
(1959) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 43 of 1959

Prasad	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 21-07-1959

Acts Referred:

Madhya Bharat Municipalities Act, 1954 — Section 11, 11(a)

Citation : (1962) JLJ 408

Hon'ble Judges : Shivdayal, J;A.H. Khan, J

Bench : Division Bench

Advocate : A.B. Mishra, for the Appellant; G.P. Patanker, for the Respondent

Final Decision : Dismissed

Judgement

Shivdayal, J.—This is a petition under Article 226 of the Constitution of India for declaring the whole of the general election for the Sabalgarh Municipality illegal and ultra vires and for restraining non-Petitioners Nos. 2 to 9 from acting as elected Councillors of the said Municipality.

2. In the month of May, 1959 a general election was held for the Sabalgarh Municipality which is a second class Municipality constituted under the Madhya Bharat Municipalities Act (No. 1 of 1954). Non-Petitioners Nos. 2 to 9 were declared elected. The election is challenged by the Petitioner, who is a tax-payer and voter in the municipality, on several grounds. In short, his contention is that the election was held in contravention of Section 11 of the said Act and that the Rules under which the election was held had been framed in utter disregard of the provisions contained in that section of the Act.

3. The Act came into force on January 26, 1954. Section 11 of the Act provides that the Government shall from time to time generally or specially for each municipality (a) determine the number of councillors, and (b) make rules for various purposes enumerated therein. The Government of Madhya Bharat framed rules under this section of the Act. They are entitled as (sic) "Madhya Bharat

Nagar Palika Parishad (Nirvachan Evam Chunao) Niyam, 1954". They were published in the Madhya Bharat Government Gazette dated July 29, 1954.

4. The first objection of the Petitioner is that the Government had not determined the number of councillors for the municipality as required u/s 11 (a) of the Act. Without that being done, the Inspector General, Municipalities had no power to issue a notification under Rule 23 (1) and Rule 23 (2) of the said Rules.

5. In our opinion, this objection is without any substance and appears to have been made without taking care to possess material facts. With the return filed by Shri Patankar and supported by an affidavit of Ram Charanlal, non-Petitioner No. 8, a copy of the Government Notification dated July 10, 1954 has been filed. This notification appeared in the Madhya Bharat Government Gazette dated July 22, 1954 and was issued with reference to Section 11 (a) and 11 (b) (iii) of the Act. On entry No. 22 the number of councillors fixed for Sabalgarh Municipality is as follows:

Elected members8

Selected members 2

[Reserved seat for schedule castes and schedule tribes] 1

By this notification the Government fixed the total number of councillors at 10 (with one reserved seat). Thus Section 11 (a) of the Act was fully complied with.

6. At the time of hearing the learned Counsel for the Petitioner ventured to shift the ground. His argument was that even if the Government had determined the number of councillors in 1954, it was imperative for the Government to have fixed a fresh number before holding a general election in 1959. This ground was not taken in the petition and we did not allow that new ground to be taken, all the more so when it did not prima facie appear to be substantial. See V. B. Kharate v. The State of M. P. reported in 1959 MPLJ 534.

7. It is then urged that the Government did not fix the number of wards before holding the general election which was mandatory u/s 11 (b) (i) of the Act. Since this argument is common to other objections, it is useful to consider the whole aspect at the very outset. Section 11 of the Act runs thus:

11. The Government shall.....

(a) determine the number of councillors;

(b) make rules consistent with this Act-

(i) prescribing the number and extent of the wards to be constituted in each municipality;

(ii) providing for the preparation and revision of the list of voters from time to time;

(iii) prescribing subject to the provisions of the Constitution of India, the number of seats to be reserved in each municipality for the scheduled castes and scheduled tribes;

(iv) fixing the date after which no application for enrolment in any such list under preparation or revision shall be received;

(v) determining the manner in which the authority by whom any objections to such lists in regards to the names entered therein or omitted therefrom may be heard and decided and to what judicial authority the appeals of such entires and omissions shall lie;

(vi) prescribing the date for the publication of the Municipal Election Roll; and

(vii) regulating and conducting generally such elections.

8. Rule 3 of the aforementioned Rules of 1954 provides for the division of the whole area of a municipality into three or more than three wards. This obviously refers to Section 11 (b) (i). Rule 4 deals with reservation of seats for scheduled castes and scheduled tribes. This has reference to Section 11 (b) (iii). Rules 5 and 6 relate to the qualifications and disqualifications of voters. Rules 7 to 18 deal with the preparation of the electoral roll. It is unnecessary to refer to other rules because for the purpose of the objections raised in the petition we are considering the above rules only.

