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AVTAR SINGH HIT

v.

DELHI SIKH GURDWARA MANAGEMENT COMMITTEE AND ORS

OCTOBER 18, 2006

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[K.G. BALAKRISHNAN, G.P. MATHUR AND
R.V. RAVEENDRAN, JJ.]

Election Laws:

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Delhi Sikh Gurudwaras Act, 1971—Sections 31 and 33—Dispute regarding confusion in date fixed for holding election of the office bearers of Executive Board of the Committee—Consequently some members could not participate in the election—Validity of election challenged, by way of writ petition—Correctness of—Held: Dispute being purely factual in nature, can be resolved by examination of oral evidence—Proper remedy would be election petition under section 31—No exceptional or extraordinary circumstances disclosed to justify recourse under Article 226—Also writ petition filed without impleading the newly elected office bearers of the Executive Board as necessary parties—Thus, writ petition not maintainable—Constitution of India, 1950—Article 226.

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Constitution of India, 1950—Article 226—Writ petition—Maintainability, when necessary parties not impleaded—Held: Writ petition not maintainable.

P was elected as the President and R was elected as the Secretary of the Delhi Sikh Gurdwara Management Committee for the year 2004-06.

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The term of the Executive Board of the Committee expired but P did not hold a meeting of the Committee for electing the new members of the Executive Board. Members of the Committee made representation to the Secretary for holding fresh elections of the Executive Board for the year 2005-06. Election was held on 19.12.2005 and new office bearers of the Executive Board of the Committee were elected for the year 2005-2006.

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The constitution of the new executive Board for the year 2005-06 was announced. Thereafter, appellant filed writ petitions challenging the election held on 19.12.2005 for electing the members of the Executive Board of the Committee on the ground that the President and the

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Secretary took a contradictory stand regarding the date of the meeting in which the new office bearers of the Executive Board had to be elected and created confusion thereby, as a result he could not participate in the elections though he was keen to contest for the election for the office of the President. Gurdwara Management Committee and its President contended that since the office bearers of the newly elected Executive Board who had been functioning since 19.12.2005 were not impleaded as party to the writ petition, and that the petitioner had an alternative remedy of filing an election petition under section 31 of the Delhi Sikh Gurdwaras Act, 1971, writ petitions were not maintainable. Single Judge of High Court countermanded and set aside the election held on 19.12.2005 of the members of Executive Board and directed that fresh elections be held. Division Bench of High Court set aside the order of the Single Judge. Without going into the issue regarding the effect of the non-joinder of the newly elected members it expressed a prima facie view that its effect is not fatal and that despite the alternative remedy of election petition being available, writ petitions were maintainable. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1. Where elections are conducted in accordance with the provisions of a statute and the statute also provides a remedy of settlement of election disputes by filing an election petition before a tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. [327-H; 328-A]

1.2. The pleadings of the parties and also the material placed in the writ petition clearly show that the dispute raised as to whether some confusion had been created regarding the date fixed for holding of the meeting of the Committee for electing the office bearers of the Executive Board, as a result of which some members of the Committee could not participate in the meeting was purely factual in nature. The dispute could more appropriately be resolved by examination of oral evidence to be led by the parties. Appellant claimed that on account of the confusion in dates he could not attend the meeting though he was very keen to participate in the meeting and contest for the office of the President of the Executive Board. In view of the nature of the dispute raised the proper remedy for the petitioner was to file an election petition as provided in Section 31 of the Delhi Sikh Gurdwaras Act where parties could have got opportunity to lead oral evidence. No exceptional or extraordinary circumstances were

A disclosed which could justify recourse to the extraordinary remedy under Article 226 of the Constitution and for not availing the remedy provided by the statute. Thus, the writ petitions filed by the appellants were not maintainable. [331-B-E]

