

(1960) 02 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1242 of 1959

Hambirrao Bhaurao Patil

APPELLANT

Vs

Balisha Ganpat Kamble

RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151, 152
Constitution of India, 1950 — Article 227

Citation : (1960) 62 BOMLR 749

Hon'ble Judges : V.S. Desai, J;S.T. Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.S. Desai, J.—The election of Councillors to the Islampur Municipality was held on November 5, 1957. In that election there were two seats in Ward No. 2 to be elected. One of these seats was a reserved seat and the other was a general seat. The petitioner and opponent No. 3 were candidates for the general seat, while opponent No. 1 and opponent No. 4, who were qualified for the reserved seat, contested the election for the reserved seat. In the said election opponents Nos. 1 and 3 were declared as duly elected. On November 15, 1957, an election petition was filed by the petitioner before the District Judge of South Satara u/s 22 of the Bombay Municipal Act, challenging the validity of the election. Another election petition was also filed by opponent No. 4, who had also been declared unsuccessful in the election. In the proceedings of these election petitions, by consent of the parties it was decided to have a recounting and scrutiny of the votes and the result declared on such recounting and scrutiny. According to this agreement the recounting and scrutiny of votes was gone through and the result thereof was that the petitioner was found to have secured 773 votes, opponent No. 1 got 689 votes opponent No. 3 obtained 832 votes and opponent No. 4 got 651 votes. Now it must be remembered that out of these four candidates the petitioner and opponent No. 3 were entitled to contest only for the general seats and they were not qualified to contest for the reserved

seats. Of these two candidates for the general seat, opponent No. 3 had obtained 832 votes and the petitioner had obtained 773 votes. Therefore, for the general seat opponent No. 3 was the successful " candidate and the petitioner was the defeated candidate. For the reserved seat for which opponent No. 1 and opponent No. 4 had contested and for which they alone were qualified to contest, opponent No. 1 had secured 689 votes and opponent No. 4 had got 651 votes. Therefore, for the reserved seat opponent No. 1 should have been declared the successful candidate and opponent No. 4 the defeated candidate. It appears, however, that the learned Assistant Judge, who was holding this enquiry u/s 22, overlooked the fact that the election was for one reserved seat and one general seat and the candidates for the general seat namely the petitioner and opponent No. 3 were not qualified for the reserved seat and, therefore, the petitioner who was defeated for the general seat could not be declared elected for the reserved seat simply because the votes which he had obtained were larger in number than the votes secured by each of the candidates for the reserved seat. The learned Assistant Judge considered only the number of votes polled by the candidates and declared opponent No. 3, who had secured the highest number of votes, namely, 832 and the petitioner, who had obtained the next highest number of votes, namely 773, as the successful candidates and declared the other two candidates as the defeated candidates. Now this was a decision and order, which contained an error apparent on the face of the record in so far as it declared the petitioner as the duly elected candidate. Opponent No. 1 filed a Review Application in the District Court at Sangli praying that the decision given and the order passed in the election petition should be reviewed as it suffered from an error apparent on the face of the record. This application was transferred by the District Judge for disposal to the learned Assistant Judge, who had decided the original application. Two points were urged before the learned Assistant Judge by the petitioner, who was opponent No. 1 in the Review Application. It was contended in the first place that the review application, which was filed in the District Court and not presented to the District Judge himself, was not properly presented and, therefore, not maintainable. It was urged in the second place that there was no power in the District Judge or the Assistant Judge, who had decided the election petition, to review his own decision. Both these contentions were negatived by the learned Assistant judge. He entertained the review application holding it to be maintainable and he also held that the decision, which he had given in the original application and the result, which he had declared were manifestly wrong and required to be corrected. He accordingly granted the review application and declared opponent No. 3 and opponent No. 1 as duly elected to the general seat and the reserved seat respectively in Ward No. 2 of the Municipality. Against this decision of the learned Assistant Judge the petitioner has filed the present Special Civil Application.

