
(1991) 07 BOM CK 0079
In the Bombay High Court
Case No : W. P. No. 1501 of 1991

Rajendra Mishra

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 76, 88C(5)
Civil Procedure Code, 1908 (CPC) — Section 115
Maharashtra Land Revenue Code, 1966 — Section 211, 247, 257, 259
Payment of Wages Act, 1936 — Section 17(1), 17(2)

Citation : (1991) MhLj 1146

Hon'ble Judges : V. A. Mohta, J; M. B. Ghodeswar, J

Bench : Division Bench

Advocate : A. B. Choudhary, for the Appellant; Ramesh Agarwal, A.G.P. Ramesh Darda, for the Respondent

Judgement

V. A. Mohta, J.—Can the State Government entertain a revision u/s 155 of the Bombay Village Panchayats Act, 1958 (the Act) against an appellate order passed by the Commissioner relating to the validity of election of a Sarpanch u/s 33(5) of the Act?

2. The above point falls for determination in the instant writ petition. This is what happened.

Janendrakumar Daftary, respondent No. 2, was elected as a Sarpanch of Gram Panchayat, Selu, District Wardha. Rajendra Mishra, the petitioner, disputed the validity of the said election, which matter was referred to the Collector, Wardha for adjudication u/s 33(5) of the Act. The Collector declared the election invalid. Aggrieved thereby respondent No. 2 filed an appeal before the Divisional Commissioner, Nagpur, under that very provision. The Commissioner refused to stay the impugned order during the pendency of the appeal. Aggrieved by that interim order, respondent No. 2 filed a revision before the State Government u/s 155 of the Act. The State Government was pleased to grant ex parte stay, which

was later on vacated. The Commissioner dismissed the appeal on merits. Aggrieved by the said order, respondent No. 2 once again moved the State Government u/s 155 of the Act. The revision was entertained and ex parte stay as prayed for was granted. Aggrieved by the order of entertaining the revision and the stay order passed therein, this petition has been filed raising a contention that such revision is not at all maintainable.

3. Section 33(5) of the Act provides for a reference of a dispute arising of the validity of election of a Sarpanch or Up-sarpanch to the Collector for decision. It also provides for an appeal against the decision of the Collector before the Commissioner, whose decision "shall be final". Section 155 reads thus :

"The State Government may call for and examine the record of proceedings of the Zilla Parishad, Panchayat Samiti or Standing Committee, as the case may be or of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just."

4. In order to gather legislative intention it would be necessary to examine the scheme of the Act relating to the appellate and revisional jurisdiction. Appeals are provided against in all four orders, the appellate forum being the Commissioner. They are - (i) Order of the Collector in a dispute relating to genuineness of the resignation of a member or Sarpanch of the Gram Panchayat u/s 29(4); (ii) Order of the Collector relating to the validity of election of a Sarpanch or Up-sarpanch u/s 33(5); (iii) Order of the Collector relating to the validity of a No Confidence motion against Sarpanch or Up-sarpanch u/s 35(3C); and (iv) Order of the Standing Committee relating to removal from office any member or any Sarpanch or Up-sarpanch on specified grounds u/s 39(3). Section 29(5), section 33(5) and section 35(3B) and (3C) in terms say that the appellate order "shall be final". Section 39(3) does not say so.

5. u/s 29(3) limitation for referring the dispute to the Collector and u/s 29(4) limitation for filing appeal before the Commissioner is seven days. The Collector has to decide the dispute and the Commissioner the appeal, as far as possible within fifteen days from the date of receipt of the dispute and the appeal as the case may be. u/s 29(6) the resignation takes effect (a) where there is no dispute, after expiry of seven days from the date on which it is placed before the meeting of the Panchayat, (b) where the dispute is referred to the Collector and no appeal is made to the Commissioner, after expiry of seven days from the date of rejection of the dispute by the Collector, and (c) where an appeal is made to the Commissioner, immediately after the appeal is rejected by the Commissioner. u/s 33(5) limitation for referring the dispute to the Collector is fifteen days from the date of election, limitation for filing appeal is fifteen days from the date of decision and the Collector and the Commissioner are obliged to give decision, as far as possible within sixty days of the receipt of the reference or appeal as the case may be. Under sub-sections (3B) and (3C) of section 35, limitation for raising a dispute before the Collector and for filing appeal before the Commissioner, is seven days from the date of receipt of the dispute and decision,