B *N.P. Ponnuswami v. The Returning Officer*, AIR (1952) SC 64;
Mohinder Singh Gill v. The Chief Election Commissioner, AIR (1978) SC 851;
K.K. Shrivastava v. Bhupendra Kumar Jain, AIR (1978) SC 1703; *Gujarat University v. Shri N.U. Rajguru*, AIR (1988) SC 66; *S.T. Muthusami v. K. Natarajan*, AIR (1988) SC 616; *C. Subrahmanyam v. K. Ramanjaneyullu*, [1998] 8 SCC 703; *Ashok Kumar Jain v. Neetu Kathoria*, [2004] 12 SCC 73
 C and *Umesh Shivappa Ambi v. Angadi Shekara Basappa*, [1998] 4 SCC 529; *Harneek Singh v. Charanjit Singh*, [2005] 8 SCC 383, relied on.

2. The respondents took a specific plea before the High Court in the counter affidavit filed on their behalf that the new office bearers of the Executive Board, who had been elected in the meeting held on 19.12.2005, were not impleaded as respondents to the writ petition. In spite of such clear assertion in the counter affidavit, the writ petitioner did not choose to implead the newly elected office bearers of the Executive Board. On the contrary, the President and the Secretary of the earlier Executive Board were arrayed as respondents to the writ petition. Thus, no relief
 D could have been granted to the writ petitioner on account of the fact that the newly elected office bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not impleaded as party to the writ petitions. Non-impleadment of the newly elected office bearers of the Executive Board was fatal. Thus, the writ petition was not
 E competent as necessary parties were not impleaded as respondents to the same. [333-A-B]
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Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar, AIR (1963) SC 786; *Prabodh Verma v. State of Uttar Pradesh*, AIR 1985 SC 167; *Ishwar Singh v. Kuldip Singh and Ors.*, [1995] Supp. 1 SCC
 G 179 and *Arun Tewari and Ors. v. Zila Mansavi Shikshak Sangh and Ors.*, AIR (1998) SC 331, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4532 of 2006.

From the Final Judgment dated 1.3.2006 fo the High Court of Delhi at
 H New Delhi L.P.A. Nos. 244-245/2006.

WITH

C.A. Nos. 4533,4534 and 4535 of 2006.

Soli J. Sorabjee, Mukul Rohtagi, Rajiv K. Garg, Ashish Garg, Inderbir Singh, Jagdeep S. Lamba, Pradeep Kumar Bakshi and Annam D.N. Rao for the Appellant.

Fali S. Nariman, Jagmohan Sabharwal, K.N. Balagopal, S.C. Sharma, Rajan Sabharwal, K. Bharthi, Mukundan, S. Srinivasan, S.R. Sharma, Madhusmita Bora, S. Balaji, Devendra Singh and C.N. Sree Kumar for the Respondents.

The Judgment of the Court was delivered by

G.P. MATHUR, J. Leave granted.

2. These appeals have been filed challenging the judgment and order dated 1.3.2006 passed by the Division Bench of Delhi High Court by which Letters Patent Appeals were allowed and the judgment and order of the learned single Judge disposing of four writ petitions was set aside. The learned single Judge had allowed the writ petitions and countermanded the election of the members of the Executive Board of Delhi Sikh Gurdwara Management Committee, which was held on 19.12.2005 and had issued a further direction that fresh election be held on 14.2.2006.

3. The controversy raised in all the four appeals is identical and for the sake of convenience we will refer to the facts of Civil Appeal No. 4532 of 2006 (arising out SLP (C) No. 5188 of 2006) (*Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and Ors.*). The principal issue raised is regarding the validity of the election held on 19.12.2005 for electing the members of the Executive Board of Delhi Sikh Gurdwara Management Committee (hereinafter referred to as 'DSGMC'). In order to understand the controversy involved it is necessary to make a brief reference to the relevant statutory provisions.