2. Mr. Sukthankar, who appears on behalf of the petitioner, has urged before us two points, which were urged on behalf of his client before the lower Court . Mr. Sukthankar has argued that u/s 22 of the Bombay District Municipal Act, the

election petition is to be made not to the District Court but to the District Judge, who is a persona designata and if a review application is at all competent, it must also be made and presented to the persona designata himself and not to the District Court, because the District Court has no jurisdiction to deal with and decide applications u/s 22 of the Act and also applications for review of the decisions given u/s 22.

3. Now, it is no doubt true that the District Judge deciding election petitions u/s 22 of the District Municipal Act is not the District Court but is a persona designata, who is entitled to deal with election matters under the District Municipal Act. It is also true that applications, which are to be made u/s 22 of the Act must be made to the District Judge. In the present case the application for review was made to the Court of the District Judge and was presented in the office of the District Court and the District Judge had forwarded it to the Assistant Judge, who, as persona designata, had decided the election petition. It may be that there was some irregularity in the form and presentation of the application for review, but we do not think that such an irregularity was sufficient to vitiate the entertaining of the review application by the persona designata, to whom it was forwarded and who was invested with jurisdiction to deal with election matters. We do not think, therefore, that the first contention, which Mr. Sukthankar has raised before us, is sustainable.

4. The next contention, which he has raised before us, is that the learned Assistant Judge, when he decided the election petition and passed an order declaring the result on the recounting, was functus officio and had no jurisdiction thereafter to entertain a review application relating to the decision, which he had given. Mr. Sukthankar's contention is that a power to review his decision was not expressly given to the persona designata by the District Municipal Act, which invested him with jurisdiction to deal with election petitions and Mr. Sukthankar contends that such a power cannot be exercised unless the authority is specifically invested with it. Mr. Sukthankar has further argued that the enquiry before the learned Assistant Judge being an enquiry before a persona designata and not before a Court, the provisions of the CPC were not applicable and, therefore, the provisions relating to review contained in the CPC could not be availed of by the learned Assistant Judge. In short, therefore, the submission of Mr. Sukthankar is that the order reviewing the decision passed by the Assistant Judge is an order passed without jurisdiction and must, therefore, be set aside.

5. We are not inclined to accept the argument, which has been advanced before us by Mr. Sukthankar. It is no doubt true that the District Judge or the Assistant Judge, who is invested with jurisdiction to hear an election petition u/s 22 of the District Municipal Act, is not a Court. The Code of Civil Procedure, which prescribes the procedure to be followed in Courts of civil jurisdiction, does not, therefore, automatically apply to the enquiry before the Judge hearing an election petition u/s 22 of the District Municipal Act. There is, however, no doubt that the enquiry, which is to be held on an election petition, is a judicial enquiry

and the authority before whom the inquiry is to be held is a judicial authority. The inquiry is entrusted to a Judicial Officer of the status of a District Judge or an Assistant Judge. Pleadings are required to be submitted by the parties to the inquiry and a regular hearing is contemplated by the production of oral and documentary evidence. The Act, however, has not prescribed any special procedure for the holding of the inquiry. Now, when a statute sets up a tribunal to hold a judicial inquiry and does not prescribe the procedure, which the Tribunal has to follow in the conduct of the inquiry, the statute may either have left to the Tribunal to fix its procedure suitable and appropriate for the inquiry or may have intended that the Tribunal should follow the rules of procedure contained in the CPC in so far as they may be applicable to the inquiry. That the District Municipal Act has intended that the procedural provisions of the CPC should be followed in the inquiry u/s 22 appears to us to be indicated by the language used in Section 22(2B) of the Act. That Sub-section lays down:

Notwithstanding anything contained in the Civil Procedure Code, 1908, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any pleading, unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is bond fide and not collusive.

