

(1965) 10 GUJ CK 0011
In the Gujarat High Court

Parsottamdas Nathubhai Brahmabhat	APPELLANT
Vs	
D.S. Patel and Others	RESPONDENT

Date of Decision : 30-10-1965

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1898 (CrPC) — Section 195(1)(b)
Gujarat Municipalities Election Rules, 1964 — Rule 12, 14, 7(1)

Citation : (1966) 7 GLR 443

Hon'ble Judges : N.K. Vakil, J

Bench : Single Bench

Judgement

N.K. Vakil, J.—The petitioner in this special civil application has inter alia prayed for the issue of an appropriate writ or direction under Article 227 of the Constitution of India, for quashing the notice issued by the Returning Officer, opponent No. 1, for the general election to be held for the Mehsana Borough Municipality and further to require the Returning Officer to include the petitioner's name in the list of candidates validly nominated for Ward No. 7 for the said election and to republish the said list.

2. The town of Mehsana is a Municipal Borough within the meaning of the relevant provisions of the Gujarat Municipalities Act, 1963 (Gujarat Act No. 34 of 1964). The Collector of Mehsana, the 2nd opponent, by virtue of powers conferred upon him under Rule 7(1) of the Gujarat Municipalities Election Rules, 1964, (hereinafter referred to as the "afore said rules") issued a notice on 18th June 1965 fixing the various stages of the general election for the Municipal Borough of Mehsana. By this notification, the general election was notified to be held on the 12th of September 1965. The dates for the nomination of the candidates for the said general municipal election were 18th and 19th of August 1965. 21st of August 1965 was fixed as the date for scrutiny of the nomination papers. 23rd August 1965 was fixed as the last date for withdrawal of candidature under the said notice. 2nd of September 1965 was fixed under the said notice as the date for publishing the list of validly nominated candidates for

the said general municipal election.

3. Opponent No. 1 was appointed the Returning Officer for the said general municipal election. The petitioner and opponents Nos. 3 to 10 were the candidates from Ward No. 7 of Mehsana Municipal Borough for the ensuing general municipal election to be held as stated hereinabove on the 12th of September 1965. The petitioner's name was included in the voters' list of the said municipality at Serial No. 41 of Ward No. 7. However, the petitioner's age was shown to be 59 though, as a matter of fact, the petitioner is aged about 32. To be on the safe side, two nomination papers were filed nominating the petitioner as a candidate from Ward No. 7 at the said election. Both these nomination papers were filed on the 19th of August 1965 within the time prescribed. They were given serial Nos. 102 and 103 by the Returning Officer. In the nomination paper bearing Serial No. 102, the correct age i.e. 32 years was mentioned and in the other nomination paper bearing Serial No. 103, the petitioner's age was shown as 59 years in consonance with the age shown in the voters' list as mentioned above. Both these nomination papers were duly proposed and seconded. Two separate deposits each of Rs. 100/-, as required, were made with the Returning Officer. On the 21st of August 1965, the date fixed for scrutiny, both the nomination papers of the petitioner were accepted by the Returning Officer. According to the petitioner, as he was nominated as a candidate from Ward No. 7 under the said two nomination papers and both of them were accepted by the Returning Officer, he was advised by the Returning Officer to withdraw one of the nomination papers in order to avoid unnecessary complication by duplication. Thereupon, the petitioner by his letter dated the 22nd August 1965 requested that he may be permitted to withdraw his nomination paper bearing Serial No. 103 in which his age was shown as 59. It is also averred that on that very day the petitioner personally presented him-self before the Returning Officer and informed him that he may be permitted to withdraw the said nomination paper bearing Serial No. 103. Thereafter, the Returning Officer, purporting to act under Rule 12(3) of the aforesaid rules, issued a notice on the 23rd August 1965 declaring the names of all the candidates who had withdrawn their candidature from the ensuing general election. The petitioner's name was not published in the said consolidated list containing the names of those who had withdrawn their candidature. On the 2nd of September 1965, the Returning Officer issued under his signature a list of validly nominated candidates at the said election purporting to act under Rule 14 of the aforesaid rules. In that list, however, the name of the petitioner was not mentioned and the names of opponents Nos. 3 to 10 only were placed in the said list as the validly nominated candidates from Ward No. 7. The petitioner has alleged that a day prior to the publication of the said list, i.e. on the 1st of September 1965, he had heard rumours to the effect that his name was not going to be included in the said list to be issued on the next day and he was thoroughly surprised and confused on the next day when he did find that his name was not included in that list. On making oral enquiries from the Returning

Officer as to why his name was not placed in that list inspite of the fact that he had merely withdrawn one nomination paper bearing Serial No. 103 and the nomination paper bearing Serial No. 102 was still there and which was accepted by him after scrutiny and as such he was entitled to be declared as a validly nominated candidate, it is the case of the petitioner that, at that time, the 1st opponent had informed the petitioner orally that as he had, by his application dated 22nd August 1965 withdrawn one of his nomination papers, he was deemed to have withdrawn his candidature at the election within the meaning of Rule 12 of the aforesaid Rules. The petitioner being dissatisfied with the explanation given by the Returning Officer, requested that he be given an explanation in writing setting out reasons for the omission of his name from the said list. The 1st opponent, however, did not comply with the petitioner's oral request. So he gave a written application on the 4th of September 1965 setting out the details of all the circumstances leading up to the withdrawal of the petitioner's nomination form bearing Serial No. 103 and pressed for an explanation in writing from the opponent No. 1. The first opponent by his letter dated the 4th of September 1965 informed the petitioner inter alia that by virtue of Rule 10 Sub-rule (5) of the aforesaid Rules, when a candidate at a general municipal election filled in more than one nomination papers from the same Ward all the said nomination papers were required to be consolidated and kept together and further that all the said several nomination papers have to be treated not as separate but as a single nomination of the same candidate and, therefore, when he withdrew one or his nomination papers, he was deemed to have withdrawn his candidature within the meaning of Rule 12 and, therefore, the petitioner's name was not included in the list of validly nominated candidates.