4. The Parliament enacted The Delhi Sikh Gurdwaras Act, 1971 (hereinafter referred to as 'the Act') to provide for the proper management of the Sikh Gurdwaras and Gurdwara property in Delhi and for matters connected therewith. Section 2(c) of the Act defines "Committee" and it means the Delhi Sikh Gurdwara Management Committee established under

- A Section 3 of the Act. Section 3 provides for establishment of a committee called the Delhi Sikh Gurdwara Management Committee for the proper management and control of the Gurdwaras and Gurdwara property. The Committee shall be a body corporate with the name aforesaid having perpetual succession and a common seal and shall by such name sue and be sued.
- B Section 4 provides for composition of the Committee. Sub-section (a) of this Section provides that forty six members shall be elected from various wards into which Delhi is divided in accordance with the provisions of the Act. Besides them some members have to be co-opted and nominated in the manner prescribed in the section. Section 5 provides that the term of the office of the members of the Committee shall be four years. Section 16 provides for the election of the office bearers and members of the Executive Board. Sub-section (5) of Section 16 lays down that the President and the other members of the Executive Board elected under sub-section (1) or sub-section (2) shall hold office for a term of one year but shall be eligible for re-election for one more term only. The proviso to this sub-section says that
- D an outgoing office bearer or member shall continue in office until election of his successor is held. Sub-section (6) of Section 16 lays down that the election of the President and other office bearers and members of the Executive Board under sub-section (1) or sub-section (2) or any subsequent annual election to any of those offices shall be held in such manner as may be prescribed by Rules. Section 40 of the Act provides that the Committee may make regulations not inconsistent with the provisions of the Act or the rules made thereunder for carrying out its functions under the Act. Regulation 4(1), which has been made by the Committee and has some relevance for the decision of the case reads is as under: -

F “4. *Meetings of the Committee/Executive Board etc.*

(1) Annual General Meeting

G (i) Annual General Meetings of the Committee shall be held in the month of September every year to hold election of Office-bearers and members of the Executive Board. The date of election once announced by the President/General Secretary shall not be postponed.

(ii) Among other items, the Annual General Meetings shall consider and approve:

H (a) Annual Report of the Committee;

- (b) Annual Budget containing proposals for A
- (1) Revised estimates of the current year;
- (2) Budget estimates for the next year;
- (c) Audited statement of accounts of the last year;
- (d) Action taken on report for pending audit paras; B
- (e) Format and the manner in which the accounts shall be maintained in the next financial year;
- (f) Appointment of Auditors for the next year.

Note: Election of New Executive Board and Office-bearers is to be held in accordance with the Rules framed or to be framed under Clause (r) of sub-section (2) of Section 39 of the Act. C

(iii) The agenda papers for the Annual General Meetings shall be circulated by the General Secretary with approval of the Executive Board at least 8 days before the date of meetings.” D

5. The issue involved in the present case is regarding the election, which was held for electing the members of the Executive Board for the year 2005-06. In the preceding year 2004-05, Shri Paramjit Singh Sarna was elected as President and Shri Ravinder Singh Khurana was elected as Secretary. According to Shri Paramjit Singh Sarna the election was held on 19.12.2005 in which the new office bearers of the Executive Board for the year 2005-06 were elected. There is no dispute that at the relevant time the Committee which had to elect the members of the Executive Board had 50 members and had the right to elect the members of the Executive Board from amongst themselves. E

6. After constitution of the new Executive Board for the year 2005-06 had been announced as a result of election held on 19.12.2005 the appellants Shri Avtar Singh Hit filed Writ Petition (C) No. 370 of 2006 in the Delhi High Court praying that the alleged minutes of the meeting dated 19.12.2005 be quashed and a writ of mandamus be issued directing the respondents to the writ petition to hold fresh election of the Executive Board. The parties arrayed as respondents to the writ petition are: - F

1. Delhi Sikh Gurdwara Management Committee
2. Shri Paramjit Singh Sarna, President G

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- A 3. Shri Ravinder Singh Khurana, General Secretary
 4. The Manager, Delhi Sikh Gurdwara Management Committee.

The same persons are arrayed as respondents in the present appeal.

