblies, except by way of an election petition, there was no such positive bar indicated u/s 204 of the said Act.

42. In support of his aforesaid submissions, Mr. Sarnanta first referred to the decision of this Court in the case of Sajder Rahman (surpa), referred to with great emphasis by Mr. Islam, and submitted, that the said decision was a complete answer to the proposition that the writ court was competent to entertain an application relating to a prayer for recounting, notwithstanding the provisions of Section 204 of the said Act. Mr. Sarnanta also referred to the decision of the Supreme Court in the case of S. Baldev Singh (surpa), which had also been referred to with great emphasis by Mr. Islam, with regard to the unreasonable or frivolous refusals of recount by Returning Officer in cases where margin of difference is minimal.

43. In this regard, Mr. Sarnanta also referred to the provisions of Rules 63 and 64 of the Conduct of Election Rules, 1961, which regulates the recounting of votes and declaration of results in relation to election to the Lok Sobha or the State Legisletures. Mr. Sarnanta pointed out that the language of Rules 63 and 64 of the said Rules were similar to the language used in Rules 64 and 65 of the West Bengal Panchayat (Election) Rules, 3 974, and an analogy could, therefore, be drawn in the present situation with the observations made by the Supreme Court in the above case.

44. Mr. Sarnanta also relied upon the decision of the Supreme Court in the case of Sukhad Raj Singh vs. Ram Harsh Misra and Others, reported in AIR 1977 S.C. at page 681, which had most probably been taken into account by the learned Single Judge of this Court in deciding the case of Sajder Rahman (supra), since a similar direction had been given therein regarding the recounting of the disputed votes under the personal supervision of the Joint Registrar of the Allahabad High Court, Lucknow Bench. Mr. Sarnanta sought to urge that the said decision was sufficient it in itself for the proposition that the High Court was entitled in writ jurisdiction to certain matters relating to recounting of votes, which did not come within the ambit of Scetion 204 of the said Act.

45. Mr. Samanta then submitted in the absence of any affidavit on behalf of the state, the allegations contained in the writ petitions must be deemed to have gone unrebutted and consequently admitted by the State. Mr. Samanta referred to the case of C.S. Rowjee vs. State of Andra Pradesh reported in AIR 1964 S.C. at page 962, as also the case of Ishwarlal Girdharilal Joshi vs. State of Gujarat and Others, reported in AIR 1968 S.C. at Page 870, in this regard.

46. Mr. Sumanta concluded his submissions by urging the Court to direct recounting in the cases relating to recounting, in the manner indicated by the Supreme Court and this Court in the case of Sukhad Raj Singh (supra) and Sajder Rahman (supra). As far as the other matters relating to other disputes raised, besides recounting, Mr. Samanta urged that this Court was fully competent to entertain the same under Article 226 of the Constitution.

47. Replying to the several points of law emerging from the several writ applications and the submissions made on behalf of the writ petitioners, the learned government Pleader firstly submitted that in most of the cases, the applications for recounting had been made to the Returning Officer by way of afterthought, in contravention of the provisions laid down in Rule 64 of the said Rules which provides that such applications for recounting are to be made to the Presiding Officer immediately after the announcement by him of the votes polled by each candidate."

48. The learned government. Pleader submitted that in cases where applications had been made in keeping with the aforesaid provisions, the Presiding Officers had taken necessary action.

49. The learned Government Pleader then submitted that, in any event, when a specific remedy had been provided for in the Statute itself, namely. Section 204 of the said Act, by way of an election petition, the writ Court should not interfere, but direct the writ petitioners to seek their remedy, if any, under the said provisions.

50. The learned Government Pleader then submitted that the facts involved in each and every writ petition were highly disputed, and the question of admission, as submitted by Mr. L.C. Bihani, did not, therefore, arise. The learned Government Pleader submitted that each and every case involved a dispute relating to various stages of the election, from the date of notification of the poll till the declaration of the election results, and hence they came squarely within the ambit of Section 204 of the West Bengal Panchayat Act, 1973. Furthermore, since disputed questions of fact were involved, the writ court would ordinarily avoid going into such disputed questions, since a proceeding under Article 226 of the Constitution was of a summary nature, and leave such decision to the forum provided under the said Act, which could go into such disputed questions on evidence.