4. The petitioner contends that the decision of the Returning Officer not to include the name of the petitioner in the list of candidates validly nominated issued under Rule 14 of the aforesaid Rules on the ground mentioned by the first opponent was illegal, void and without/or in excess of jurisdiction vested in him. In deleting his name from the list of candidates validly nominated, the first opponent had assumed jurisdiction which he did not possess and he had committed an error of law apparent on the face of the record by erroneously interpreting the aforesaid rules and in failing to carry out the mandatory provisions of the aforesaid rules. That the opponent No. 1 had been influenced by extraneous and irrelevant considerations and had acted arbitrarily and illegally in deleting the name of the petitioner from the said list and had thus not exercised the powers vested in him bona fide. The petitioner contended that he was duly nominated as a candidate from Ward No. 7 because once a nomination paper had been duly accepted after scrutiny, the Returning Officer had no power, authority or jurisdiction to delete the name of the candidate whose nomination paper had been accepted from the list of validly nominated candidates unless the candidate himself had withdrawn his candidature or retired from the contest at the election. His nomination paper Serial No. 102 was good and valid on the date of the issuance of the list of validly nominated candidates as the petitioner had neither

withdrawn his candidature nor retired from the contest at the election so far as the said nomination paper was concerned. The withdrawal of nomination paper Serial No. 103 cannot in any manner be said to affect the petitioner's candidature from Ward No. 7 at the general municipal election, as apparently the withdrawal was restricted only to the said nomination paper Serial No. 103. It has also been contended on behalf of the petitioner that the first opponent had erred in law in treating the two nomination papers of the petitioner Serial Nos. 102 and 103 as one single nomination, as if they were consolidated, on a wrong interpretation of Rule 10(5) of the aforesaid Rules. The said sub-rule does not deal with consolidation of nomination papers at all and the said sub-rule, in fact, recognises the principle that there could be more than one nomination papers filed proposing the name of the candidate and that even if one of such nomination papers were to be declared as invalid, the candidate must nevertheless be taken to have been nominated by means of another nomination paper which was duly accepted and found valid. Opponent No. 1 had thus misread and misconstrued Rule 10(5) of the aforesaid Rules and had committed an error of law apparent on the face of the record in relying upon the said sub-rule in support of his action under Rule 12. The opponent No. 1 had erred in law in construing his application dated 22nd August 1965 as a notice of withdrawal of candidature under Rule 12. On these and other grounds and allegations, the petitioner came to this Court challenging the said acts of the Returning Officer and sought for an appropriate writ or direction to set right the wrong done to him.

5. In the affidavit in reply, filed by the first opponent at the interim stage, the personal allegations made against him have been controverted, He also stated certain facts as regards the various acts he had done in discharge of his duty as the Returning Officer in order to support his version that he had not acted mala fide in any manner. I do not find it necessary to set out all the details contained in this affidavit filed in reply at this stage, for the reasons that will become apparent from what follows.

6. At the hearing of this petition, a preliminary objection has been raised on behalf of the opponents Nos. 1, 2 and 5 that this petition is incompetent under Article 227 as opponent No. 1, the Returning Officer, whose acts are impugned, is neither a Court nor a Tribunal under that article. The merits of the contentions raised by the petitioner against the impugned act of the Returning Officer, therefore, can be examined only if the preliminary objection raised fails.

7. In support of the objection raised, it was contended that when the Returning Officer acted under Rule 12 or 14 of the aforesaid Rules, he acted only in his administrative capacity and not as a judicial or quasi-judicial authority. If it could not be held that his function while acting under Rule 12 or 14 is a judicial or a quasi judicial function, then only the next question would arise as to whether he could be held to be a Tribunal. Even if he could be held to be a quasi judicial authority, all quasi judicial authorities would not necessarily fall within the meaning of a Tribunal under Article 227. Therefore, if the function of an authority

or body could not be shown to be of a judicial or quasi judicial nature, then that authority or body can never be held to be a Tribunal. It was further urged that the Division Bench of this High Court consisting of My Lord the Chief Justice and Sarela, J. has decided on 15/16th July 1965 in the case of Patel Govindbhai Hirabhai v. Patel Lallubhai Madhavbhai and Ors. in Special Civil Application No. 443 of 1962 (With Special Civil Applications Nos. 444, 445, 446 of 1962) that the function of the Returning Officer under Rule 11 of the Bombay Village Panchayats Election Rules, 1959, is not a quasi judicial function but only an administrative function and the said ruling having a binding effect on this Court, it has to be held that opponent No. 1, the Returning Officer in this petition, does not perform any quasi judicial function under Rule 10 of the aforesaid Rules and, therefore, he is not a tribunal. It is not in dispute before me that under Rule 11 of the Village Panchayats Election Rules, the nature of the function of the Returning Officer is the same as that of the Returning Officer acting under Rule 10 of the aforesaid Rules and that these rules are in pan materia.

8. Mr. I.M. Nanavati, the learned advocate for respondent No. 5 further contended that even if it were to be held that the said Division Bench ruling does not clinch the issue, opponent No. 1, the Returning Officer, cannot under law be held to be a Tribunal because an authority can be held to be a tribunal within the meaning of Article 227 only if it is established that it is an adjudicating body constituted by the State and is vested with the State's inherent judicial powers. It would not even be enough to prove that the Returning Officer was under the duty to perform his function judicially. It is further to be proved that he is invested with the part of the judicial functions of the State. It was submitted that the Returning Officer is neither under the duty to act judicially as held by the aforesaid Division Bench decision of this High Court nor under the acknowledged tests laid down by the Supreme Court he can be said to have been invested with any judicial power of the State. According to him, in cases of the kind with which we are concerned, the test to be applied is as laid down by the Supreme Court in many of its decisions, that in determining the question whether the authority in question can be regarded as a tribunal or not the principal and important incident is the investiture of the trappings of a Court, and applying this test opponent No. 1 cannot be held to be a tribunal.

9. Mr. P.D. Desai, the learned advocate for the petitioner, urged that it would be a wrong approach to the problem if one were to accept the submissions made on behalf of the respondents that first it has to be determined whether the Returning Officer is at least a quasi judicial authority who is under a duty to act judicially, and that if it is found that the Returning Officer is not a quasi judicial authority, he can never be held to be a "tribunal". The correct approach to the problem, according to Mr. Desai, is to determine whether the Returning Officer is a tribunal independent of the question whether a duty is imposed on him to decide judicially and as such can be held to be a quasi judicial authority or not. The test laid down by the Supreme Court to determine whether an authority is a tribunal or not within the meaning of Article 227 is whether the authority is

constituted by the State having the right to adjudicate the disputes between parties and that it has been vested with the inherent judicial power of the State. Once this is established, the duty to act judicially would flow there from. According to him, the Returning Officer is a "tribunal" within the meaning of Article 227. In support of these submissions of his, he heavily relied upon the decision of the Supreme Court in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*. He submitted that the aforesaid Division Bench decision of this High Court cannot have any application to the facts of the present case because the learned Judges in the said decision dealt with the question only for the purpose of Article 226 and not for Article 227. They were not dealing with the question whether the said Returning Officer was a tribunal as is the case in the present petition. Very different tests and considerations arise in the two cases. Inter alia, he further contended that the said Division Bench decision is not binding because it is a decision per incuriam inasmuch as the attention of the learned Judges was not drawn to the Supreme Court decision in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, which is in direct conflict with the finding of the Division Bench decision. It was also contended that though in the Division Bench case the learned Judges have considered the Supreme Court decision in *Associated Cement Companies Ltd. v. P.N. Sharma and Anr.* they had considered it only from the point of view of coming to the conclusion as to whether the Returning Officer was quasi judicial authority or not to enable the Court to issue a writ under Article 226 and not from the point of view of the question whether he is a tribunal within the meaning of Article 227 and the inquiry and the matter for decision in respect of the two being very different in nature and approach, this fact of the Division Bench having made the finding that Returning Officer is not a quasi judicial authority cannot, in any way, affect adversely the present petitioner. According to Mr. Desai, under the force of the findings in the aforesaid Supreme Court decisions in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, and *A.C. Companies v. P.N. Sharma (supra)*, the Returning Officer must be held to be a Tribunal.