- B 7. The main facts pleaded in the writ petition are as follows. The last general elections were held on 30.6.2002 and a new Committee, which is the present Committee in existence, was constituted. The Executive Boards, which have life of only one year, were constituted in the elections held on 24.7.2002, 22.9.2003 and 22.11.2004. As respondent No. 2 in the writ petition did not hold a meeting of the Committee for electing the members of the Executive Board after expiry of the term of the earlier Board on 21.11.2005, seventeen members of the Committee made representation to the General Secretary on 28.11.2005 for holding of fresh election of the Executive Board for the year 2005-06. Thereafter the General Secretary sent a letter on the same day, i.e., on 28.11.2005 intimating that the meeting of the Committee shall take place on 19.12.2005 to elect the office bearers of the Executive Board. The
C Officiating President S. Baldev Singh Rani Bagh sent a letter dated 1.12.2005 stating that the letter of the General Secretary dated 28.11.2005, whereby it was informed that the election shall be held on 19.12.2005, had been issued without any authority. However, the General Secretary by his letter dated 7.12.2005 disputed the authority of the Officiating President and reiterated
D that what had been conveyed by his letter dated 28.11.2005 was correct. Thereafter, Shri Paramjit Singh Sarna, respondent No. 2, sent a letter to the members of the Committee on 8.12.2005 stating that there are no records to indicate that the Executive Board had taken any decision to hold the election. On 10.12.2005 the General Secretary gave a reply that the Committee was under a legal obligation to hold the election and the same would be held on
E 19.12.2005. A letter was also sent by him to all the members on the same day intimating his decision to hold the meeting as scheduled. In para 15 of the writ petition it is stated that in a meeting, which had been called by Paramjit Singh Sarna, respondent No.2, on 15.12.2005, the members passed a resolution that the election shall be held as scheduled on 19.12.2005. This was followed
F by a communication sent by respondent No. 3 on 16.12.2005 to all the members that as intimated earlier *vide* letter dated 28.11.2005 the meeting shall take place on 19.12.2005. Respondent No. 2 then sent a letter to the members that the meeting for electing the members of the Executive Board shall be held on 18.1.2006. In para 28 of the writ petition it is stated that though respondent No. 3 was taking up a stand that the order passed by him
G and communicated *vide* letter dated 28.11.2005 that the meeting shall be
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convened on 19.12.2005 was justified but respondent No. 2 had taken a stand that the meeting shall be held on 18.1.2006. In para 29 of the writ petition it is averred that the President in connivance with the General Secretary kept the members of the Committee in a confused state of affairs and the position was not clear till 16.12.2005. In para 32 of the writ petition it is alleged that on account of aforesaid confusion the writ petitioner did not attend the meeting on 19.12.2005 though he was very much interested to contest the election for the office of the President but on account of the confused state of affairs he was deprived of his valuable right to participate and contest the election.

8. The respondent No. 1 filed a short affidavit stating that respondent No. 3 had sent a letter to all the members on 28.11.2005 that the meeting shall be held on 19.12.2005. The respondent No. 2 had also sent a letter dated 17.12.2005 to all the members of the Committee that the Annual General Meeting of the members of the DSGMC shall be held at 11.00 A.M. on 19.12.2005 and the said letter was delivered to all the members of the Committee by 'Dak Rider'. The elections were held as scheduled on 19.12.2005 wherein 35 out of 50 members participated and the new office bearers had been elected with more than 2/3rd majority of the total membership of the Committee. The new office bearers of the Executive Board had taken over charge on the same day i.e. on 19.12.2005 but they had not been impleaded as party to the writ petition. It was also pleaded that the election of the office bearers could only be challenged by filing an election petition in accordance with Section 31 of the Act and the rules framed thereunder.

9. Shri Paramjit Singh Sarna, respondent No. 2, in the writ petition also filed a short affidavit stating that 35 out of 50 members had taken part in the meeting held on 19.12.2005. The writ petition was not maintainable on the ground that the petitioner had an alternative remedy of filing an election petition as provided in Section 31 of the Act. It was further pleaded that the office bearers of the newly elected Executive Board, who have been functioning since 19.12.2005, having not been impleaded as party to the writ petition, the writ petition was liable to be dismissed on ground of non-joinder of necessary parties.

