

(1978) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Letters Patent Appeal No. 303 of 1977

Gariadhar Gram Panchayat

APPELLANT

Vs

Nanubhai S. Desai and Another

RESPONDENT

Date of Decision : 06-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats Act, 1961 — Section 305

Citation : AIR 1978 Guj 96

Hon'ble Judges : S.H. Sheth, J;R.C. Mankad, J

Bench : Division Bench

Advocate : A.P. Ravani, for the Appellant; K.M. Chhaya, Asstt. Govt. Pleader and S.D. Shah, for the Respondent

Judgement

S.H. Sheth, J.—This appeal is directed against the judgment of Mr. justice P.D.Desai in Special Civil Application No. 1543 of 1973. The question which has been raised is whether this Letters Patent Appeal is maintainable. In order to examine this question, it is necessary to note a few facts and to determine the nature of the order which was challenged before him and the jurisdiction which he exercised.

2. On 30th Nov. 1968, Gariadhar Gram Panchayat passed a resolution selecting a tax. On 26th Dec. 1968 the panchayat published a public notice and invited objections, if any, to the tax which it had selected for imposition. On 24th Jan. 1969 the original petitioner lodged objections before the panchayat. On 12th Feb. 1969 the gram samba unanimously decided to impose the entertainment tax. The objections lodged by the original petitioner were obviously rejected. On 1st March 1969 the imposition of the tax was notified. The original petitioner felt the grieved by it and, therefore, filed an appeal before the District Panchayat, Bhavnagar. The Appeal Committee of the District Panchayat decided the appeal which was allowed. The tax imposed by the gram panchayat was therefore quashed. The appellate order was challenged by the panchayat before the State

Government under S. 305 of the Gujarat Panchayats Act, 1961. The Development Commissioner who decided the revision application allowed it and restored the tax imposed by the Gram Panchayat. The revisional order of the Development Commissioner was challenged in this Court in Special Civil Application No. 1543 of 1973 by the original petitioner it was heard by Mr. Justice P. D. Desai on 8th April 1977. He allowed the petition and remanded the case to Development Commissioner.

3. It is that order which is challenged by the Gram Panchayat in this Letters Patent Appeal..

4. It has been contended by Mr. S. D. Shah who appears on behalf of the original petitioner that this appeal is not maintainable. The Special Civil Application was filed under Arts. 226 and 227 of the Constitution. In order to answer the contention which has been raised before us. it is necessary to determine the nature of the order which was made by the Appeal Committee in appeal and by the Development Commissioner in revision. Section 290-A, inter alia, provides that the Appeal Committee of a district panchayat shall exercise the powers conferred upon the district panchayat under Ss. 93, 178 and 290 of the Gujarat Panchayats Act and that the Appeal Committee shall consist of the President of the panchayat and four other members of the panchayat. It further provides that the State Government shall make rules consistent with the Act to regulate the procedure which the Appeal Committee shall follow in exercising its appellate powers and that such rules may, inter alia, provide for the mode of settling the differences which may arise between the members of the Bench. Sub-section (6) provides that the appellate powers of the Appeal Committee shall include the power to grant temporary injunction or to issue a direction to stay the execution of the decision or order appealed against until the disposal of the appeal or to make such other interlocutory order as may appear to be just and convenient and that such power may be exercised by the Chairman of the Appeal Committee. Section 290-A shows that the Appeal Committee which exercises powers conferred upon a district panchayat under Ss.93, 178 and 290 has the trappings of a Court. Sec 93 deals with the control on erection of buildings. Section 178 deals with the question of levy of taxes and fees by gram panchayats and nagar panchayats. S.290 provides for appeals against the orders of gram or nagar panchayats. The State Government has made in pursuance of this section Gujarat District Panchayats Appeal Committee (Procedure) Rules, 1968. Rule 5 provides for registration of an appeal. It, inter alia lays down that if the Secretary is satisfied that an appeal which has been presented suffers from some minor defects only, the Secretary shall register it. If an appeal has been filed beyond time, the secretary has with the approval of the Appeal Committee power to register an appeal if he is satisfied that on account of the non-communication of the order or decision and that, therefore, he could not prefer the appeal within the period of limitation. Sub-rule (3) of R.5 provides for return of appeal under certain circumstances. R. 6 provides that an appeal shall be served with notice before the appeal is decided on merits. It confers power upon