10. If, as submitted on behalf of the opponents, the finding of the Division Bench decision in *Patel Govindbhai Hirabhai v. Patel Lallubhai Madhavbhai and Ors. (supra)* can be held to apply to the question to be determined in this petition in all its aspects, then this Court certainly would be bound to follow it and no further consideration would be needed. The matter, however, has not remained so simple as that and, on the contentions raised before me, questions of importance and far reaching consequences have arisen to be considered and answered. For his submission that different considerations arise, in determining the question whether an authority is a quasi judicial authority to enable the issue of writs under Article 226 and the question whether an authority is a tribunal within the scope of Article 227, Mr. Desai sought support from the observations made by Gajendragadkar C.J. in the aforesaid Supreme Court decision of *A.C. Companies v. P.N. Sharma (supra)*. The learned Chief Justice has observed at one place that:

That problem has been considered by this Court on several occasions and judicial decisions show that it arises in two different forms. Sometimes, the question which is posed for the decision of this Court is whether a particular decision reached by an authority or a body can be corrected by the issue of a writ of certiorari by the High Courts in exercise of their jurisdiction under Article 226; and in dealing with this question, it becomes necessary to enquire whether the impugned decision is a judicial or quasi judicial decision and whether in reaching it, the authority concerned was required to adopt a judicial approach and follow the principles of natural justice. We will very briefly indicate how this question has been considered by this Court by referring to some important decisions in that behalf.

After discussing the various cases bearing on that question, the learned Chief Justice has further observed as follows:

It will be noticed that in these cases, this Court was not called upon to consider whether the authorities whose decisions were challenged under Article 226 were tribunals or not, because the requirement that the impugned decision should be that of a tribunal which has been prescribed by Article 136(1) is not to be found in Article 226; and so. the only point which fell for decision was whether the impugned orders amounted to judicial or quasi judicial decisions liable to be corrected by the Issue of a writ of certiorari under Article 226, or not. That problem is different from the one which we have to decide in the present case.

Let us now refer to some of the decisions which deal with the problem with which we are concerned.

In the said Supreme Court decision, a number of previous decisions of that Court bearing on both the subjects have been discussed and some tests appear to have been laid down after discussing important decisions particularly for determining as to when a given authority or body can be held to be a Tribunal. As the petitioner has rested most of his submissions upon this ruling to show that the objection raised on behalf of the opponents cannot stand in the way of his petition and the Returning Officer must, under the test laid down by this Supreme Court decision be held to be a tribunal, it would be expedient, without accepting the correctness of the contention raised by Mr. Desai as regards the appropriate approach to the question for determination before me, to consider first whether any tests are laid down, if so what they are, and whether applying those tests the Returning Officer could be held to be a Tribunal, particularly when he functioned under Rule 12 or 14 of the aforesaid Rules. The effect and the scope of the aforesaid Division Bench decision of this High Court and of the decision in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, may have then to be examined only if it is found necessary to do so.

11. In the Supreme Court decision in *A.C. Companies v. P.N. Sharma* (supra), the main point of law that arose was whether the State of Punjab exercising its appellate jurisdiction under Rule 6 Sub-rule (6) of the Punjab Welfare Officers

Recruitment and Conditions of Service Rules, 1952 was a tribunal within the meaning of Article 136(1) of the Constitution. To understand fully the observations and the conclusions reached by the Supreme Court, it will be useful to state a few facts of the said case. Sharma was the Welfare Officer appointed by the appellant Company as the Welfare Officer, under the provisions of the Factories Act, 1948, read with the rules framed thereunder. The letter of appointment issued to him stated that he would be liable to be transferred from one unit of the appellant to another and that his services could be terminated by the appellant by one month's notice or with one month's pay in lieu thereof. The respondent Sharma after a few years of service refused to be transferred from one place to another according to the requirements of service and the working of the appellant's factories. After a long and protracted correspondence between the parties, the appellant informed the respondent Sharma that since he had not proceeded to the place where he was transferred as directed, he had ceased to be in the employment of the appellant and his name had been struck off from the company's rolls. Respondent No. 1 Sharma then filed an appeal before respondent No. 2, the State of Punjab as the appellate authority under Rule 6(6) of the Rules. A notice was issued thereupon to the appellant and a written statement was filed disputing the validity of the grievances made by Sharma in respect of the termination of his services. Respondent No. 2 then passed the impugned order which was issued in the name of the Governor of Punjab in exercise of the powers conferred by Rule 6(6) of the Rules directing that the Governor of Punjab was pleased to reinstate respondent No. 1 as Labour Welfare Officer in the service of the appellant. The order stated that, however, nothing in the said order shall be construed to prevent the management from taking action against Sharma in accordance with the provisions of the rules for such acts and omissions on his part as may have come to the notice of the employer. The validity of this order had been challenged before the Supreme Court. At the hearing of the appeal, a preliminary objection had been raised on behalf of respondent No. 1 that special leave should not have been granted to the appellant because the appeal was incompetent inasmuch as respondent No. 2 against whose appellate decision the appellant purported to have preferred the appeal was not a tribunal under Article 136(1). The Supreme Court was thus called upon to first decide the question as to whether respondent No. 2 could be said to be a tribunal within the meaning of Article 136(1) so as to justify the appellant to bring the appellate decision of respondent No. 2 before the said Court by special leave under the said article. Now here I may mention that though the Supreme Court was concerned with the word "tribunal" mentioned in Article 136(1), there can hardly be any doubt that the "tribunal" falling within the purview of Article 227 has the same meaning and significance. Bachawat J. who has given a separate but concurring judgment has also taken the same view.

12. Before the Supreme Court it was contended that in every State there exists administrative bodies. They perform functions within their jurisdiction and take decisions which are only administrative decisions. It was pointed out that, at the

same time, it was not unlikely that even in the process of reaching administrative decisions such bodies or authorities are required to act fairly and objectively and in many cases may have also to follow the principles of natural justice; all the same the authority to reach such decisions conferred on them is clearly distinct from the judicial power conferred on Courts. Similarly, the decisions given are also different and distinct. Then it was pointed out how the tribunals have been given a special place or significance in the scheme of the Indian Constitution. To the tribunals are entrusted special matters for their decisions and they share with the Courts one common characteristic, that is to say, "both are constituted by the State and are invested with the judicial as distinguished from purely administrative or executive function" as was held as far back as 1954 by the Supreme Court in *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, In the case of the tribunal, the procedure may not be so definitely or regularly prescribed and it may have to devise its own procedure for discharging its functions. All the same, both are adjudicating bodies and they deal with and finally decide disputes between parties within their respective jurisdictions. To the Court and the tribunal it is the State's inherent judicial power that has been transferred and by dint of such vesting both of them discharge the inherent judicial function of the State. Mostly, the State transfers such inherent judicial powers to the regular Courts established under the provisions of the Constitution. But there is no impediment under the Indian Constitution for the State, by making proper provisions, to transfer a part of its judicial powers and functions to the tribunals by entrusting to them the work of adjudicating upon disputes between the parties. The basic characteristic common to both therefore, is that they are vested with the authority to discharge judicial functions of the State that inherently vest in a sovereign state.