10. Shri Ravinder Singh Khurana, respondent No. 3, in the writ petition filed a counter affidavit stating that after receipt of a representation from over 1/3rd members of the Committee for holding a fresh election, he issued a letter dated 28.11.2005 fixing 19.12.2005 as the date for convening the meeting and holding of elections and this had been done by him in exercise of powers

A vested in him under the Regulations. In fact, respondent No. 2, who was holding the office of President, did not want to hold the election so that he could continue in office. In para 7 of the counter affidavit it is stated that a meeting of the Executive Board was held on 15.12.2005 wherein a decision was taken to hold the elections on 19.12.2005 and accordingly a communication was sent to all the members of the Committee. However, respondent No. 2 held another meeting wherein only 8 members were present and a resolution was passed that the Secretary had no authority to circulate the letter dated 28.11.2005 and it was further resolved that the meeting shall be held on 7.1.2006. In para 9 of the counter affidavit it is averred that respondent No. 2 issued another communication to the members of the Committee on 16.12.2005 stating that the meeting for electing the office bears of the Executive Board would be held on 18.1.2006. Respondent No. 2 also passed an order whereby he declared 19.12.2005 to be a holiday. Lastly, it is averred that the respondent No. 2 had never agreed for holding of elections on 19.12.2005 and had in fact fixed 18.1.2006 for the said purpose and thus holding of the election on 19.12.2005 by respondent No. 2 was arbitrary and *mala fide* exercise of powers.

11. The learned single Judge held that the writ petitions are replete with approbation and reprobation of the two warring factions; that the requirement of Regulation 4 had been met; that the motions of holding of an election were factually completed on 19.12.2005; that the plea taken by the petitioners that they did not have notice of the meeting could not be accepted. He further held that the action of the General Secretary in cancelling the election on the penultimate day was not permissible and the manner in which the election had been concluded, it had been reduced to a farce. Finally, it was held that the President's decision to go along with the elections scheduled on 19.12.2005 was given at the eleventh hour and it did not meet with the expectations of law. The learned single Judge accordingly passed an order countermanding and setting aside the election held on 19.12.2005 and further directed that the election shall be held on 14.2.2006.

12. Shri Paramjit Singh Sarna, respondent No. 2 in the writ petition and Delhi Sikh Gurdwara Management Committee, respondent No.1 in the writ petition, preferred Letters Patent Appeals against the decision of the learned single Judge. The Division Bench of the High Court, after meticulously examining the material on record, held that there was no confusion regarding the date of meeting as the total number of members was only 50. It also held that the allegation that 15 members did not participate in the meeting because

of any alleged confusion could not be believed, more so in the light of the findings of the learned single Judge that the elections were validly summoned. It was further held that as more than 2/3rd members were present and had elected the office bearers of the Executive Board, the result of the election had not been materially effected and, therefore, the order passed by the learned single Judge countermanding and setting aside the election could not be sustained. The Division Bench did not go into the question regarding the effect of non-joinder of the newly elected members of the Executive Board to the writ petition but expressed a *prima facie* view that its effect was not fatal. It further held that despite the alternative remedy of election petition being available, the writ petitions were maintainable.

13. Learned counsel for the appellants have submitted that there was utter confusion regarding the date of the meeting in which the new office bearers of the Executive Board had to be elected. Initially Shri Ravinder Singh Khurana, Secretary, sent a communication dated 28.11.2005 stating that the meeting shall be convened on 19.12.2005 but the President Shri Paramjit Singh Sarna sent a letter on 8.12.2005 disputing the authority of the Secretary to convene a meeting. He reiterated on 12.12.2005 that no meeting shall be held on 19.12.2005 and thereafter convened a meeting of all members on 15.12.2005 to discuss the issue and fix a date for holding of the election. The President subsequently fixed 7.1.2006 and then 18.1.2006 for the purpose of holding the meeting. The Secretary, later on took a different stand and sent telegrams to all the members of the Committee on 18.12.2005 cancelling the date earlier fixed by him and confirming the date fixed by the President, i.e., 18.1.2006. It has thus been submitted that the contradictory stand taken by the President and the Secretary and the confusion created thereby, the election held on 19.12.2005 was a farce and the learned single Judge had rightly countermanded the same.