the Chairman to call for all the material records and papers which are necessary for deciding the appeal. Next it also confers power upon the committee to examine any witness or to require any document to be produced in order to enable it to decide the appeal. It then provides that decision on merits shall be recorded by the Appeal Committee after the parties have been heard. Rule 8 which is the last rule provides that, in any matter not provide for in those rules, the procedure laid down in the Civil P.C. 1908, may, as far as applicable, be followed or that the appeal committee may regulate its procedure in such manner as it thinks fit. A glance at these rules makes it clear that the Appeal Committee which inter aila, has the power to examine witnesses is under an obligation to hear the parties before it decides the appeal on merits and that the CPC is as far as practicable applicable to regulate the procedure before the Appeal Committee. It also necessary to note that the function which the Appeal Committee performs is the function of deciding a dispute between a gram panchayat or nagar panchayat on one hand and the party aggrieved by the decision of the gram or nagar panchayat on the other hand. In other words, the decision of a gram or nagar panchayat becomes the subject-matter of lis between the gram or nagar panchayat on one hand and those who are aggrieved by it on the other hand and this lis between the parties is decided by the Appeal Committee performs the function of a judicial tribunal. It decides the lis between the parties and has also got trappings of a Civil Court. Therefore, the order which the Appeal Committee makes, in our opinion, is a judicial order.

5. The appellate order made by the Appeal Committee can be revised by the State Government u/s 305 of the Gujarat Panchayats Act 1961. Section 305 provides as follows:

"The State Government may call for and examine the record of proceedings of any panchayat or of any committee thereof or of any officer except any proceedings of the Nyaya Panchayat or of the District or the Sessions Court in judicial proceedings in revision or reference from the proceedings of a Nyaya Pauchayat for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just."

These are the contours of the revisional jurisdiction which the State Government exercises under S. 305 Where a subordinate tribunal, such as the Appellate Committee has exercised judicial power by deciding the lis between the parties and if such a decision is challenged before the State Government under S.305, the State Government also exercises the judicial power, act as a judicial tribunal and decides the lis between the parties. It is, therefore, clear that the decision which the Appeal Committee or the revisional authority against the appellate decision of the Appeal Committee exercises a judicial in character. The decisions which they record are judicial decisions.

6. The question, therefore, which has arisen before us is whether appeal under Clause 15 of the Letters Patent lies against an order made by a learned single judge in a petition in which such an order was challenged. It may be noted that

so far as the Arts. 226 and 227 are concerned, none of them provides for an appeal against a decision of a learned single judge recorded in a petition instituted there under. Therefore, right of appeal against the decision of a learned single judge cannot be gathered or inferred from them. The source of the right of appeal lies only in Clause 15 of the Letters Patent. In its application to this High Court, C1. 15 provides as follows:

"And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of S. 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one judge of any Division Court, pursuant to S. 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one judge of any Division Court, pursuant to S. 108 of the Government of India Act made on or after the first day of Feb. 1929 in the exercise of appellate jurisdiction in respect of a decree or order made (in the exercise of appellate jurisdiction) by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided...."

Clause 15 which provides for right to appeal from the decisions of the learned single Judge of the High Court to a Division Bench of that Court is subject to certain exceptions. The bracketed portion which carves out the exceptions to that right, inter alia, provides that if a learned single judge has exercised revisional jurisdiction or the power of superintendence, then his decision in such a case is not appealable under Clause 15 of the Letters Patent. The exercise of revisional jurisdiction within the meaning of the language used in Clause 15 of the Letters Patent has nothing to do with Art. 226 or art 227 of the Constitution. In fact, Arts. 226 and 227 were not enacted when Letters Patent were brought into force. Therefore, it is not wholly correct to say, as is generally believed, that the Court exercises original jurisdiction under Art. 228 and that therefore, any order made there under by a learned single Judge is appealable under d. 15 of the Letters Patent. The test which is required to be applied to determine whether a particular order made by a learned single judge is appealable or not in so far as the writ jurisdiction is concerned, whether the learned single Judge while exerting power under Art 226 or under Art. 227 was, required to revise the order impugned before him.

