
(1958) 03 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 188 of 1957

Bhojraj Krishnarao Khade

APPELLANT

Vs

State of M P. and Others

RESPONDENT

Date of Decision : 23-03-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 20A(2)

Citation : (1958) MPLJ 459

Hon'ble Judges : M. Hidayatullah, C.J.;V.R. Sen, J

Bench : Division Bench

Advocate : P.S. Dharmadhikari, for the Appellant; M. Adhikari and S.B. Sen and V.K. Sangh, for the Respondent

Judgement

This case comes before the Division Bench on a reference by Bhutt J. The facts of the case sufficiently appear from the order of reference and need not be stated again. The reference involves consideration of two questions. They are as follows:

(i) Whether the State Government should be directed to issue another notification empowering any particular class of Judges to entertain these petitions ?

(ii) Whether, even if this is now done, the petition in question would not be barred by limitation if it is hereafter presented before a duly constituted authority ?

Under Section 20-A (2) of the Central Provinces and Berar Municipalities Act, 1922, an election petition is to be presented to the District Judge or Additional District Judge or to a Civil Judge especially empowered by the Provincial Government in this behalf. The first question is whether the special empowering is to be only of the Civil Judge or also of the District Judge and the Additional District Judge. The second question involves a notification issued by the State Government by which all Judges of the Courts of Civil Judge, Class I, were empowered, to hear such election petitions. By the Madhya Pradesh Courts

(Amendment) Act, 1956, the distinction between Civil Judges, Class I, and Civil Judges, Class II, has been abolished. The point raised by the learned single Judge is whether a new notification should issue and whether the election petition would not be time-barred if represented before the new authority.

In so far as the first point is concerned, Rao J. held in *Purshottam v. G.V. Pandit* 1950 N L J 520 that the words "especially empowered by the Provincial Government in this behalf" qualify not only Civil Judge, but also District Judge and Additional District Judge. The case decided by Rao J. was reversed in a Letters Patent Appeal reported in *Dr. G.W. Pandit v. Dr. P. v. Deshmukh* 1952 NLJ 356 : ILR 1952 Nag. 352, but not on this point. In *Madan Lal v. Laxmichand C.R.* No. 607 of 1956 decided on 15-10-57 Chaturvedi J. took a different view of the matter, though he did not refer to any earlier authority on the subject. According to Chaturvedi J., the words quoted from the section above qualify the words "Civil Judges" only. In *Janardan v. Hiralal* 1957 MPLJ 170 Naik J. held by implication that the words qualify all three.

In our opinion, it is plainly a question of the language of the statute. Section 20-A (2) reads as follows:

Such petition shall be presented "to" the District Judge "or" Additional District Judge "or to" a Civil Judge especially empowered by the Provincial Government in this behalf within the local limits of whose jurisdiction the election or selection was held and no petition shall be admitted unless it is presented within fourteen days from the date on which the result of such election or selection was notified.

(Underlining by us)

It will be noticed that the word "or" is interposed between the words "District Judge" and "Additional District Judge", and again between the words "Additional District Judge" and "Civil Judge". It will also be noticed that the preposition "to" is used before the words "District Judge", but not before the words "Additional District Judge", but is used before "Civil Judge". The effect of the use of the words "or" and "to" is to create two categories, the first is comprised of the District Judge and Additional District Judge, and the second, of the Civil Judge. The qualifying clause, therefore, cannot by any rule of construction or grammar be carried beyond Civil Judge. In this connection, see the observations of their Lordships of the Privy Council in *Irrawaddy Flotilla v. Bugwandass* 18 I A 121 127 : 18 Cal. 620

Both the reason of the thing and grammatical construction of the sentence seem to require that the application of those words should be confined to the subject which immediately preceded them.

It, therefore, appears quite clear to us that the qualifying words qualify only "a Civil Judge" and not the District Judge or Additional District Judge. The indefinite article "a" before "Civil Judge" also lends force to the argument. The definite article "the" before District Judge shows a class while the indefinite article shows

an individual Civil Judge in whose case there should be empowering. of course the empowering may be of the whole class of Civil Judges or of one or more such. There is no question of creating ad hoc tribunals. The intention of the law is manifest. Power is given to Courts of Civil Judicature and is to be exercised by them as part of their general jurisdiction: See *National Telephone Company Ltd. v. Post Master-General* (1913) A C 546.

It was contended that there would be three parallel Courts in a single area and the Petitioner would not know to which Court he should take his appeal. This is not an insuperable difficulty. Every District Judge in his district, by a distribution memo., designates the authority before which election petitions are to be filed. This is a common practice and is to be found in connection with cases arising under the Guardians and Wards Act, and the Indian Succession Act. In our opinion, therefore, the decision of Rao J., with all due respect, on the interpretation of Section 20-A (2) of the Act is erroneous.

This brings us to the notification. No doubt, the empowering by the notification was of Civil Judges, Class I, and not of Civil Judges, Class II, and by the Amendment Act of 1956, the distinction between the two has been abolished. Civil Judges, Class II, now exercise identical jurisdiction, which Civil Judges, Class I, exercised before. The result of this is not a stepping down of Civil Judges, Class I, to the category of Civil Judges, Class II, but a stepping up of Civil Judges, Class II, to the category of Civil Judges, Class I. The notification does not, in terms, apply to the present Civil Judges as constituted. But the position of those Civil Judges, who being of the designated class cannot change unless they are now enjoying reduced or different powers. Whether or not Civil Judges, of Class II, now merged with the Civil Judges, Class I, can be said to be empowered by implication is a difficult question which does not fall for decision just now. *Prima facie*, they may require another notification. But in so far as Civil Judges of the previous Class I are concerned, their position has not altered and in their case the words "Class I" in the notification can be regarded as surplusage now. In our opinion, Shri Surana had jurisdiction to hear the election petition.

Our answers to the two questions are-

- (i) No.
- (ii) Does not arise.