9. The argument of Shri Mishra is that it was not sufficient for the Government to have made these rules; it was further necessary to prescribe the number of wards and to do all other things named in the said section. Emphasis was laid on the words "prescribing" and "providing", etc. According to him, the Government itself was bound to prescribe the number of wards and extent of the wards u/s 11 (b) (i) while making rules, and that this could not be left to be done after the rules had been framed. It is true that the section has not been happily worded. The word "prescribing" admits of two constructions:

(1) Rules shall be framed "for prescribing the number and extent of wards".

(2) The Government while making rules shall itself "prescribe the number and extent of wards.....

In our opinion, the second interpretation does not fit in the context, nor agrees with the intension of the Legislature. If the Government is to prescribe the number and extent of the wards, Clause (i) of Section 11 (b) becomes superfluous and redundant. But it is contrary to the accepted principle of interpretation of statutes that any provision of law should be considered as redundant. In the case of AIR 1941 16 (Federal Court) Suleman J. laid down:

If there are two possible interpretations, it is the duty of a Court to accept that one which is more reasonable, more consistent with ordinary practice and less likely to produce impracticable results.

The first interpretation is wholly in accord with the object and purpose of the section. We have had the advantage of looking into the Bombay District Municipal Act No. III of 1901. There also Section 11 is worded almost in the same language as we have in the Madhya Bharat Act. It runs thus;

11 (i)-The State Government shall from time to time generally or specially for each municipality-(a) determine the number of councillors; (b) (omitted) (c) make rules consistent with this Act for- (i) fixing the dates and the time and manner of holding elections general or casual, of councillors to be elected, (ii) prescribing the number of and extent of the wards to be constituted in each municipal district, the number of councillors to be elected by each ward and the number of seats, if any, to be reserved for the representation of women, scheduled castes and scheduled tribes; and the qualifications of candidates and of voters other than hereinafter provided.....

10. On a comparison of Section 11 of the Bombay Act with the same section of the Madhya Bharat Act it transpires that there is one additional word in Section 11 (i) (c) of the Bombay Act: "Make rules consistent with this Act, for.....". In the Madhya Bharat Act Section 11 (b) is exactly in the same language but here the word "for" has been omitted. In our opinion the existence of the word "for" would have made the matter incontestible that the rules were to be made "for the purposes" enumerated in the subclauses which follow it. But even if the word "for" is not there, and the section is read without it, its meaning remains unchanged. On carefully considering all the provisions contained in Section 11, the intention of the law-makers is amply clear, viz., that for the working details and purposes which were enumerated in that section rules were to be framed by the Government and not that the Government itself was required to do all those things.

11. Adverting to the objection about prescribing the number of wards, the Government did frame rules u/s 11. Rule 3 provides that every Municipality, according to its need, divide the municipal area into three or more than three wards and shall obtain the assent of the Government, in the case of a City Municipality, and of the Inspector-General, Municipalities, in the case of other municipalities. And after such assent, such division shall be published in the Madhya Bharat Government Gazette.

12. By making Rule 3, therefore, the Government complied with the direction contained in Section 11 (b) (i). It has been stated in the return filed by Shri Patanker that the Sabalgarh Municipality fixed the number and extent of the wards by a proposal which was accepted by the Inspector-General. Municipalities. He has filed a copy of the notification to that effect (annexure C) and the same was published in the Madhya Bharat Government Gazette dated September 16, 1954. For these reasons the objection that section 11 (b) (i) was not complied with is devoid of force.

13. It was next argued that the Government did not make rules prescribing the

number of seats to be reserved in the said municipality for scheduled castes and scheduled tribes and that the Inspector General of Municipalities had no authority to issue a notification for that purpose, as he did.

14. This objection too is entirely misconceived and appears to have been made recklessly without taking care to collect necessary facts. It seems that the Government notification published in the Gazette dated July 22, 1954 (referred to above) the Government reserved one seat for the scheduled castes and the scheduled tribes. Rule 4 was eventually amended, as published in the Madhya Pradesh Government Gazette dated November 21, 1958 and the power of the Inspector-General of Municipalities to fix the number of reserve seats for the scheduled castes and scheduled tribes in the case of all municipalities other than city municipalities was taken away from him and conferred on the Government. Thereafter appeared in the M. P. Government Gazette dated March 13, 1959 a notification wherein it was stated that the Government of Madhya Pradesh by their notification dated February 3, 1959 had reserved one seat for the scheduled castes (instead of former reservation for scheduled castes and scheduled tribes) and, further that this seat was reserved specially for ward No. 7 in the case of the Sabalgarh Municipality. Neither Rule 4 nor Section 11 (b) (iii) requires that the action of the Government in fixing the number of reserve seats must be published in the Government Gazette, It is sufficient that there is an order of the Government and a reference to that order is made in the Gazette notification issued by the Inspector-General, Municipalities and the fact has not been challenged by the Petitioner even at the hearing. Thus it is clearly established that Section 11 (b) (iii) had been fully complied with before the general election was held.