7. Before we proceed further with this aspect we may refer to two decisions

which have been cited before us. In *Jagannath Ganbaji Chikhale Vs. Gulabrao Raghobaji Bobde*, , the question which was argued was whether the jurisdiction exercised by a learned single Judge under Art. 227 was the revisional jurisdiction within the meaning of that expression used in Clause 15 of the Letters Patent. A Division Bench of the High Court of Bombay compared Art. 227 of the Constitution with Sec. 107 of the Government of India Act, 1915 and Section 224 of the Government of India Act, 1935 and recorded the conclusion that Art.227 in the matter of superintending jurisdiction of the High Court over subordinate tribunals was successor to S. 107 and S. 224 referred to above. It was further held by the learned judges that if the superintending jurisdiction was exercised in a judicial matter by the High Court under Art.227 appeal against such a decision of a learned single judge was excluded by Cl.15 of the Letters Patent. To repeat, Clause 15 of the Letters Patent excludes appeals against the decision of a learned single judge both in a case where he has exercised revisional jurisdiction or in a case where he has exercised superintending jurisdiction. The question whether an appeal would lie against the decision of a learned single judge under Cl.15 of the Letters Patent if he has exercised revisional or superintending jurisdiction under Art.226 was not canvassed before the Bench.

8. The next decision to which reference has been made is in *Srinivasa Reddiar and Others Vs. P. Krishnaswami Reddiar and Others*, In that case the question which was argued was whether the Jurisdiction exercised by the High Court under Art 227 was revision jurisdiction. The Madras High Court answered the question in, the affirmative. It was also contended before that Court that an order made under Art. 227 without jurisdiction would be patently illegal and that therefore, such an order without any exception would be appeasable under Clause 15 of the Letters Patent. That argument was negative by the learned Judges of the Madras High Court.

9. The third decision to which our attention has been invited is *In Re: V. Tirupulswamy Naidu*, . It was hold by a Division Bench of the Madras Court that jurisdiction exercised under Article 227 is a revisional jurisdiction and not the extraordinary original jurisdiction like the jurisdiction of the Court under Art. 226 of the Constitution.

10. It is, therefore, clear that if learned single judge of the High Court exercises revisional jurisdiction, no appeal against his decision under CL 15 of the Letters Patent is competent. It is also clear that under Article 227, the High Court exercises revisional jurisdiction, The Madras High Court in the latter-mentioned judgment has described Article 226 as extraordinary original jurisdiction. It may be so. But what happens in a case where a writ of certiorari is sought under Art. 226 to quash a judicial, decision of a Court or a tribunal below. That raises the question of what a judicial decision is.

11. In our opinion, a judicial decision is one which is rendered by a Court or an authority which has no interest in the subject matter of the decision and which is rendered sifter hearing both the parties. In other words, when a Court or an

authority howsoever it might have been described, decides lis between two contesting parties, to decision which it renders is a judicial decision. When such a decision is impugned before the High Court, what the High Court does is to revise it. While doing so, the High Court may confirm it, modify it or quash it. The revisional jurisdiction of the High Court within the meaning of that expression of used in Cl.15 of the Letters Patent embraces within its sweep all judicial orders made by Courts, Tribunals and other authorities howsoever they might have been described. Such a function may be performed by an officer of the State Government irrespective of who or which authority exercises this jurisdiction if the decision rendered by such an authority or tribunal is a judicial decision by which the lis or the contest between the parties is decided, the High Court in exercise of its power under Art.226 does nothing more than to revise that decision. It may quash it or it may confirm it. But essentially the jurisdiction which the High Court Exercises is that of revising the judicial decision impugned before it. Therefore, irrespective of whether such a decision has been impugned under Art.227 or Art.226, none of which makes any reference to a right of appeal, appeal against the decision of a learned single judge from such a decision is excluded by Cl.15 of the Letters Patent.

12. An unreported decision of a Division Bench of this Court consisting of Mr. justice Divan (as he then was) and Mr. justice T. U. Mehta in Letters Patent Appeal No. 78 of 1970 decided on 22nd Sept 1970 has been cited before us. In that we, the dispute centered round the rejection of two nomination papers. The dispute was that amongst others, two persons had filed nomination papers for contesting the Sarpanchship of Sankhari village in Mehsana District. Their nomination papers were rejected by the election authority. By consent it was decided that the entire dispute should be referred to the Taluka Development Officer for his decision. The Taluka Development Officer held that both the nomination papers did not comply with the mandatory requirement of R. 6 of the Gujarat Gram and Nagar Panchayats (Sarpanch and Upa-Sarpanch, Chairman and Vice-Chairman) Election Rules, 1962 and that, therefore, they were invalid. He, therefore, set aside the entire proceedings relating to the election of the Sarpanch of Sankhari village. That decision was challenged in a writ petition which was filed in this Court. The learned single allowed the writ petition, quashed the order of the Taluka Development Officer and declared the petitioner in that petition duly elected as Sarpanch of Sankhari Gram Panchayat. That order was challenged in the Letters Patent Appeal. In, that appeal it was contended that the appeal was not maintainable. This Court took the view that the appeal was maintainable. While doing so, it proceeded on the concession made by the learned advocate who raised that contention that the Taluka Development Officer who had functioned as competent authority under S. 44 (6) of the Gujarat Panchayats Act, 1961 was not a Tribunal or a Court within the meaning of Art. 227. In the alternative, this Court also expressed an opinion that the learned single Judge had appreciated evidence and come to the exclusion on appreciation of such evidence. Therefore, in the opinion of this Court, appreciation of evidence