14. Learned counsel for the respondents has submitted that there was no confusion as the Secretary had sent a communication on 28.11.2005 for holding the election on 19.12.2005. Though initially the President Shri Paramjit Singh Sarna had challenged the authority of the Secretary to fix the date for convening the meeting, but subsequently he had himself intimated that the meeting shall be held on 19.12.2005, as originally scheduled. Learned counsel has further submitted that the fact that 35 out of 50 members participated in the meeting and unanimously elected office bearers of the Executive Board by more than 2/3rd majority itself demonstrated that there was no confusion and the election was properly held. Learned counsel has also submitted that

A at any rate in view of the contradictory stand and divergent points of view projected by the rival parties, it was not a fit case for interference by this Court under Article 136 of the Constitution.

B 15. We have given our careful consideration to the submissions made by learned counsel for the parties. The pleadings of the parties and also the material placed in the writ petition clearly show that there is a factual dispute. Whether some members of the Committee could not participate in the meeting on account of the alleged confusing and contradictory stand taken by the President and the Secretary is a question of fact. The writ petitioner Shri Avtar Singh Hit has specifically averred that he was keen to contest for the office of the President but on account of the alleged confusion regarding the date of the meeting he could not participate in the same.

C 16. Part V of the Delhi Sikh Gurdwaras Act deals with Settlement of Election and Other Disputes. Sections 31 and 33 of the Act, which find place in Part V, read as under: -

D “31. The provision of sections 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29 and 30 of the Delhi Municipal Corporation Act, 1957, shall *mutatis mutandis* apply, subject to such modifications as the Central Government may by order direct, in relation to settlement of dispute regarding election, corrupt practices and electoral offences in respect of election or co-option of members of the Committee.

E 33. (1) Any person aggrieved by an order passed by the District Judge may, within sixty days of the order, prefer an appeal to the High Court at Delhi and the orders of the High Court on such appeal shall be final and conclusive.

F (2) The provisions of sections 5 and 12 of the Limitation Act, 1963, shall, so far as may be, apply to appeals under this section.”

G Sections 15 to 20 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as ‘the DMC Act’) provide for resolution of disputes regarding elections by filing an election petition. Sections 15 and 16 of the DMC Act read as under:-

H “15. *Election petitions*.— (1) No election of a councilor shall be called in question except by an election petition presented to the court of the district judge of Delhi within fifteen days from the date

of the publication of the result of the election under section 14. A

(2) An election petition calling in question any such election may be presented under any of the grounds specified in section 17 by any candidate at such election, by any elector of the ward concerned or by any councilor.

(3) A petitioner shall join as respondents to his petition all the candidates at the election. B

(4) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies; C

(b) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings. D

16. *Relief that may be claimed by the petitioner.*— (1) A petitioner may claim—

(a) a declaration that the election of all or any of the returned candidates is void, and E

(b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected.

(2) The expression “returned candidate” means a candidate whose name has been published in the Official Gazette under section 14. F

Section 17 of the DMC Act gives grounds for declaring the elections to be void. Section 19 of the DMC Act lays down powers of the District Judge which includes the power to declare the election of all or any of the returned candidates to be void. Section 22 of the DMC Act defines corrupt practices for the purpose of the Act. Thus a complete machinery for settlement of election disputes is provided in the DMC Act which provisions by virtue of Section 31 of the Delhi Sikh Gurdwaras Act are applicable for settlement of disputes regarding elections under the said Act. G

17. It is well settled principle that where elections are conducted in accordance with the provisions of a statute and the statute also provides a H