51. In support of his aforesaid contention, the learned Government Pleader relied upon the decision of the Supreme Court in the case of D.C.F. Housing Construction (P) Ltd. vs. Delhi Municipal Corporation and Others reported in AIR 1976 S.C. at Page 386, wherein the Supreme Court observed that in a case where the basic facts are disputed and complicated questions of law and fact depending on evidence are involved, the writ Court is not the proper forum for granting relief.

52. In this regard the learned Government Pleader also relied on several other decisions of the Supreme Court where similar sentiments had been expressed, namely, 1) Arya Vyasa Sabha vs. The Commissioners of Hindu Charitable and Religious Institutions and Endowments. Hyderabad and Another, reported in AIR 1976 S.C. at Page 476, 2) Jai Singh vs. Union of India and Others, reported in AIR 1978 S.C. at Page 898, and 3) State Cadre Authority & Anr. vs. K.S. Bajpai & Ors., reported in 1990 (Suppl.) S.C.C. at Page 713.

53. On the question of alternative remedy, the learned Government Pleader submitted that it had been repeatedly held by the Courts that when a specific

remedy was provided for by Statute, the same must be availed of first by a litigant before moving the writ Court. The learned Government Pleader conceded that there were exceptions to the above proposition, as when an authority acted wholly without jurisdiction or in violation of the statutory provisions, but such a situation was generally the exception and not the rule. The learned Government Pleader again referred to Jai Singh''s case (supra) where this question had also been gone into and the Supreme Court had held that the High Court had correctly concluded that it should not in exercise of its extraordinary jurisdiction grant relief to a litigant who had an alternative remedy.

54. In this regard the learned Government Pleader also referred to the decision of the Supreme Court in the case of S. Jagadeesan vs. Ayya Nadar Janaki Anmal College and Another, reported in 1984 (1) S.C.C. at Page 158.

55. On the question relating to issuance of a writ in the nature of Quo Warranto, the learned Government Pleader submitted that in the case of A.N. Shastri vs. State of Punjab, reported in 1988 (Suppl.) S.C.C. at Page 127, the Supreme Court had observed that the High Court in a Quo Warranto proceeding should be slow to pronounce upon the matter unless there was a clear infringement of the law.

56. Apart from the principles evolved through various decisions on the High Court''s powers of interference in writ jurisdiction where an alternative remedy had been provided for and was available, and in cases involving disputed questions of fact, the learned Government Pleader submitted that in matters relating to election disputes, the Courts had consistently held that where a specific procedure had been laid down with regard to deciding election disputes, the writ courts should not as a rule interfere.

57. The learned Government Pleader firstly referred to the celebrated decision of the Supreme Court in the case of N.P. Ponnuswami vs. The Returning Officer, Namokhal Constituency, reported in AIR 1952 S.C. at Page 64, which has been repeatedly quoted with approval upto recent times. In the said case it was observed that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

58. The learned Government Pleader then referred to the decision of the Supreme Court in the case of K.K. Shrivastava vs. Bhupendra Kumar Jain & Ors., reported in AIR 1977 S.C. at Page 1703, where, while considering the Election Rules of the Bar Council of Madhya Pradesh, the Supreme Court observed that where there is an appropriate or equally efficacious remedy available to a litigant, the writ court should desist from interfering in such matters, more particularly so where the dispute related to an election.

59. The next decision referred to by the learned Government Pleader was a Full Bench decision of the Madhya Pradesh High Court in the case of Malam Singh vs.

Collector, Sehore, M.P. & Ors., reported in AIR 1971 Madhya Pradesh at Page 195. Expressing sentiments similar to those expressed by the Supreme Court in K.K. Shrivastava''s case, the Full Bench observed that in view of the remedy of an election petition provided for under the Madhya Pradesh Panchayats Act, 1962, to be presented after the election was over, it would not be proper for the High Court to exercise its undoubted powers under Article 226 of the Constitution for interfering with interlocutory orders passed during the process of election, save in very exceptional circumstances.