15. This brings us to the question whether Sub-clauses (iv) and (v) of Section 11 (b) were offended against. According to the Petitioner (a) the Government did not fix the last date after which no application for enrolment could be received, (b) no provision is made in the rules for hearing of appeals against decisions as to entries in the electoral roll and (c) if Rule 12 be interpreted to contain a provision for appeal, it is inconsistent with the Act because the Returning Officer is not a Judicial Authority. The first of these contentions had already been discussed above. It is not for the Government to fix any dates; Section 11 (b) (iv) requires the Government to "make rules for fixing the dates" Chapter II of the Rules lays down the procedure for fixing of the dates as required in Section 11 (b) (iv).

16. Shri Mishra strenuously endeavours to show that rule in terms violates Section 11 (b) (v). While the Act makes it mandatory that the Government shall make rules determining to what judicial authority appeals shall be against entries and omissions, Rule 12 lays down a prohibitory provision, in so many words, that no appeal shall lie from an order of the Nirvachan Nirikshak deciding objections to voter-lists, On the face of it, Rule 12 seems to be directly opposed to the provisions of the Act, but on a careful consideration it is not so in

substance. Rule 11 provides for the manner and procedure in which claims and objections relating to the electoral roll shall be heard and decided by the Nirvachan Nirikshak (Election Officer). A person aggrieved by his decision has the remedy under Rule 12 (I) to file a petition before the Returning Officer and the Returning Officer has been invested with power to modify or reverse a decision of the Election Officer, yet in the same breath the rule does provide for an appeal calling it a "petition". The rule enables a "petition" to be made from the decision of the Election Officer, but, in our judgment, this is nothing but inartistic drafting. If a person aggrieved by an order of the Nirvachan Nirikshak is allowed to approach another named authority for its reversal or modification and such authority has power to reverse or modify it, i. e., to grant or deny him the relief he seeks, it does not matter with him how the proceeding is styled. It is in essence a provision for appeal. The distinction here between "appeal" and "petition" is nominal but not real. For, after all, what is an appeal? Truly speaking an appeal means removal of a cause to a higher tribunal for the purpose of testing the soundness of the decision of the inferior tribunal (see Wharton's Law Lexicon).

17. The word "appeal" has not been defined in Indian Codes. Any application by a party to a higher authority asking it to reverse a decision of the subordinate authority is really an appeal although it may be called by a different name. An appeal is the hearing of cause of a superior Court, which tests the soundness of the decision of the inferior Court on an application by defeated or unsuccessful party.

18. In Oxford Dictionary the meaning of the word "appeal" is given as "'call to (higher tribunal) for deliverance from decision of lower".

19. It was held in *Ponnamma v. Arumogam* 1905 A.C. 383 that an appeal, strictly so called, is one in which the question is whether order of the Court from which the appeal is brought was right on the materials which that Court had before it.

20. It is stated in 3 *Corpus Juris Secundum* 297:

While the law has usually considered it an essential right of a suitor to have his rights examined in tribunals superior to those in which he considers himself aggrieved, the right pertains to the remedy, and in the absence of constitutional inhibition it is within the power of the Legislature to prescribe the cases in which and the Courts to which parties shall be entitled to bring a cause for review; and to impose such conditions and restrictions as it may see fit. Where, however, the right to appellate review is given or secured by the Constitution, it cannot be taken away or impaired by the Legislature; nor can the Legislature confer appellate jurisdiction in conflict with constitutional provisions.

In 26 *Halsbury (Hailsham)* 114, it is stated in paragraph 225:

All appeals to the Court of Appeal are by way of rehearing and are brought by notice of motion in a summary way.

21. Rule for interpretation of statutes are well-known. It will however be useful to recall with benefit the observations of the Supreme Court in the following cases:

In *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, their Lordships laid down:

It is the duty of Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be constructed differently. Indeed the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.

22. In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, their Lordships laid down:

While no doubt it is not permissible to supply a clear and obvious lacuna in a statute and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language which would render a part of the statute devoid of any meaning or application.

In *Raj Krushna Bose Vs. Binod Kanungo and Others*, their Lordships laid down:

Whenever it is possible to do so, it is the duty of the Court to construe provisions which appear to conflict so that they harmonise.

23. In *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, their Lordships laid down:

The words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject or in the occasion on which they are used, and the object to be attained.