13. In order to consider the questions so raised before them, Their Lordships of the Supreme Court found it necessary to consider a number of its own decisions to be able to finally answer the question and the very approach that they made to the problem is significant. I have already referred to certain observations made by the learned Chief Justice to the effect that this problem had been considered by the Supreme Court and the High Courts on several occasions and that it has arisen in two different forms. One of them was when the Courts had to determine the question whether the authority was a quasi judicial authority, in cases falling under Article 226; but there the Courts were not called upon to decide as to whether the authority whose decision was challenged was a tribunal or not. In the view of the learned Judges, the problem of determining whether an authority or body is a tribunal or not is of a very different nature and they, therefore, proceeded also to examine a set of decisions of the Supreme Court in which the inquiry was as to whether the impugned authority was a tribunal or not.

14. After examining various decisions bearing on the point, the conclusion reached by the Supreme Court in the case of *Associated Cement Companies Ltd. v. Sharma* (supra) was as follows:

It would thus be seen that in dealing with the question as to whether respondent No. 2 while it exercises its appellate power under Rule 6(6), is a tribunal Article 136(1), we must enquire whether respondent No. 2 has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively. That is the test which has been consistently applied by this Court in considering the question about the status of any body or authority as a tribunal under Article 136(1).

The learned Judges, after laying down this test and before applying it to the facts of the case on hand for decision also dealt with one important subject and that was to point out the distinction between the Constitution of Australia and the Constitution of this country, and how the expression "judicial power of the State" has been borrowed from the Australian law. It has been pointed out in the judgment of the learned Chief Justice that under Australian Constitution, judicial power of the State could never be invested in any body other than the Courts constituted under the Constitution, and, therefore, in Australian rulings whenever a reference is made to the judicial power of the State, it has always been given a narrow meaning. According to the Australian Constitution, as the judicial power of the State can only be vested in the Court, if any part of the judicial power of the State is vested in any other body than a Court it is there always referred to as "quasi judicial powers". But there is no such impediment in the Indian Constitution. The Indian Constitution, as a matter of fact, recognises the possibility of the judicial power of the State being vested in the tribunal and this has been pointedly brought out by the learned Chief Justice as well as Justice Bachawat in his concurring judgment, where he has observed:

Now, the expression "judicial power of the State" is not to be found in our Constitution. We have borrowed this expression from the Australian law. By Article 71 of the Australian Constitution, "the judicial power of the Commonwealth" is vested in the Courts therein mentioned, and no other body or tribunal can exercise that power. The Australian cases try to soften the rigour of this prohibition by giving a somewhat narrow construction to the expression "judicial power of the Commonwealth". Thus, they hold that an arbitral power in relation to industrial disputes to ascertain and declare what in the opinion of the arbitrator are to be respective rights and liabilities of the parties in relation to each other is not to be regarded as a judicial power of the Commonwealth within Article 71 of the Australian Constitution.... But our case-law does not use the expression "judicial power of the State" in the same narrow sense while giving the test of a tribunal under Article 136 of the Constitution.

The learned Judge has also made the following further important observations:

An authority other than a Court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the power vested in the authority can be truly described as judicial functions or judicial powers of the State For the

purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals.

15. The learned Judges, having evolved the test proceeded to apply the test to the case on hand and they held that the main and the basic test, whether the adjudicating power which a particular authority is empowered to exercise has been conferred on it by a statute and can be described as a part of the State's inherent power exercises in discharging its judicial functions, when applied to the case on their hand, left no doubt that the power which the State Government exercises under Rules 6(5) and 6(6) is a part of the said judicial power. It had been conferred on the State Government by a statutory rule and it can be exercised in respect of disputes between the management and its Welfare Officer. There is the lis in that sense. There is affirmation by one party and denial by another and the dispute necessarily involves rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides it was an order passed on appeal. Having regard to those distinctive features of the power conferred on the State Government by the said Rules. Their Lordships felt no hesitation in holding that it was a tribunal within the meaning of Article 136(1).

16. There is no doubt that the Supreme Court in this decisions of theirs in A.C. Companies v. P.N. Sharma has laid down, after a detailed examination of the question, that the only basic and firm test to determine whether a particular body or authority is a tribunal or not is whether it has been constituted under a statute and is an adjudicating authority which is vested with the judicial power of the State. But it is also obvious that an authority other than a Court may be vested by statute with the judicial power in various ways and it would not be possible to attempt to define exhaustively all such different circumstances or ways and each case has to be examined as it arises to ascertain whether the powers vested in the authority can be justifiably called the judicial functions or judicial powers of the State. As regards the case that they were looking into, they were satisfied that the State of Punjab was a tribunal under the said Act and was vested with the State's judicial power from the facts (1) that there was a lis before it, (2) that the order which the State Government ultimately passed is its decision and is made final and binding, and (3) that it is an order passed on appeal.

17. Mr. Nanavati, the learned advocate on behalf of the opponents, submitted

that the observations made in the *A.C. Companies v. P.N. Sharma* by the Supreme Court, as regards the test of the investiture of the trappings of the Court, have to be read in the context of the fact that Their Lordships were dealing in that decision with a case where the act of the State Government itself was impugned and they had to decide whether the State Government was a tribunal or not. According to him, the investiture of the trappings of a Court in the authority, in respect whereof the question is to be determined whether it is a tribunal or not, remains a very important test despite the observations made in the said Supreme Court ruling. It was urged by him that the rulings of the Supreme Court discussed by Their Lordships in the decision of *A.C. Companies v. P.N. Sharma* could be divided into three categories (1) where the State Government or the Central Government was the authority about which the question had arisen, (2) where arbitrators appointed by parties were concerned and (3) which were in respect of authorities other than these two. He submitted that when the Government itself is concerned, the duty to act judicially can be implied. When the Central Government or any State Government exercises the judicial powers no further tests are necessary to be applied. Even the important tests of the trappings of the Court need not be necessary because the Government itself is exercising its inherent power. In the case of arbitrator, he is not appointed by the State but by the parties and, therefore, obviously, on the universally acknowledged principles, he cannot be a tribunal. But the real difficulty arises in the third category of cases where the authority is an officer, who exercises mostly administrative powers but sometimes has a duty to act judicially. In these cases, it may be that he has been appointed under a statute to act and has also been invested with certain powers, but when the question arises to decide as to whether when he exercised such powers of his, he functioned only administratively or whether he can be said to have acted under the judicial powers of the State vested in him the difficulty arises and then the real distinctive test would only be whether his powers and functions were clothed with the trappings of a Court or not. He pointed out that this concept of "the trappings of the Court" was most emphasised in the case of the *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhar and Others*, and then again the test was applied in the case of *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others*, where the status of the Central Board of Revenue exercising its appellate power came in for determination. I find it difficult to accept this line of reasoning advanced by Mr. Nanavati in view of the very clear observations and conclusions reached by the Supreme Court in their decision of *A.C. Companies v. P.N. Sharma* even after considering the decisions on which Mr. Nanavati relied upon. In the first place, I find that the division into the three categories is more or less artificial and cannot stand the test of scrutiny. For example, in the first category Mr. Nanavati had placed the cases concerning the State Government or the Central Government and tried to urge that in those cases, there need not be any emphasis on the test of the trappings of the Court because the Government itself was exercising its inherent judicial power. This reasoning is fallacious per se. The "State" and the "Government" are

