

(1925) 12 BOM CK 0036

In the Bombay High Court

Case No : Civil Revisional Application No. 309 of 1925

Gangadhar Baburao Gadre and Another

APPELLANT

Vs

The Hubli Municipality and Another

RESPONDENT

Date of Decision : 05-12-1925

Acts Referred:

Bombay District Municipal Act, 1901 — Section 11, 115, 22

Citation : (1926) ILR (Bom) 357

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Judgement

Macleod, C.J.—The Petitioner filed a petition in the District Court at Dharwar praying for a declaration that the election of opponents Nos. 1 to 4 as Councillors of the Hubli Municipality was illegal and void on account of the corrupt practices described in the petition, and further that he and opponent No. 5 should be declared as validly elected members of the Hubli Municipality. Opponents Nos. 1, 2 and 4 resisted the application on the grounds set out in their written statement. They denied the corrupt practices attributed to them, and contended that the petition not having been legally and properly presented to the District Judge was barred by time.

2. The first issue was whether the petition was or was not legally and properly presented to the District Judge within the prescribed time. The petition was as a matter of fact presented to the Clerk of the Court of the District Judge within 10 days of the declaration of the results of the elections for the Hubli Municipality. The question then was whether such a presentation amounted in the eye of the law to its presentation to the District Judge as required by Clause (1) of Section 22 of the Bombay District Municipal Act, III of 1901.

3. The Assistant Judge held that the presentation of the application to the Clerk of the Court of the District Judge was not a presentation of the application to the District Judge, and accordingly the application was rejected.

4. The Petitioner now applies to this Court u/s 115 of the Code of CPC to set aside the order of the Assistant Judge, and he is met with the objection that the District Judge acting u/s 22 of the Bombay District Municipal Act, III of 1901, as further amended, was not a Court within the meaning of the word in Section 115. A similar point arose in *Balaji Sakharam v. Merwanji Nowroji* (1895) 21 Bom. 279., under the Bombay District Municipal Act, II of 1884, Section 3 and it was held by this Court that the District Judge was not a Court within the meaning of Section 622 of the Code of 1882 so that this Court had no jurisdiction to revise the order refusing to set aside an election.

5. But it has been urged before us as a ground for admitting this application that in this case as the District Judge, or the Assistant Judge acting for the District Judge, has refused to entertain the application on the ground stated in the judgment, that enables this Court to interfere. But the District Judge remains a *persona designata* whether he hears the petition and makes an order thereon, or whether he refuses to entertain the application, because it has not been presented to him in time.

6. If it seems desirable that the High Court should have powers of superintendence over the District Judge acting u/s 22 of the District Municipal Act, III of 1901, then that is a matter for the Legislature to consider. As the law stands at present we cannot entertain this application.