Unless the procedural provisions of the CPC in so far as they may be applicable were intended to apply to the proceeding of the inquiry u/s 22, there was no reason to use the words "notwithstanding anything contained in the Civil Procedure Code, 1908" in that Sub-section. Mr. Sukthankar has referred to the provisions contained in Section 22(2) which empower the Judge holding the enquiry to exercise the powers of a Civil Court contained in the CPC to enforce the attendance of witnesses and compel them to give evidence and has argued that the provision indicates that the CPC is applicable only to the limited extent as specified in this provision. We do not think that the argument is sound. The powers to enforce the attendance of witnesses and to compel them to give evidence, which are contained in the Civil Procedure Code, are the powers of the Civil Court. The Authority hearing the election petition is not a Court and does not possess that power unless it is specifically given to it. It is, therefore, clear that the provision is made in Section 22(2) specifying that the Judge hearing the petition will exercise the powers as if it is a Civil Court. The provision does not mean as is contended by Mr. Sukthankar that the CPC applies to the inquiry before the Judge" u/s 22 only to the extent as specified in Section 22(2). In our view the inquiry contemplated u/s 22 of the District Municipal Act is a Judicial Inquiry, the authority holding that inquiry is a Judicial Authority and the procedure prescribed by the CPC in so far as it may apply is applicable to that inquiry.

6. Although we have taken the view that the procedure prescribed by the CPC is applicable to the inquiry before the District Judge or the Assistant Judge, who is holding an inquiry on an election petition u/s 22 of the District Municipal Act it

does not follow, therefrom, that a party to the inquiry has a right to apply to the Judge for a review of the decision given by him in an election petition. For the right of review like the right of appeal is a substantive right and not a matter of procedure. The District Municipal Act has not provided for an appeal from the decision or order of the Judge nor has it provided for a review of the decision. On the other hand, the decision or order passed is made conclusive. Therefore, a party to the election petition cannot claim a right of review of the decision or order made by the Judge on the petition u/s 114 and Order XLVII, r. (f). of the Civil Procedure Code. We are, however, of the opinion that the election Tribunal, which is a Judicial Tribunal, in the absence of express provisions denning and limiting its jurisdiction in the Act, which has constituted it, must be deemed to possess as inherent in its constitution as a Judicial Tribunal all such powers as are necessary in the interest of justice. Such powers as are referred to in Sections 151 and 152 of the CPC are in our view possessed or must be deemed to be possessed by all Judicial Tribunals whether they are Courts or not. Thus every Judicial Tribunal must possess the power to correct arithmetical or clerical mistakes or accidental slips or omissions in its judgment or order or to correct its orders so as to bring them in conformity with their decision or to correct such glaring or manifest errors as might have crept in its order through oversight or inadvertence. The existence of such power is all the more necessary in the case of Tribunals whose decision or order is final and no appeal or revision is provided therefrom. The order passed by the learned Assistant Judge is clearly within the ambit of these powers. In passing the order, which is the subject-matter of the present Special Civil Application, the learned Judge has neither sat in appeal over the decision previously given by him nor has he indulged in any reconsideration of the facts or law relating to the matter nor arrived at conclusions on merits other than those to which he had formerly arrived. All that he has done is that he has corrected a manifest and palpable error which had crept in through oversight in the final declaration of the result of the election, which his order had made. The order previously passed was clearly and hopelessly wrong inasmuch as it had declared a candidate elected for a seat which he was not qualified to contest and had not contested. The correction of this obvious mistake was clearly called for in the interest of justice and the learned Assistant Judge was, in our opinion, clearly entitled to and justified in exercising his inherent powers as a Judicial Tribunal in correcting the mistake. We do not agree with Mr. Sukthankar that the order passed by the learned Assistant Judge in the present case is an order passed without jurisdiction nor do we agree with him that he was functus officio after he gave his earlier decision and no power was left in him whatsoever in respect of the decision or order given by him.

7. Even if we were to accept Mr. Sukthankar's argument that the Assistant Judge was functus officio and had no jurisdiction to entertain the application, which was made to him, and pass the present order, we would have had no hesitation in exercising our jurisdiction under Article 227 of the Constitution in respect of the first order passed by the learned Assistant Judge, which is also before us in the

present proceeding and we would have our selves corrected the said order or directed the learned Assistant Judge to do so in accordance with law. The result in that case would have been the same as is obtained under the present order of the Assistant Judge. Since, however, we have taken the view that the present order passed by the learned Assistant Judge is with jurisdiction and also just and proper, we do not propose to adopt that course.

8. The result, therefore, is that the Special Civil. Application fails and must be dismissed. The rule is accordingly discharged. There will be no order as to costs.