recorded by the learned single judge amounted to exercise of original jurisdiction under Art. 226 which distinguished the revisional proceedings under Art. 227 of the Constitution. We do not find any reference to Clause 15 of the Letters Patent having been made in that decision. Since it was conceded by the learned advocate who raised the preliminary objection that the Taluka Development Officer who exercised jurisdiction under S. 44 (6) of the Gujarat Panchayats Act was neither a "Court" nor at "Tribunal", it was really not necessary for this Court to express an opinion on the nature of the jurisdiction exercised by the learned single judge. Therefore, the examination of the question on merits appears to us to be obiter dicta.

13. In our opinion, the test which is required to be applied while determining whether an order made by a learned single Judge is appealable to a Division Bench under Cl. 15 of the Letters Patent is not whether the party has invoked Art. 226 or Art. 227 or whether one Article confers larger jurisdiction while the other Article does not do so. But the real test is whether what the learned single judge has done is to revise a judicial order. If the order which was challenged before him was a judicial order and he examined that order and recorded his decision, he did nothing else except to revise it. In case of an executive or administrative order, a Court of law does not exercise revisional jurisdiction. We do not revise such orders. We may uphold them or vacate them to be invalid and unlawful. We do not revise them in the sense that we do not substitute our decisions for those of the executive orders impugned before us nor do we modify them. The expression "revisional jurisdiction" used in Cl. 15 of the Letters Patent has a reference to a judicial order and to no other orders. We have reproduced above Clause 15 of the Letters Patent in its entirety. When Clause 15 is read in its entirety, it leaves no doubt in our mind that it refers to judicial orders. Such a judicial order does not necessarily emanate from or originate in a Civil Court. It may originate in a Tribunal or in the authority. As stated above, the test whether a particular order is a judicial order or not lies in determining the fact whether the tribunal or authority below has decided a dispute between the contesting parties and adjudicated upon their rights. A dispute exists between the parties when there is a preposition by one and opposition by another. The existence of such a dispute, the decision by a tribunal or authority having no interest in the subject matter of the decision and adjudication of the rights of the contesting parties in that behalf lead to an irresistible inference that the order made by such tribunal or authority is a judicial order. If such a judicial order is challenged in this Court before a learned single judge, he revises it. He may do so either under Art. 226 or Article 227. Now, when he exercises such a revisional jurisdiction irrespective of the fact whether it is invoked under Art. 227 or Article 226 his order is not appealable to a Division Bench under Cl. 15 of the Letters Patent. It is needless for us to say that the nature of an order, whether it is a judicial or quasi-judicial order, is determined by the following tests: (i) whether the tribunal or the authority had decided a dispute between the parties, (ii) whether it had interest in the subject matter of the decision and (iii) whether the rights of the contesting parties had been

adjudicated upon by it. If the answer to the first and the third questions is in the affirmative and the answer to the second question is in the negative, the decision which is rendered by a learned single judge in a petition either under Art. 226 or Art. 227 against such an order is not appeasable. The Tribunal or the authority may or may not have all the trappings of a Court. The appeal ability of a decision of a learned single judge before whom such an order is impugned is barred by Cl.15 of the Letters Patents.

14. In the instant case, the Appeal Committee decided the lis between Gariadhar Gram Panchayat and the petitioner who challenged the levy of tax by that gram panchayat. It has significant trappings of a Court of law. That decision was challenged before the State Government were judicial orders. They were impugned before the learned single judge under Art.226. In our opinion, he exercised the revisional jurisdiction when he examined those decisions. Since he exercised revisional jurisdiction in relation to them appeal against his order under Cl.15 of the Letters Patent is barred.

15. Therefore, this appeal is not maintainable and is dismissed with no order as to costs in the circumstances of the case. Since we have held that the appeal is not maintainable, we reject the application made by Mr.Ravani for amendment to the memorandum of Letters Patent Appeal.

16. Appeal dismissed.