different legal entities. It is obvious that even in the case of State Governments or the Central Government, the inherent judicial power of the "State" is not automatically exercised by either the State Government or the Central Government. What the "State" in our country connotes is the Union and its component States which is very different from the State Government or the Central Government. The decisions which have been referred to by Mr. Nanavati viz. *Indo-China Steam Navigation Co. Ltd. v. Harinagar Sugar Mills Ltd.* and the very case of *A.C. Companies v. P.N. Sharma* themselves show that the main question that was discussed was whether the State Government or the Central Government was invested with the inherent judicial power of the State. Therefore, there is no doubt that even in the case where the question arises as to whether the government has acted in the exercise of the inherent judicial powers of the State, the main test has to be satisfied as in the case of any other authority or body. Therefore, it cannot be said that the test of the concept of the trappings of the Court would not at all arise in those cases if at all that feature was one of the important tests. To my mind, hardly any scope is left for any such argument as regards the "trappings of the Court" if we carefully examine the clear observations made particularly by Bachawat J. in his concurring judgment. He has pointed out how this concept of the trappings of a Court has been borrowed from the Australian decisions. He has referred to *Shell Co. of Australia v. Federal Commissioner of Taxation* 1931 A.C. 475 where Lord Sankey, L.C. said "there are tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial power". The Lord Chancellor was obviously pointing out that a tribunal possessing one or more of the trappings of a Court was not necessarily a Court exercising the judicial power of the Commonwealth as contemplated by Article 71 of the Australian Constitution. But it does not follow that the investiture of some or many of the trappings of a Court is an essential attribute of a tribunal contemplated by Article 136. Then later the learned Judge has observed that "Nevertheless, our concept of a tribunal has been somehow coloured by Lord Sankey's idea of a tribunal with the trappings of a Court" and then he made reference to all the cases which were considered at length by Chief Justice Gajendragadkar, wherein the trappings of the Court were referred to in one or the other manner, and then observed:

If it has one or more of such trappings, it may be easier to pronounce the body to be a tribunal. But we must not forget that the investiture of the trappings of a Court is not an essential attribute of a tribunal. The basic test of a tribunal is that it is a body vested with the judicial power of the State. Unless this basic concept is borne in mind, the trappings of a Court any will become a trap and a snare for the unwary.

And then again the learned Judge has said, "It matters little that such a body or authority is vested with the trappings of a Court The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a Court, so also the Industrial Disputes Act, 1947 vests an authority acting u/s 10A of the Act with many of

such trappings, and yet, such bodies and authorities are not tribunals." Chief Justice Gajendragadkar has also made observations to the same effect in respect of the concept of the "trappings of the Court" when he observed that, "The requirements of procedure which is followed in Courts and the possession of subsidiary powers which are given to Courts to try the cases before them are described as trappings of the Courts and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears the appeals under Rule 6(5) and Rule 6(6). But as we have already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not "To my mind, therefore, after this decision of the Supreme Court, it will be difficult to hold that the test of "investiture of the trappings of the Court" could be emphasised as a test to determine whether a particular authority or body is a tribunal or not. It seems fairly settled by this decision that the absence of such trappings cannot be any decisive test that a particular authority or body is not a tribunal, if it is shown that it is constituted under a statute to adjudicate disputes between parties, and that the State's inherent judicial powers have been vested in it. Whether such judicial powers can be said to be vested in it or not would depend upon the facts of each case and the Court deciding it shall have to come to its own decision as to whether the power vested in such body or authority can be truly described as the judicial function or judicial power of the State. If the trappings of a Court exist in a given case, it may only facilitate the Court to come to the conclusion whether the authority vested is truly in the nature of the judicial power of the State.

18. It was then urged by Mr. Nanavati that the Supreme Court in the said decision has at least laid down that one of the tests to determine whether the judicial power of the State has been vested in that authority or not was to see whether the said authority's pronouncement is a "decision" and whether it is a final decision. Even though the conclusion or order of any authority could be said to be a decision, unless such decision is "final" such authority cannot be said to be invested with the judicial power of the State. He urged that the decision of the Returning Officer could not be held to be conclusive and final. It is true that the learned Judges in the case before them did take into consideration the fact that the order passed by the State Government under Rule 6(6) was a decision, and that it was a final decision, and that fact was taken as one of the features in the said case to determine that the Government was vested with the State's judicial power. It is also to be noticed that in *Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand and Ors.* (supra), the Conciliation Officer under the Industrial Disputes Act, 1947, was held not to be a tribunal on the ground that he was not vested with the judicial power of the State as he was empowered merely to lift the ban statutorily imposed on the employer's right and was not authorised to pronounce a final and binding decision in any dispute. So the Supreme Court

itself seemed to have emphasised this feature to be one of the important ingredients to be taken into account for determining whether the State's judicial power has been vested in the particular authority or not. It has to be conceded that this aspect has, to a certain extent, been watered down by the observations made by Bachawat J. when he said that any outside authority empowered by the State to determine conclusively the rights of two or more contesting parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal. But while saying so, he prefaced it by saying "for the purposes of this case it is sufficient to say" and then again he has further stated that this test of a tribunal is not meant to be exhaustive and it may be that other bodies not satisfying this test are also tribunals. It is true, therefore, that it cannot be said that this test was laid down as a conclusive test to determine as to whether the judicial power of the State has been vested in a particular authority or not and yet the emphasis does linger on the fact that the authority to decide conclusively between parties is an important factor to be considered while deciding whether the judicial power of the State is vested in a particular body or not. Possibly what Justice Bachawat wanted to convey was only this that where there are other very decisive features or factors present in a given case, the mere absence of this feature by itself would not handicap a Court in coming to the conclusion that such an authority or body was a tribunal.