60. The learned Government Pleader then referred to the decision of the Supreme Court in the case of S.T. Muthusami vs. K. Natarajan & Ors., reported in 1983 (1) S.C.C. at Page 572 and also in AIR 1988 S.C. at Page 616, in which the Supreme Court, while referring to the various other decisions in that regard, from N.P. Ponnuswami''s case onwards, concluded that the High Court had committed a serious error in issuing a writ under Article 226 of the Constitution.

61. The learned Government Pleader laid a good deal of emphasis on the decision of the Supreme Court in the case of Gujarat University vs. N.V. Rajguru & Ors., reported in 1987(Suppl.) S.C.C. at page 512. where the Supreme Court while considering a dispute relating to an election under the Gujarat University Act, 1949, held that where an alternate remedy had been provided for and a machinery for determination of election disputes was available under the Statute, a writ petition under Article 226 of the Constitution was not maintainable.

62. A good deal of reliance was placed on this case by the learned Government Pleader, who submitted that the facts of the said case were in pari materia with the facts in the cases before us.

62. The next case referred to by the learned Government Pleader was that of Narayan Chandra Mukherjee & Anr. vs. District Magistrate, Hoogly & Ors., reported in AIR 1954 Calcutta at Page 32, where this Court had held that the Bengal Municipal Act, 1932, was a complete code in itself. The right to vote or to be elected flowed from the Statute, as did the remedies available to an aggrieved party, and the same were to be resorted to instead of resorting to the extraordinary remedy under Article 226 of the Constitution.

64. The next set of decisions cited by the learned Government Pleader on the above point are those of 1) Jyoti Basu & Ors. vs. Debi Ghosal & Ors., reported in AIR 1982 S.C. at Page 983, 2) Arun Kumar Bose vs. Mohd. Furkan Ansari and Others, reported in AIR 1983 S.C. at Page 1311. 3) Upadhya Hargovind Devshanker vs. Dhirendrasinh Virbhadrasinhji Solanki and Others; reported in 1988 S.C. at Page 915 and 4) Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi, reported in AIR 1978 S.C. at Page 851.

65. It was pointed out by the learned Government Pleader that in the said cases, the Supreme Court had noted with approval the sentiments expressed in N.P.

Ponnuswami''s case (supra) and had observed that a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law right, but is pure and simple a statutory right. So is the right to be elected and to dispute as election. Outside of statute there is no right to elect, no right to be elected and no right to dispute an election. Being statutory creations, they are subject to sttutory limitations. An election petition is not an action at Common Law, but a statutory proceeding to which neither the common law nor principles of equity apply but only those rules which the statute makes and applies. It was also observed that in the trial of election disputes. Court is put in a strait jacket and such election could be questioned except in the manner provided for by the Representation of the People Act, 1951, which was a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute.

66. The learned Government Pleader concluded his submissions by contending that the High Court''s jurisdiction under Article 226 of the Constitution in dealing with election disputes stood ousted to a large extent in view of the provisions of Section 204 of the West Bengal Panchayat Act, 1973. The remedy provided thereunder in respect of disputes with regard to the validity of an election under the said Act was self-sufficient and by virtue of self-imposed limitations, the High Court should be slow to interfere in such matters in exercise of its powers under Article 226 of the Constitution. The learned Government Pleader submitted that in the two cases where the Courts had directed recount of votes in the presence of the registrars of the High Courts in question, such orders were passed on concession and could not be taken as precedents or settled law.

67. Appearing for the private respondents in two of the writ petitions, Mr. Bikash Ranjan Bhattacharya firstly submitted that the relevant provisions of the West Bengal Panchayat Act, 1973, and the Representation of the People Act, 1951, relating to the remedy available to a person in respect of an election dispute, were more or less the same, and even though there was a slight variance in the language, the spirit of the said provisions were the same. Mr. Bhattacharya submitted that similarly the provisions of the Conduct of Election Rules, 1961, in respect of elections to the Lok Sabha and the State Legislative assemblies and those of the West Bengal Panchayat (Election) Rules, 1974, were more or less identical.

