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SLP(C)No. 10303 OF 2001
ITEM No.2

Court No.9

SECTION IVB
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.10303/2001

(From the judgement and order dated 01/05/2001 in CWP 8396/00
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MAYA DEVI

Petitioner (s)

VERSUS

RATNI & ORS.

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 05/12/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Naresh Kaushik,Adv.
Mr. D. Bharuka,Adv.
Mrs Lalita Kaushik,Adv.

For Respondent (s) Mr. S.K. Bansal,Adv.
No.1 Mrs. Savitri Bansal,Adv.
Mr. Harbans Lal Bajaj,Adv.

For Election Mr. Mahabir Singh,Adv.
Commission Mr. Ajay Pal,Adv.

For RR 2 to 5 Mr. J.P. Dhanda,Adv.

UPON hearing counsel the Court made the following
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Leave granted.

The appeal is disposed of in terms of the signed
order.

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(Neena Verma)
Court Master

(Radha Rani Bhatia)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8332 OF 2001@@
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(@ Special Leave Petition (C) No.10303 of 2001)

Maya Devi Appellant

Versus

Ratni & Ors. Respondents

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Leave granted.

Gram Panchayat elections were held in Village Ranila, Tehsil Charkhi Dadri, District Bhiwani (Haryana). The office of Sarpanch of Ranila Gram Panchayat was reserved for 'women'. The appellant and the respondent No.1, besides other six candidates, contested the election for the post of Sarpanch. It appears that at about 4.00 PM, there was a disturbance at polling booth numbers 627 and 630 whereupon the polling was adjourned to 15th March, 2000 and such of the voters as were present but were prevented from exercising their franchise, were issued voting slips. On 15.03.2000, only such of the voters as were present at polling booth Nos.627 and 630 and were also issued with voting slips, were allowed to cast their ballots. Such other voters as were registered in the voters list and had
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not exercised their voting right on 12.03.2000 but were not issued with voting slips were not permitted to cast their ballots on 15.03.2000. The result of the election was declared on 15.03.2000. The appellant was declared elected. The counting had commenced on 12.03.2000 and by the time additional ballots were cast on 15.03.2000 at booth Nos. 627 and 630, the result of the election was almost known to everybody, though not officially announced. On 24.06.2000, respondent No.1 filed a writ petition under Article 226 of the Constitution, putting in issue the election of the appellant and seeking quashing of the result of the election. Although an objection to the maintainability of the petition under Article 226 of the Constitution before the High Court was raised in the counter affidavit filed by the appellant, however, the High Court proceeded to decide the writ petition on merits and having formed an opinion that Rule 59(2) of Haryana Panchayati Raj Rules, 1994 was violated, allowed the writ petition and set aside the election of the appellant. Aggrieved by that decision of the High Court, the appellant has filed this appeal by special leave.

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The principal plea raised by the appellant is that in view of the provisions contained in Article 243-O of the Constitution of India, the jurisdiction of the High Court or any other court to entertain a dispute laying challenge to election to any Panchayat has been taken away and the only remedy available is to file an Election Petition to such authority and in such manner as is provided for by or under any law made by the legislature of State and in view of the bar enacted by the Constitution of India, the High Court was not justified in entertaining the writ petition. It was further pointed out that section 176 of the Haryana Panchayati Raj Act, 1994 provides the remedy of filing an election petition and also makes provision for the grounds on which a civil court may set aside an election. Learned counsel for respondent No.1 submitted that Section 176 abovesaid, contemplates only a limited category of cases in which an election petition may be filed and entertained, and, therefore, the ground on which the writ petition was filed before the High Court being not one falling within the net of Section 176, the writ petition was maintainable and was rightly entertained and decided on merits by the High Court.

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During the course of hearing, the learned counsel for the Election Commission brought to our notice the Haryana Panchayati Raj (Amendment) Ordinance, 2001 (Ordinance No.2 of 2001) promulgated on 5th October, 2001 but given a retrospective effect from 1st day of March, 2000 whereby Section 176 of the Act has been amended. The scope of grounds for filing an Election Petition has been enlarged and it is now specifically provided that non-compliance with or violation of any Rules made under the Act, can be a ground for filing an Election Petition. The writ petitioner's case falls within the purview of sub-clause (iii) of clause (aa) of sub-section (4) of Section 176 of the Act. In view of the retrospective applicability given to the Ordinance, the remedy of filing writ petition stands excluded and the only remedy available to the respondent No.1 was, and is, to have filed an Election Petition under Section 176.

Faced with this situation, the learned counsel for respondent No.1 i.e., the writ petitioner before the High Court, submitted that respondent No.1 was advised in filing the writ petition before the High Court as per the practice prevalent then and such writ petitions were being

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entertained by the High Court, as was done in the present case, and were being decided on merits. He further submitted that the law having been amended with retrospective effect, it would be fair to the respondent No.1 and also serve the ends of justice if respondent No.1 is permitted to withdraw the writ petition with the liberty of filing an Election Petition within the time permitted by this Court. We find merit in the prayer so made.

The Writ Petition filed by respondent No.1 before the High Court is dismissed as withdrawn. The impugned judgment of the High Court is also set aside. The respondent No.1 is permitted to file an Election Petition under Section 176 of the Act within a period of 15 days, which, if filed, shall be heard and decided on merits and in accordance with law, uninfluenced by the impugned decision

of the High Court.

The appeal stands disposed of accordingly.

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.....J.
(R.C. LAHOTI)

New Delhi,
December 05, 2001.

.....J.
(BRIJESH KUMAR)