A remedy of settlement of election disputes by filing an election petition before a tribunal, it is that remedy alone which should be availed of and recourse cannot be taken to proceedings under Article 226 of the Constitution. This view has been taken in series of decisions rendered by this Court. The earliest decision was rendered in *N.P. Ponnuswami v. The Returning Officer* AIR (1952) SC 64 by a Bench of six learned Judges. In this case the nomination paper of the appellant for election to Madras Legislative Assembly was rejected by the Returning Officer. The appellant challenged the rejection of the nomination paper by filing a writ petition in the High Court which was dismissed on the ground that it had no jurisdiction to interfere with the order of the Returning Officer on account of Article 329(b) of the Constitution, which says that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. In appeal this Court examined the question whether the writ petition would be maintainable at the initial stage against an order rejecting the nomination paper. Certain observations made in para 9 of the reports are relevant and they are being reproduced below:-

“The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court.....”

In para 12 it was observed:-

“Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

It will be a fair inference from the provisions of the Representation of the People Act to draw that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate

stage.”

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In *Mohinder Singh Gill v. The Chief Election Commissioner*, AIR (1978) SC 851, it was held that if during the process of election, at any intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law.

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The same view has been taken in regard to the elections held in accordance with some statutory provision where Article 329(b) of the Constitution is not applicable and they are not governed by Representation of the People Act. In *K.K. Shrivastava v. Bhupendra Kumar Jain*, AIR (1978) SC 1703, the dispute related to election to Bar Council of Madhya Pradesh under the Indian Advocates Act and Rule 31 of Election Rules framed by Bar Council of Madhya Pradesh provided that all disputes arising under the Rule shall be decided by a tribunal to be known as an election tribunal. The defeated candidate approached the High Court under Article 226 of the Constitution challenging the validity of the election which was allowed by the High Court. This Court set aside the judgment of the High Court with the following observations:-

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“Where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms.

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In *Gujarat University v. Shri N.U. Rajguru*, AIR (1988) SC 66, the dispute related to election to the Court of Gujarat University. Some teachers challenged the holding of elections by means of a writ petition before the High Court which was allowed. In appeal this Court set aside the judgment of the High Court with the following observations: -

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“It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Art. 226 of the

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A Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies.”

B There are several other decisions where the same view has been taken. *S.T. Muthusami v. K. Natarajan*, AIR (1988) SC 616 is a case relating to election to the office of Chairman of a panchayat union under the Tamil Nadu Panchayats Act, 1958 where it was held that the parties who are aggrieved by the result of the election can question the validity of an election by an election petition which is an effective alternative remedy and it is not appropriate for the High Court to interfere with the election process.

C *C. Subrahmanyam v. K. Ramanjaneyullu*, [1998] 8 SCC 703 is a case relating to election under the Andhra Pradesh Panchayat Raj Act and in a short judgment it was observed that the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution should not have been entertained for this purpose.

D In *Ashok Kumar Jain v. Neetu Kathoria*, [2004] 12 SCC 73, a writ petition was filed under Article 226 of the Constitution challenging the election held under Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972. This Court observed that Section 66-A of the said Act provided that an election under the Act could be challenged only by presenting an election petition and except in some exceptional extraordinary circumstances normally remedy under Article 226 of the Constitution, challenging the election by filing a writ petition would not be available.

E *Umesh Shivappa Ambi v. Angadi Shekara Basappa* [1998] 4 SCC 529 is a case relating to election of President, Vice-President and Chairman, etc., under the Karnataka Cooperative Societies Act, wherein the High Court in a writ petition under Article 226 of the Constitution set aside the order by which the nomination of the first respondent therein was rejected. This Court reversed the judgment of the High Court with the following observation:-

F “Once an election is over, the aggrieved candidate has to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226. The High Court will not ordinarily interfere where there is an

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appropriate or equally efficacious remedy available, particularly in relation to election disputes.” A