68. Mr. Bhattacharya submitted that having regard to the similarity of the provisions of the Representation of the People Act, 1951, and the West Bengal Panchayat Act, 1973, and the rule for conduct of the elections thereunder, the various decisions cited under the Representation of the People Act. 1951, with regard to ouster of the writ Court''s Jurisdiction in disputes relating to elections, would also'' be equally applicable to election disputes under the West Bengal Panchayat Act, 1973.

69. While relying upon the various decisions cited by the learned Government Pleader, Mr. Bhattacharya repeated that the directions given in Sajder Rahman''s

case (supra) and in the case of Sukhad Raj Singh (supra) were upon concession and could not be taken to be precedents.

70. Mr. Bhattacharya also relied on a recent decision of the Supreme Court in the case of N. Budda Prasad vs. Simhadri Satyanarayana Rao and Others, reported in AIR 1993 S.C. at Page 1178, where the Supreme court declined to interfere with the dismissal of the election petition by the high Court on the ground that such petition had been filed solely to make fishing enquiry as no objection had been raised by any of the candidates regarding the counting.

71. Having regard to the fact that in most of the cases the election process has been completed, the first and foremost point which falls for section is whether the High Court, in its writ jurisdiction, would at all be competent to interfere in disputes relating to the validity of elections conducted under the West Bengal Panchayat Act, 1973. having regard to the provisions of Section 204 thereof. It naturally follows that if the answer is in the affirmative, the parameters within which the writ Court will interfere will have to be defined.

72. It will appear from the decisions cited by the parties in this regard, that the majority of the cases relate to election disputes under the Representation of the People Act. 1951. Although, an attempt had been made to draw a parallel between disputes under the said Act and the West Bengal Panchayat Act. 1973, the basic difference between the two states from the Constitutional bar imposed under Article 329(b) in matters under the Representation of the People Act, 1951. It has, of course, been sic to be argued that the bar imposed by Article 329(b) of the constitution sic been included in Section 204 of the West Bengal Panchayat act itself an sic that view of the matter, the observations made in the various decision with regard to ouster of the court''s jurisdiction under Article 226 of the Constitution would be applicable in cases under the West Bengal sic Act as well.

73. In my view, a proceeding under the Representation of the People sac 1951, and proceedings under other election laws cannot be treated on sic equal footing, although, the principles enunciated with regard to the sic Court''s powers of interference in election disputes under the Representation of the People Act, 1951, may be taken as guidelines in dealing with election disputes under other enactments. In my view, the provisions of Article 329(b) of the Constitution makes all the difference in the two types of proceedings.

74. Article 329(b) is a Constitutional bar imposed on matters involving disputes with regard to elections to the Lok Sabha or to the State Legislative Assemblies. The bar imposed by legislation framed by the legislature is statutory in nature, and, as is now well-settled, a statute enacted by legislation cannot circumscribe the extraordinary powers of the High Court under Article 226 of the Constitution. Of course, in such situations, the question of self-imposed limitations comes into play.

75. I am, therefore, of the view that the High Court''s powers under Article 226 of the Constitution do not stand completely ousted by virtue of the provisions of Section 204 of the West Bengal Panchayat Act, 1974, as in the case of Article 329(b) of the Constitution.

76. The line of decisions, commencing from the decision in N.P. Ponnu-swami''s case (supra) have laid down the proposition of law that the Representation of the People Act, 1951, is a self-contained enactment so far as elections are concerned, and in order to ascertain the true position in regard to any matter connected with elections held thereunder, one would only have to look to the said Act and the Rules framed for implementing the revisions thereof, however, even in Ponnuswami''s is case it was sought to be urged that since the Representation of the People Act. 1951. was enacted under Article 227 of the Constitution, it could not bar the jurisdiction of the High Court under Article 226 of the Constitution. Such argument was, however, repelled by reading the Act along with the provisions of Article 329(b) of the Constitution.