19. Keeping in mind the position of law and the observations made by the highest judicial authority in the country, we shall now proceed to examine the question arising in this petition. Under the aforesaid rules the Returning Officer means the Chief Officer or such officer of Municipality or of Government as may, from time to time be appointed by the Collector as Returning Officer in respect of a municipal election or part of a municipal election. Rule 8 provides for the nomination of candidates. Nomination papers are to be delivered by the nominators personally to the Returning Officer and on receiving the nomination papers the Returning Officer shall pass a receipt in token of having received the nomination papers as provided in Form A. Under Sub-rule (2), the Returning Officer, on receiving the nomination paper, has to enter in it its serial number and has to put his signature thereon and to put under his signature a certificate stating the date on which and the exact time at which the nomination paper was delivered to him. Under Rule 9, the candidate has to deposit with the Returning Officer a sum of Rs. 100 in cash. Under the sub-rules of the said rule he has to deal with the deposit as laid down therein. It is obvious that so far, the Returning Officer has only administrative duty. Then we come to rule No. 10 where under rule No. 10, the scrutiny of the nomination papers has to be done by the Returning Officer and Sub-rule (1) thereof provides that the candidates, their nominators and one other person duly authorised in writing by each candidate shall alone be entitled to be present at the time and place fixed for the scrutiny of the nomination papers under Rule 7. The Returning Officer has to allow such person all reasonable facilities for examining all nomination papers. Sub-rule (2)

provides that the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such summary inquiry if any, as he considers necessary, reject a nomination paper on any of the following grounds:

- (i) A candidate being disqualified or not qualified under the Act or these rules for election;
- (ii) a nominator not being qualified to nominate the candidate; (iii) failure to comply with any of the provisions prescribed by these rules or the Act;
- (iv) a candidate, proposer or seconder not being identical with the person whose electoral number is specified in the nomination paper as the number of such candidate, proposer or seconder, as the case may be;
- (v) the signature of the candidate, or of the proposer or seconder not being genuine or having been obtained by fraud.

Then Sub-rule (3) says that where the Returning Officer has reason to believe that any candidate was disabled from continuing to be a councilor u/s 38 of the Act, he shall before accepting the nomination paper of such candidate verify from the Collector whether such disability has ceased and the candidate is eligible for re-election. Sub-rule (4) is as follows:

(4) For the purposes of the Sub-rule (1)-

- (1) The production of a certified copy of an entry made in the municipal election roll shall be conclusive evidence of the right of any voter named in that entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate or the proposer or the seconder is disqualified; and
- (ii) Where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which were first received upto the number of vacancies to be filled shall be deemed to be valid.

Sub-rule (5) of the said rule is as follows:

- (5) Nothing contained in this rule shall be deemed to authorise the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

Rule 11 is as follows:

- 11. Completion of scrutiny. - (1) The scrutiny shall be completed on the day appointed in this behalf and no adjournment of the proceeding shall be allowed.
- (2) The Returning Officer shall, on the same day, endorse on each nomination paper his decision accepting or rejecting the same, and, if the nomination paper is rejected, shall record a brief statement of his reasons for such rejection.

(3) On an application by a candidate whose nomination paper is rejected, the Returning Officer shall, within 24 hours of the receipt of such application, grant him a copy of the order rejecting the nomination paper.

(4) An appeal by any aggrieved person against an order rejecting under Sub-rule (2) a nomination paper shall lie to the Collector, provided it is made within three days of the date of such order. The orders passed by the Collector on such an appeal shall be final.

(5) If no appeal is made within the period prescribed under Sub-rule (4), the Collector shall forthwith communicate the fact to the Returning Officer; and if an appeal is so made, the Collector shall within four days of its presentation give his decision thereon and immediately communicate the decision to the said Officer.

Rule 12 is as follows:

12. Withdrawal of Candidature. ? (1) Any candidate may withdraw his candidature by a notice in writing subscribed by him and delivered between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon of any day not later than two days from the date of completion of the scrutiny of nomination under Rule 11 to the Returning Officer either by such candidate in person or by a person authorised by him in this behalf.

(2) No person who has given a notice of withdrawal of his candidature under Sub-rule (1) shall be allowed to cancel the notice.

(3) The Returning Officer, on receiving a notice of withdrawal under Sub-rule (i) shall as soon as may be thereafter cause a notice of withdrawal to be affixed in some conspicuous place in his office.

Rule 14 is as follows:

14. Preparation of list of candidates validly nominated. -On receipt of the communication from the Collector under Sub-rule (5) of Rule 11 and after the expiry of the period within which candidature may be withdrawn under Rule 12 the Returning Officer shall prepare under his signature a list of all validly nominated candidates and post it, or cause it to be posted, at the municipal office, the place at which the election is to be held and other conspicuous places, at least seven days before the date fixed for the election.

20. Now, before we proceed further it is very necessary to have a clear idea as to against what wrongful act of the Returning Officer this petition is directed and which of the provisions of the aforesaid rules that are alleged to have been contravened by such act or wrongful exercise of his powers. In other words, the nature and character of which of his various and varied functions under the aforesaid rules that we are called upon to determine, by applying the tests laid down. To my mind it is clear that the wrongful act or the wrongful exercise of power complained against mainly is in respect of the "function" that the Returning Officer had to carry out under Rule 12 and only consequently under

Rule 14. As we have seen, the petitioner has complained that though he had not withdrawn his candidature, putting a wrong construction on Sub-rule (5) of Rule 10, the Returning Officer had wrongly treated his letter dated 22nd August 1965 as a notice of withdrawal of candidature under Rule 12. That though he had not, as a matter of fact, treated the said letter as such notice and had not included the petitioner's name in the list of candidates who had withdrawn and which had to be affixed in some conspicuous place in his office as required under Sub-rule (3), later mala fide and wrongfully claimed to have done so. As a consequence of this wrongful act, though his nomination paper Serial No. 102 was not withdrawn and which had been accepted as valid, and as such his name ought to have been included in the list of candidates validly nominated, to be posted at the municipal office and other places as required by Rule 14, it was wrongfully omitted therefrom, and thus he committed an irregularity and failed to carry out the mandatory provisions of Rule 14. It is important to note that the wrongful exercise of power under Rule 14 complained of is only consequential on the wrongful act complained of under Rule 12. Prima facie, therefore, we are required to examine and determine the nature and character of the "function" of the Returning Officer particularly under Rule 12. Both these rules have been reproduced in full hereinabove and it is obvious that the function to be performed under either of these two rules is purely administrative or ministerial in nature and character. It was also not disputed before me that the function of the Returning Officer under Rule 12 or 14 taken by themselves and apart from Rule 10 or 11, could be said to be judicial or quasi judicial in nature or character. Under Rule 12 or 14 the Returning Officer was not required to hear any one or to hold any inquiry even of a summary nature. No question of anyone having the right to object to any act arises under those rules. It is apparent that the nature of his "function" under Rule 12 or Rule 14 is neither judicial or quasi judicial and no duty to act judicially can even be said to flow from the nature of his function. It is patent on the face of these two rules that by no stretch of argument can it be said that any part of the judicial power of the State are vested in the Returning Officer to discharge his function under these two rules.

