
(1958) 10 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.P. No. 214 of 1958

Gyaniram Gujaram

APPELLANT

Vs

I.N. Saksena D.J., Raigarh and others

RESPONDENT

Date of Decision : 15-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1959) MPLJ 166

Hon'ble Judges : M. Hidayatullah, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; S.B. Sen, Government Advocate, for the Respondent

Judgement

M. Hidayatullah, C.J.

This is a petition under Articles 226 and 227 of the Constitution by one Gyaniram who questions the order of the District Judge, Raigarh, dated 2nd July 1958, in Civil Appeal No. 560 of 1958.

The facts are as follows: Gyaniram was returned as an elected member from Ward No. 6 to the Municipal Committee, Kharsia, on 27th May 1958. The result of the election was declared the next day and the Collector notified it in the Madhya Pradesh Gazette on 13th June 1958. Subsequently, the Collector in exercise of the powers conferred on him issued a notice on 7th June 1958 calling a meeting of the elected members on 27th June 1958 for the purpose of selection of members under the Act. This notice became ineffective because of an order by the High Court. The Collector, Raigarh, then superseded the earlier notice and issued another calling the same meeting on 5th July 1958. Before this date, however, applications had been filed to question the election of the Petitioner before the Additional District Judge, Raigarh. The District Judge, Raigarh withdrew the cases upon his file inasmuch as the Additional District Judge was not available and on 2nd July 1958 passed the impugned order. By that order he provisionally stayed the selection of the members and the Collector,

Raigarh, and the Secretary, Municipal Committee, Kharsia, were informed accordingly.

By this petition Gyaniram challenges the order of the District Judge as being without jurisdiction.

Under the scheme of the C.P. and Berar Municipalities Act election disputes are resolved by election petitions filed before the District Judge or Additional District Judge or a Civil Judge especially empowered by the State Government in that behalf. Section 20-A of the Act reads as follows:

20-A (1) No election or selection notified u/s 20 shall be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition shall be presented to the District Judge or Additional District Judge or to a Civil Judge especially empowered by the State 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.

(3) Such petition shall be enquired into and disposed of according to such summary procedure as may be prescribed by rules made under this Act.

* * * * *

Under the fourth sub-section no appeal lies against the decision of the Judge on such petition and under the fifth sub-section a power of revision is conferred on the High Court which can revise the order of the Judge on the ground that the decision is contrary to law or that the Court has exercised jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law.

Under the Rules framed for the purpose of inquiries into these election matters, the Judge hearing an election petition is conferred the powers which are vested in a civil Court under the CPC code in respect of certain enumerated matters. Rule 12 reads as follows:

For purposes of enquiring into such petitions, the Judge shall have the powers which are vested in a Court under the CPC code, 1908, when trying a suit, in respect of the following matters:

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and

(g) issuing commissions for the examination of witnesses;

and may summon and examine suo motu any person whose evidence appears to him to be material; and shall be deemed to be a civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure code, 1898.

There is no provision which expressly confers the power upon the Judge hearing an election petition to stop the further working of the elected body under the Act. Indeed, the law contemplates that even if the names of elected members are not notified, they shall be deemed to have entered upon their office for the purpose of selection of members. The meeting which is called by the Collector after the election is a statutory meeting and there is no express provision in the law that such a meeting can be stayed by an order of the Judge hearing an election petition.

At the hearing we invited the learned Counsel for the Respondents to show us on what ground or provision of law the order of the learned District Judge can be sustained. He did not point to any specific provision but stated that this would be in exercise of inherent or ancillary powers for keeping the status quo ante in existence till the decision of the election petition. He also stated that between two rival candidates it would be the right of the candidate who emerged successful from the election petition dispute to attend such a meeting for selection of members. There is nothing in the law to show that during the pendency of the election petition the right of the elected member to attend such a meeting is taken away. The general proposition that the Judge exercises ancillary or inherent powers cannot be given effect to unless such ancillary powers can be said to flow reasonably from the provisions of the law itself. The tribunal which is constituted for the hearing of election disputes is a special one and has been designedly conferred only some of the powers of a Court and not all. It would have been simple to say that the District Judge hearing an election petition shall have all the powers of a Court under the CPC code, but that has not been said. Enumerated powers have been conferred upon such a Judge for the purpose of hearing and deciding the election petition. To read into the provision supplemental or inherent powers to stay the operation of the Act in such matters would be to legislate rather than to interpret.

A decision of a learned single Judge was cited before us which is not reported except in notes by the Nagpur Law Journal. That decision was given in *Hiralal and Anr. v. Shri N.M. Indurkar and three Ors.* 1954 NLJ 233 (M.P. No. 169 of 1954 decided on 2nd August 1954), in connection with an election to the Janapada Sabha under the Local Government Act. The learned single Judge, relying upon a decision of their Lordships of the Privy Council reported in *Goonesinha v. De Kretser* AIR 1945 PC 83; held that a Judge hearing an election dispute has an inherent or ancillary power to stay the selection of candidates. In our opinion--and we say it respectfully--the learned single Judge has misread the ruling in question. The case before their Lordships of the Privy Council concerned the issuance of a writ of certiorari by the Supreme Court of Ceylon against a

Judge of the Supreme Court hearing an election matter. Their Lordships of the Privy Council, agreeing with the Chief Justice of Ceylon held that such a writ could not issue within the Supreme Court from one Judge to another. Their Lordships said that the hearing of the election matter was only an extension of the jurisdiction of the Supreme Court. Their Lordships were not laying down the proposition that the Judge hearing the election matter enjoyed the powers which the Supreme Court enjoyed in other respects. Their Lordships only pointed out that the Judge of the Supreme Court hearing an election matter did not cease to be a Judge of the Supreme Court and therefore no writ could be issued against him on the accepted principle that no writ issues from one superior Court to another or within one superior Court.

In our opinion, the point decided in the Privy Council case was entirely different. We are also not satisfied that the passage relied upon by the learned single Judge from Maxwell's Interpretation of Statutes has anything to do with this limited matter. We are concerned here with a Tribunal set up for the solution of election disputes with limited powers under the CPC code. Those powers do not include the right to stop the working of the elected body under the Act. At the very end of the election dispute, the Judge if he decides against the returned candidate can declare only a casual vacancy. The scheme of the Act shows that in spite of a casual vacancy the right of the other members to continue their work under the Act is not in any way taken away. Before the decision of the election dispute, there is not even a casual vacancy and there is nothing in the Act to show that a member against whom an election petition is pending has no right to work as a member for the purposes of the Act. There being no such provision, the order of the District Judge impugned before us suspending the selection of members was entirely without jurisdiction. We accordingly quash that order.

In the circumstances of the case, there shall be no order about costs. Security deposit shall be refunded to the Petitioner.