77. The principles laid down with regard to relief under the Representation of the People Act, 1951, therefore, has to be read in the context of Article 329(b) of the Constitution and can be considered as guidelines in dealing with election disputes arising out of other enactments where there is no constitutional, but a statutory bar. While one will have to keep in mind the proposition of law developed over the years that when a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute must be availed of, one cannot also lose sight of the other principles which have also developed over the years that the existence of an alternative remedy is not an absolute bar to invocation of the powers of the writ court and where the statutory authorities transgress the limits specified in the statute or fail to exercise the jurisdiction vested in them by the statute, the High Court would have ample jurisdiction to interfere in such matters in its writ jurisdiction.

78. From the various decisions on the subject, it would be evident that the Supreme Court, as also the High Courts, were alive to the legal scenario, which was recognised even as far back as in N.P. Ponnuswami''s case (supra); but was repelled in view of the provisions of Article 329(b) in that case. The said question cropped up repeatedly in subsequent cases and divergent views were expressed regarding the powers of the writ court to interfere when a specific alternate remedy had been provided in the statute. This will be evident from the different cases cited on behalf of the petitioners and the State, though the more recent decisions support the view that alternate remedy is not an absolute bar to the filing of a writ petition.

79. After referring to Ponnuswami''s case (supra), the learned Government Pleader referred to the decision of this Court in Narayan Chandra Mukherjee''s case (supra) where Sinha J., observed in the context of the provisions of the Bengal Municipal Act, 1932, that so far as a Municipal election is concerned, it could not be held that

precisely the same principles as applicable to an election under the Representation of the People Act, 1951, would apply to an election under the Bengal Municipal Act, 1932, having regard to the provisions of Article 329(b) of the Constitution.

80. Even in the case of K.K. Shrivastava (supra), the Supreme Court while repeating the principle relating to limitations in the exercise of powers under Article 226 of the Constitution where an equally efficacious remedy had been provided for, particularly in disputes relating to elections, recognised the fact that in exceptional or extraordinary circumstances the writ Courts could interfere in granting relief to a litigant.

81. In the Full Bench decision of the Madhya Pradesh High Court in Malam Singh''s case (supra), it was obsered that since a remedy by way of an election petition had been provided for under the Madhya Pradesh Panchayats Act, 1962, it would not be proper for the High Court to exercise its undoubted powers under Articles 226 and 227 of the Constitution, save in very exceptional circumstances.

82. Even in the Gujarat University case (supra), on which a great deal of reliance was placed by the learned Government pleader, the Supreme Court while reiterating the principles enunciated in A.P. Ponnuswami''s case (supra) and in the case of Jyoti Basu and Another (supra), conceded that there may be exceptional or extraordinary circumstances which would justify the by-passing of the alternate remedies provided under the Statute.

83. The said position has been further clarified by the Supreme Court in S.T. Muthusami''s case (supra). While considering the earlier decisions, from N.P. Ponnuswami''s case onwards, the Supreme Court in dealing with the provisions of the sic Nadu Panchayats Act, 1958, and the Tamil Nadu Panchayats (conduct of Election of Chairman of Panchayat Union Councils and Presidents and Members of Panchayats) Rules, 1978, observed as follows : -

It is no doubt true that rule (1) of the Rules made for the settlement of election disputes which provides that an election can be questioned only by an election petition cannot have the effect of overriding to powers of the High Court under Article 226 of the Constitution of India. It may, however, be taken into consideration in determining whether it would be appropriate for the High Court to exercise its power under Article 226 of the Constitution of India in a case of this nature.

The above observation seems to sum up the legal situation as far as the cases under consideration are concerned.

84. The said position is further strenghened by the principles laid down in various cases where the statutory authorities have acted without jurisdiction or have failed to exercise the jurisdiction vested in them, in which cases it has been repeatedly held that alternative remedy is not an absolute bar to the maintainability of a writ petition. The case of Dr. Smt. Kuntesh Gupta (supra) referred to by Mr. Islam and

also Mr. Milan Bhattacharya, reiterates the said with complete approval.