21. Realising this difficulty in his way, it appears, Mr. Desai had contended that the nature of the office and the function of the Returning Officer has to be looked at and determined as a composite whole and the question as to whether he is an authority in whom the judicial power of the State had been vested or not cannot be decided rule-wise. He pointed out that he was appointed for a specific purpose and to carry out the function as laid down in the various rules referred to hereinabove. He acts as a single entity right from the time of his appointment upto the time his duty is over under the rules prescribed. In any case, from the stage, Rule 8 comes into play till the time of the preparing of the list of candidates validly nominated and it is published under Rule 14, he acts for a single purpose and the nature of his function must be judged as a whole.

22. There can be no scope for any controversy that one and the same "authority" may exercise powers in discharge of his functions in respect of the

subject-matter in question, which may be judicial for a particular stage and purely administrative at another stage. It will depend upon the facts of each case and the provisions of the statute that constitute that authority, to find out whether there do exist such dividing lines to make his functions fall into different compartments or not. In the present case, in my view, they do exist. As we have noticed, the main-complaint is in respect of the wrongful act of the Returning Officer under Rule 12. The function or the exercise of power under Rule 12 has nothing to do with what the Returning Officer has to do under Rule 10 or Rule 11. Rule 12 is quite independent of the subject matter of Rule 10 or Rule 11. The function of the Returning Officer under Rule 12 is not dependent at all on the result of the exercise of his powers for the scrutiny of nomination papers and the completion thereof under Rule 10 or Rule 11. The function of the Returning Officer under Rule 12 depends on the act of withdrawal of the candidature by the candidate himself, while under Rule 10 the Returning Officer accepts or rejects the nomination papers suo motu or after deciding objections if made. The consequence that ensues under Rule 12 depends on the action of the candidate himself and has no relation with the exercise of the powers by the Returning Officer under Rule 10 or 11. Merely because the Returning Officer put a wrong interpretation on Sub-rule (5) of Rule 10 for the purposes of Rule 12, as alleged, it cannot be said that he discharged a function under Rule 10 or that the function under Rule 12 is inseparable from the one under Rule 10. The dividing line to put the function of the Returning Officer under Rules 10 and 11 and that under Rule 12, into different compartments is real and firm.

23. It also does not require much stressing that essentially the function and the powers of the Returning Officer are administrative and not judicial in nature or character. As pointed out, upto Rule 9 the functions are purely administrative and under Rules 12, 13 and 14 also they are administrative only. Under various rules that follow also the functions and the nature thereof by and large is supervisory and administrative. It is only under Rules 10 and 11 when he has to do the scrutiny and decide about the objections, if any, that may be made to any nomination paper by holding a summary inquiry if he so thinks fit, or possibly under Rules 33, 34 and 35 where he is concerned with scrutiny and counting of votes that the question may arise, if at all, whether because of these rules it can be said that the inherent judicial power of the State was vested in this otherwise primarily administrative authority. In my view, under such facts and circumstances the submission made by Mr. Desai cannot have any weight. It may be that where the authority is primarily an authority having the judicial powers of the State to adjudicate that the submission may have some force. However, in the present set-up of the provisions with which we are concerned, it would be not only proper but necessary to test every act or function of such an authority if such acts or functions can be dealt with, without straining the point, as independent of each other. As I have indicated, in the present case they are independent of each other. The functions of the Returning Officer, till the time he functions under Rules 10 and 11 and decides the objections etc., are

administrative and so are the functions to be performed thereafter. The discharge of his function under Rule 12 can be separately viewed and dealt with from that under Rules 10 and 11 as discussed here in above and it is not possible then to come to the conclusion that he acts under Rule 12 under any judicial power of the State vested in him and therefore in discharging that function he can be held to be acting as a tribunal. Merely because on a wrong interpretation of Sub-rule (5) of Rule 10 he wrongly held under Rule 12 that the petitioner had withdrawn his candidature, as alleged, it cannot be Concluded that he had, done so in exercise of any judicial power of the State vested in him. I cannot, therefore, accept the submission of Mr. Desai that the rules from Rule 8 to Rule 14 must all be read together and the functions under these rules of the Returning Officer must be viewed as one composite whole and should be taken to be so closely knit that they could not be tested in parts. I, therefore, hold that the function or power of the Returning Officer under Rule 12 or Rule 14 of the aforesaid rules, in discharge whereof the impugned acts are alleged to have been done by him, are not judicial or quasi judicial in nature or character. I also find that the nature or character thereof is not such as could be truly described as the judicial functions or judicial powers of the State from which would flow the duty to act judicially.

24. The result is that, even if it were to be assumed without admitting that the function to be performed by the Returning Officer under Rules 10 and 11 can be held to be of a judicial or quasi judicial nature, or can be held to be in discharge of the inherent judicial powers of the State vested in him, such a finding cannot help the present petitioner. It would, therefore, be unnecessary and beyond the scope of the inquiry in this petition to enter into the merits of the question as to whether the nature of the function of the Returning Officer under Rule 10 or Rule 11 is judicial or quasi judicial or whether he discharges that function in the exercise of the judicial power of the State vested in him, from which flows the duty to act judicially. Consequently it is also neither expedient nor necessary to determine the question whether the decision of the Division Bench in *Patel Govindbhai Haribhai v. Patel Lallubhai Madhavbhai and Ors.* (supra) can or cannot apply to the present case. In the said decision the learned Judges came to the conclusion that the Returning Officer, when he functioned under Rule 11 of the Village Panchayats Election Rules (which is in pari materia with Rule 10 of the Rules with which we are concerned) could not be held to be a quasi judicial authority but is essentially an administrative authority. I am also, for the same reason, not called upon to enter upon into the merits of the submissions made on behalf of the petitioner that the Division Bench ruling is in direct conflict with the decision of the Supreme Court in *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, wherein, as submitted by Mr. Desai, the Supreme Court had laid down that the Returning Officer functioning u/s 36 of the Representation of Peoples Act, while deciding the objection raised against the nomination papers, did function as a quasi judicial authority and the nature of his function was judicial. For the reasons stated by me, the aforesaid Supreme Court ruling can also be of no help to the petitioner on his submission that the Supreme Court has