Similar view has been taken in *Harneek Singh v. Charanjit Singh*, [2005] 8 SCC 383 which is a case relating to election of Chairman of Gram Panchayat and the judgment of the High Court by which the order of the Returning Officer was set aside in a writ petition was reversed. B

18. As discussed earlier the pleadings of the parties show that the dispute raised was purely factual in nature as to whether some confusion had been created regarding the date fixed for holding of the meeting of the Committee for electing the office bearers of the Executive Board. The dispute could more appropriately be resolved by examination of oral evidence to be led by the parties. The writ petitioner Avtar Singh Hit claimed that on account of the confusion in dates he could not attend the meeting though he was very keen to participate in the meeting and contest for the office of the President of the Executive Board. In view of the nature of the dispute raised the proper remedy for the petitioner was to file an election petition as provided in Section 31 of the Act where parties could have got opportunity to lead oral evidence. No exceptional or extraordinary circumstances were disclosed which could justify recourse to the extraordinary remedy under Article 226 of the Constitution and for not availing the remedy provided by the statute. We are, therefore, of the opinion that on the facts and circumstances of the present case, the writ petitions ought not to have been entertained for resolving the dispute relating to election and on this count alone the writ petitions were liable to be dismissed. C D E

19. The respondents in their counter affidavits, which were filed before the High Court, took a specific plea that the new office bearers of the Executive Board, who had been elected in the meeting held on 19.12.2005, had taken charge and were functioning. In all the four writ petitions, the office bearers of the newly elected Executive Board were not made parties. On the contrary Shri Paramjit Singh Sarna and Shri Ravinder Singh Khurana, who were the President and the Secretary respectively of the earlier Executive Board, were arrayed as respondents to the writ petition. In the counter affidavit filed on behalf of respondent No. 2 to the writ petition a specific plea was taken that the office bearers of the newly elected Executive Board had not been impleaded as respondents to the writ petition and their rights would be adversely affected if any relief is granted to the writ petitioner. In spite of such clear assertion in the counter affidavit, the writ petitioner did not choose to implead the F G H

A newly elected office bearers of the Executive Board.

20. In our view no relief could have been granted to the writ petitioner on account of the fact that the newly elected office bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not impleaded as party to the writ petitions. In *Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar* AIR (1963) SC 786, it was observed that where in a petition for a writ of certiorari made to the High Court, only the tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower tribunal and in whose favour the impugned order was passed were not joined as parties; the writ petition was incompetent and had been rightly rejected by the High Court. In *Prabodh Verma v. State of Uttar Pradesh*, AIR (1985) SC 167, it was held:-

D “A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.”

E In *Ishwar Singh v. Kuldip Singh & Ors.*, [1995] Supp. 1 SCC 179, it was held that a writ petition challenging selection and appointment to some posts without impleading the selected candidates was not maintainable. This view has been reiterated in *Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.*, AIR (1998) SC 331.

F 21. This being the settled legal position the non-impleadment of the newly elected office bearers of the Executive Board was fatal and no relief could have been granted to the writ petitioners. The result of granting any relief in the writ petitions, as was done by the learned single Judge, was that the members of the newly elected Executive Board lost the office which they were holding without affording them an opportunity to present their case which is clearly impermissible in law. The writ petitions were liable to be dismissed on this count as well.

H 22. Mr. Soli J. Sorabjee, learned senior counsel for the appellant has submitted that absence of notice to even one member may vitiate the proceedings of the meeting which was convened on 19.12.2005 and in the

present case some members were not served with the statutory notice. It is not necessary for us to examine this question as we have held above that the writ petitions filed by the appellants herein were not maintainable having regard to the controversy raised which was purely factual in nature and could more appropriately be decided in an election petition which remedy was provided by the Delhi Sikh Gurdwaras Act and also on the ground that the writ petition was not competent as necessary parties were not impleaded as respondents to the same. A B

23. For the reasons discussed above, we find no merit in these appeals, which are hereby dismissed with costs.

N.J.

Appeal dismissed.