85. The other cases referred to in this regard are in the context of the provisions of the provisions of the Representation of the People Act, 1951, and cannot mutadis mutandis be applied to cases under other election laws. As far as the directions in Sukhad Raj Singh''s case and Sajder Rahman''s case are concerned, they cannot be taken as settled law or even as precedents, having been made on concession.

86. I have, therefore, no hesitation in holding that the powers of the High Court under Article 226 of the Constitution are not ousted under the provisions of Section ''204 of the West Bengal Panchayat Act, 1973, but such power is to be exercised sparingly and with caution in exceptional or extraordianry cases. Generally speaking, when a specific remedy has been provided for u/s 204 of the aforesaid Act. such remedy should be availed of first, since in such proceedings, the Tribunal would be in a position to go into and decide disputed questions of fact on evidence, which the High Court in exercise of Its powers under Article 226 of the Constitution will not ordinarily do notwithstanding the provisions of Rule 53 of the writ rules framed by it.

87. Accordingly, each writ application filed In respect of the elections conducted under the West Bengal Panchayat Act. 1973, and the West Bengal Panchayat (Election) Rules. 1974. will have to be dealt with on Its merits and will not stand rejected on the threshold.

88. The cases under consideration in this proceeding may therefore, be taken up for consideration in the above perspective.

In Radhapada Biswas''s case, it has been asserted that after the counting was over, a complaint had been made to the Presiding Officer to the effect that the counting sheet had not been sent to the Returning Officer under sealed cover, as envisaged in Rule 66 of the West Bengal Panchayat (Election) Rules, 1974. Thereafter, the petitioner''s prayer for recounting of votes made to the Returning Officer, was also not considered, despite the specific allegations made with regard to the manner of recording of the votes polled by the candidates.

The allegations in the writ petition have been denied by the respondents.

89. In the face of such denial, it cannot be decided by this Court whether the provisions of Rule 66 had been violated, thereby vitaiting the election. The same can only be decided on proper evidence and examination of the persons present at the relevant point of time. Furthermore, the Returning Officer is not empowered under Rule 64 of the West Bengal Panchayat (Election) Rules. 1974, to order a recount of the votes.

90. 1 am not, therefore, inclined to interfere in the matter and the petitioner will be at liberty to pursue his remedy u/s 204 of the West Bengal Panchayat Act. 1973. Having regard to the fact that the writ petition is pending in this Court since 11th

June. 1993. the said period and a further period of ten days is to be taken into consideration by the Tribunal for the purpose of computing the limitation imposed under subsection (1) of Section 204. Furthermore, if such a petition is filed by the petitioner, the same must be disposed of with a period of six months from the date of presentation thereof, so that the remedy envisaged u/s 204 of the aforesaid Act is not rendered illusory.

91. The aforesaid directions will also be applicable in the case of Pranhari Das and Others, since in the said case also, receipt of the application dated 31st May, 1993, being Annexure "B" to the writ petition, by the Presiding Officer, has been denied on behalf of the respondents, and the Returning officer has no authority to direct a recount of the votes under Rule 64 of the West Bengal Panchayat (Election), 1974.

92. As far as the case of Biswanath Dolui and Another, is concerned, I am not Inclined to accept the submission that the facts relating to the chaotic conditions which were alleged to have prevailed during the counting of votes, were admitted, in view of the denial by the respondents that the letter written by the Presiding Officer to the Returning Officer, being Annexure "B" to the writ petition, was ever received in original by the Returning Officer, produced by the learned Government pleader, shows that there was no adverse situation during the total polling/counting operation at Polling Station No. 119.

93. Which of the two versions is correct can only be decided on evidence and not in a summary proceeding under Article 226 of the Constitution.

94. The directions in the case of Radhapada Biswas will be applicable in this case also, as also in the case of Asit Baran Deria, where a prayer for recounting of votes was made to the Returning Officer, who has no authority in that regard under Rule 64 of the West Panchayat (Election) Rules, 1974.