decided that the functions of the Returning Officer u/s 36, which is in pan material with the Rules 10 and 11 in the present case, are judicial in character. I may mention that in the above stated Supreme Court decision, Their Lordships were concerned with the question as to whether in discharging the functions and powers entrusted to the Returning Officer u/s 36(2) of the Representation of Peoples Act, he could be held to exercise his powers of "Court". The question had arisen in a criminal appeal before The Lordships under the following facts. The appellant was a Candidate, for election to the House of the people. He claimed to be a member of a Scheduled Caste and election law required that his nomination paper must be accompanied by a declaration verified by the candidate in prescribed form. Rule 6 of the Election Rules provides that such declaration shall be on oath or solemn affirmation before a magistrate. The declaration had to specify the facts required as prescribed. Such a declaration was made on oath by the appellant and was attached to his nomination paper. Acting on the said declaration, the Returning Officer had accepted the nomination paper of the appellant as valid, overruling the objection of competing candidate for the same seat. Later on, the said competing candidate filed an application under the Criminal Procedure Code before the District Magistrate, who functioned as the Returning Officer, alleging that the declaration made by the appellant that he belonged to a particular caste was false and that, therefore, in the interest of justice, proceedings should be taken for his prosecution. The District Magistrate held an inquiry and came to the conclusion that there was a prima facie case for taking action and he filed a complaint before the First Class Magistrate charging the appellant of the offences under Sections 181, 182 and 193 of the Indian Penal Code. Out of this complaint had arisen the criminal appeal before the Supreme Court. The controversy before the Supreme Court was whether the Returning Officer, under the facts of the case, could be held to be a "Court", because a prosecution for an offence u/s 193 I.P.C. would fall under the provisions of Section 195(1)(b) of the Criminal Procedure Code, only if the Returning Officer could be; held to be a Court or the proceeding before him to be a proceeding in a; Court. The point for decision, therefore, was whether the Returning Officer in deciding on the validity of a nomination paper u/s 36 of the Act could be held to act as a "Court". Their Lordships observed that this question raised did not appear to be covered by an authority and they were required to decide as to what was the true character of the functions of the Returning Officer and the nature and the extent of his powers. Their Lordships then quoted Parker in Election Agent and Returning Officer, 5th Edition, page 80, wherein he has said "There has been much difference of opinion as to the precise character of the office of a returning officer, viz., as to whether he is a judicial or ministerial officer". Their Lordships further observed that before they could hold that the proceedings before a returning officer resulting in the acceptance or rejection of a nomination paper fall within Section 195(1)(b) of the Code of Criminal Procedure, it must be shown not merely that they are judicial in character but that further he is acting as a Court in respect thereof their Lordships then quoted certain English and Indian decisions and observed that it was unnecessary to

traverse the same ground once again and it may be only stated broadly that what distinguished a Court from a quasi judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it, and it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arose as to whether an authority created by an Act is a "Court" as distinguished from a "quasi judicial tribunal", what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court. Having stated this principle, Their Lordships approached the facts of the case on their hands to decide whether the Returning Officer when he functioned u/s 36 of the said Act was a Court and the following observations were made:

Under Section 36(2), the returning officer has to examine the nomination paper and to decide all objections which may be made thereto. This power is undoubtedly, judicial in character. But in exercising this power, he is authorised to come to a decision "after such summary enquiry, if any, as he thinks necessary." That means that the parties have no right to insist on producing evidence which they may desire to adduce in support of their case.

There is no machinery provided for summoning of witnesses, or of compelling production of documents in an enquiry u/s 36. The returning officer is entitled to act "suo motu" in the matter. When one compares this procedure with that prescribed for trial of election petitions by the Election Tribunal under Sections 90 and 92 of the Act, the difference between the two becomes marked. While the proceedings before the Election Tribunal approximate in all essential matters to proceedings in civil courts, the proceedings u/s 36 present a different picture.

There is no "lis", in which persons with opposing claims are entitled to have, their rights adjudicated in a judicial manner, but an enquiry such as is usually, conducted by an "ad hoc" tribunal entrusted with a quasi judicial power. In other words, the function of the returning officer acting u/s 36 is judicial in character, but he is not to act judicially in discharging it. We are of opinion that the "returning officer deciding on the validity of a nomination paper is not a Court for the purpose of Section 195(1)(b) of the Code of Criminal Procedure, and the result is, that even as regards the charge u/s 193, the order of the Magistrate was not appealable, as the offence was not committed in or in relation to any proceeding in a Court.

25. This would show that the learned Judges of the Supreme Court in that decision did appear to hold that the functions of the Returning Officer u/s 36 of the Act were judicial in character and that it was a quasi judicial tribunal. But he was not to act judicially in discharging it, meaning thereby that that the parties were not entitled as a matter of right to be heard in respect of their claim nor were they entitled to adduce any proof of it. On the face of it, therefore, this

decision does appear to be in conflict with the decision in the Division Bench ruling. But, as I have observed hereinabove, I do not find it necessary to enter into any detailed examination of the submission of Mr. Desai because I am not called upon to decide that larger issue as to whether the Returning Officer when he exercised his rights under Rule 10 of the Rules with which we are concerned and which may be in *pari materia* with the provisions of Section 36 of the Representation of peoples Act, as this petition can be disposed of on the narrow issue. As indicated by me hereinabove, in the present petition that broader issue does not remain to be considered as the act of the Returning Officer was not under Rule 10 but was in discharge of his function under Rule 12 and neither the Supreme Court decision nor the Division Bench ruling have any application to the present petitioner's complaint. For the same reasons, the contention raised on behalf of the respondents that the decision of the Returning Officer is not a conclusive decision, does not require to be examined. This and some other contentions were raised on the basis that the nature and character of the function of the Returning Officer under Rules 10 and 11 may require consideration for determining the preliminary objection raised.

26. Before I conclude, however, as both sides had addressed at some length on all the points canvassed before me, I deem it my duty to observe that had I been called upon to enter into the merits of all the points raised and decide the larger issue, I would have found myself squarely confronted with the Supreme Court decision in *Virindar Kumar Satyavadi v. The State of Punjab* (supra). The observations and the findings made by the learned Judges therein do indicate that, in their judgment, the Returning Officer u/s 36 of the Representation of the Peoples Act (which provisions may be said to be in *pari materia* with Rules 10 and 11 of the present rules or the rules with which the learned Judges in the Division Bench ruling in *Patel Golindbhai Hirabhai v. Patel Lallubhai Maihavbhai and Ors.* (supra) were concerned with) was a quasi judicial tribunal and his function is of a judicial nature. This Supreme Court decision was not brought to the notice of the Division Bench of our High Court deciding the case of *Patel Govindbhai Hirabhai v. Patel Lallubhai Madhavbhai and Ors.* It may be that a thorough consideration of the said Supreme Court ruling from all its aspects may show that it has not decided as a matter of fact, the point that they appear to on the face of the decision. In any case, in the face of that ruling of the Supreme Court, I would have deemed it my duty to refer this petition for decision to a Bench of this Court for dealing with all the important questions arising in the matter. At the same time, I would like to make it clear that I may not be understood to lay down that the aforesaid Division Bench ruling of our own High Court is in definite conflict with the decision in *Virindar Kunar Satyavadi v. The State of Punjab* (supra).

27. Under the circumstances, nothing further remains to be considered as regards the preliminary objection raised, and as I have held that the Returning Officer when he functioned under Rule 12 or 14 is not a tribunal within the meaning of Article 227, the petition must be dismissed without examining the

merits of the contentions raised in the petition. The rule is discharged. Looking to the highly technical and controversial nature of the disputes that required consideration, I order that the parties shall bear their respective costs.