24. It could be argued that appeal is a matter of right while a petition is not. Such a distinction has for its background our acquaintance with the expressions "appeal", "review", "revision", etc., used in different senses in our procedural laws, but that distinction is material, when their scopes differ as, for example, in the Code of Civil Procedure. But where remedy is provided to approach a superior authority to achieve the desired end, i. e., to get the order of the inferior authority tested and varied or reversed, if found erroneous, that is really an appeal -call it a "petition" or by whatever other name. It is just like saying, "you shall not eat, but you may put it in your mouth and swallow it"-a distinction

without a difference. Had the Rule-makers taken care (which was their duty) they would not have used a different word than that used in Section 11 (b) (v)- Rule 12 (a) may not, therefore, be said to agree with the letter of the law but it certainly accords with the spirit.

25. In that view of the matter we hold that the word "petition" used in Rule 12 (1) essentially means an "appeal" and thus Rule 11 (b) (v) was substantially complied with.

26. The next contention of Shri Mishra is that the Returning Officer who is empowered under Rule 12 (1) to hear the petition ought to be a Judicial Authority but, as defined in Rule 19 the Collector of the District is the Returning Officer which contravenes Section 11 (b) (v) of the Act. The argument is that a Collector is not a judicial authority. We cannot accept this argument. The Collector is undoubtedly a judicial authority because he is a revenue Court within the meaning of the Tenancy laws under which he entertains causes, records evidence, hears arguments and pronounces definitive judgments. See *Province of Bombay Vs. Kusaldas S. Advani and Others*, There are the trappings of a Court. Under the Tenancy laws his judgments are not only definitive, but in some cases not open to challenge even in the civil Court.

27. It is the trend of the present day legislation that all kinds of disputes are entrusted only to those who have judicial experience so that the disputes may be decided with a judicial attitude of mind, Any officer, therefore, who has tried and decided suits or other proceedings of judicial nature, will meet the requirements of the law. It cannot, therefore, be said that Section 11 (b)(v) is disregarded by Rule 19.

28. It is lastly, urged that Rule 19(2) is ultra vires because when the Collector is given the power to appoint an Election Officer it really amounts to redelegation of power, which is not permissible under the law. It must first of all be stated that Shri Mishra is unable to tell us which law is hit by Rule 19 (2). His argument is that as a general principle whenever a power is delegated to an authority that authority cannot be empowered to delegate it. In our opinion, this argument is entirely misconceived. Under the Rules certain powers have been vested and duties entrusted to an authority called Nirvachan Nirikshak (whom we have also called in this judgment as Election Officer) The Nirvachan Nirikshak, as provided in Rule 19 (2), must be a Deputy or Assistant Collector at the headquarters of a Sub-Division or a Tahsildar in the case of a Tahsil or a Naib-Tahsildar in the case of a Tappa and in other cases such officer who is not inferior in office to that of a Naib-Tahsildar. The rule therefore, clearly provides that no other officer excepting those enlisted in this rule can be appointed Election Officer. Obviously enough there may be several persons eligible to be appointed Election Officers in the case of a particular municipality. Anyone of them may be appointed ex officio and this choice is left to the Returning Officer. It is not laid down in Section 11 or any other section the Act that Election Officers shall be appointed by the Government. That being so, it is wrong, to say that the power to appoint Election

Officers was delegated by the Legislature to the Government and the Government under Rule 19 further delegated it to the Returning Officer. This proposition is wholly imaginary. It is also urged, though faintly, that there was no warrant for making rules for the appointment of Election Officers in this manner. Suffice to point out Section 11 (b) (vii) which empowers the Government to make rules for "regulating and conducting generally such elections". In our opinion, this residuary clause is wide enough to include Rule 19.

29. Laxmichand Respondent No. 7 filed a separate return. He was the President of the outgoing municipal council. He has been again elected a member in the general election of this year. He virtually supports the petition and raises an additional ground, namely, that as the President of the Municipality he had written to the Inspector General of Municipalities for according sanction to the division of wards proposed, because the population in general and also that of the scheduled castes had increased. We can allow no such entry by the back-door and can pay no attention to such a new ground raised in his return. He could have filed a separate petition or could have joined the Petitioner and taken this ground, so that the other Respondents would have had an opportunity to reply and place necessary facts before this Court.

30. No other point has been agitated in this petition and those urged have been found against the Petitioner. In consequence the petition fails and is dismissed with costs. The Petitioner shall pay costs to those Respondents who filed a return through their counsel, Shri G. P. Patankar, one set of costs. Counsel's fee Rs. 100. Laxmichand Respondent No, 7 shall bear his own costs. Stay orders passed by this Court on June 5, 1959 and June 24, 1959 be and are hereby vacated.

A.H. Khan, J.

I agree with my learned brother.