95. As far as Muktaram Dhawrey''s case is concerned, the allegations involve disputed questions of fact relating to the counting of votes and the refusal of the Presiding Officer to reject two ballot papers, which were alleged to be invalid.

The said allegations are denied by the respondents and entail examination of witnesses, as well as the ballot papers and the counting sheets, which this Court is disinclined to do in a proceeding under Article 226 of the Constitution, even if it be contended that there has been violation of the statutory provisions by the concerned authorities. The allegations can be gone into effectively, in detail, by the machinery prescribed u/s 204 of the West Bengal Panchayat Act, 1973.

96. The directions in Radhapada Biswas''s case will, therefore, also be applicable in the case of Muktaram Dhawrey and in the case of Smt. Sailabala Mahato where a prayer for recounting was made to the Returning Officer, who has no authority in that regard, as indicated above.

97. In Abdul Latif Sarkar''s case the allegation is that the rules relating to user of Ballot Boxes during the Gram Panchayat Elections, had been violated by the concerned authorities. Reference has been made by Mr. Rabi Ral Moitra to Rule 34 of the West Bengal Panchayat (Election) Rules, 1974, which provides that every ballot box shall be of such design as may be approved by the State Government. In this regard, Mr. Moitra also referred to paragraph 3.4 of the Guidelines to Presiding and Polling Officers issued by the Department of Panchayats, Government of West Bengal, in connection with the Panchayat Elections, 1993. It was contended that Ballot boxes, other than those prescribed, had been used to confuse the voters.

98. On behalf of the State it was contended by the learned Government Pleader that the Government had acted in the matter in accordance with Order No. 995/l/Panch/IE-54/87 dated 31st March, 1993, issued by the Department of Panchayats, Government of West Bengal, approving the design of ballot boxes to be used in connection with the election to the Gram Panchayats, Panchayat Samities and Zilla Parishads. A copy of the said order has also been produced for the Court''s persual.

99. Having regard to the above, I am of the view that no interference is called for in this matter and the writ application is dismissed, without any order as to costs.

100. The case of Mumtaj Begum relates to an application for recounting made to the Returning Officer, who, as indicated hereinabove, is not the authority for the said purpose under Rule 64 of the West Bengal Panchayat (Election) Rules, 1974. The directions in Radhapada Biswas''s case will be applicable in this case also.

101. The case of Smt. Basani Kalindi again involves disputed questions of fact, and applications were made to the Returning Officer in this behalf, who made it clear that under paragraph 148 of the Hand Book for Returning Officers, issued by the Directorate of Panchayats, Government of West Bengal, in connection with the Panchayat Election, 1993, he had no authority in that regard. The allegations made in the complaint to the Returning Officer and in the petition, can only be decided on evidence. The dierctions in Radhapada Biswas''s case will, therefore, be applicable in this case also.

102. Let the writ applications of Smt. Sunanda Maity, Afsar Ali Shaikh and Toyed Ali Mondal be taken up for consideration separately, as no factual submission was made in the said cases, and the learned advocates appearing in support thereof addressed the Court on points of law only.

103. The writ applications of Radhapada Biswas, Pranhari Das and Others, Biswanath Dolui and Another, Asit Baran Deria, Muktaram Dhawrey, Sailabala Mahato, Abdul Latif Sarkar, Mumtaj Begum and Smt. Basani Kalindi, are thus disposed of as indicated hereinabove.

There will be no order as to '' costs in any of the said cases.

Having regard to the fact that the Election Tribunal contemplated under the West Bengal Panchayat Act, 1973, are the learned munsif having jurisdiction, where such election is in respect of a Gram Panchayat or Panchayat Samity, and before the District Judge of the District, where such election is in respect of a Zilla Parishad the Government will be at liberty to take necessary steps with the appropriate authorities for appointment of Additional or Extra Munsifs, if necessary, for disposing of the election petitions within the period specified hereinbefore.

Let xerox copies of this judgment be made available to the learned advocates of the respective parties on their usual undertaking.