as the case may be. These sub-sections mandate the Collector and the Commissioner to decide the matters as far as possible within fifteen days. Under sub-section (3D), where the Collector upholds the validity of the no-confidence motion carried and no appeal is made within the period prescribed, or where appeal is made but is rejected by the Commissioner, the Sarpanch or Up-sarpanch, as the case may be, shall cease to hold the office, in the former case immediately after expiry of the said limitation period and in the latter case immediately upon rejection of the appeal and thereupon the office held by such Sarpanch or Up-sarpanch shall be deemed to be vacant. u/s 39(3) limitation for filing appeal is thirty days, but there is no mandate relating to the period for its disposal.

6. Upon conspectus of the above appellate and revisional provisions, following legal positions emerge :

(a) Only three out of four appellate orders are made specifically "final" under the Act;

(b) Wherever appellate order is made final, there is obligation to decide the appeal as far as possible within a specified short period;

(c) Under sub-section (6) of section 29, where dispute is referred to the Collector and no appeal is made, resignation does not take effect upto the expiry of period of limitation prescribed for appeal, but takes effect immediately after the appeal is rejected by the Commissioner. Similarly under sub-section (3D) of section 35 Sarpanch or Up-sarpanch against whom no-confidence motion is carried, does not cease to hold office upto the expiry of period of limitation prescribed for appeal but ceases to hold office immediately upon the rejection of the appeal.

(d) Section 155 neither contains a non obstante clause nor a period of limitation.

7. Now, it is well settled canon of construction of a Statute that meaning must be given to every expression used therein and not so as to render it redundant. Equally well settled another canon of construction is that normally words must be given plain and natural meaning. The expression "shall be final" will generally mean that the appellate order is not open for further challenge under the Act and the controversy over the subject matter must be treated as closed. Inevitable consequence of this must be that remedy u/s 155 is forbidden. We see no compelling reasons to depart from these normal canons of construction and to erase the expression from the Statute Book by judicial interpretation. It will have to be borne in mind that in the matter of finality different legislative treatment is meted out to different appellate orders under the Act. This cannot be without any purpose. Moreover time limit is prescribed for passing appellate orders only in cases where they are made final. Thus element of urgency is introduced in their passing.

8. There is yet another aspect which gives credence to the above impression. u/s 29(6) the effect of resignation and u/s 33(3D) the effect of motion of no-

confidence is under suspended state of animation until expiry of period prescribed for raising dispute or for filing appeals. But this period is not extended after the decision of the appeal. The resignation as well as motion of no-confidence takes effect immediately upon the decision of the appeal. If Legislative intention was to provide for revision against these appellate orders, there would have been a provision for further extension of time for the resignation and no confidence motion to take effect. Indeed the act as such does not prescribe period of limitation. The expression "shall be final" used in section 33(5) will have to be given the same meaning as is given to that expression used in section 29(5) and section 35(3B) and (3C). It is true that section 155 uses the words "any order" and makes no exception about the nature of the order. But the said provision cannot be read in isolation and will have to be harmoniously construed with other provisions. That there is absence of a non-obstante clause in section 155 is also an added factor.

9. Our attention was invited by learned counsel for the respondents to section 259 of the Maharashtra Land Revenue Code, 1966 (the Maharashtra Code) which reads thus:

"Whenever in this Code it is provided that a decision or order shall be final or conclusive, such provision shall mean that no appeal lies from any such decision or order; but it shall be lawful to the State Government alone to modify, annul or reverse any such decision or order under the provisions of section 257."

We have been called upon to apply the analogy of the above provision to the provisions of the Act. But such an approach, in our view, would be erroneous for variety of reasons. In the first place, as Supreme Court has laid down in the case of *Shri Narkesari Prakashan Ltd. vs. ISI Corporation*, AIR 1984 SC 1016 (para 10).

"The effect of an Act cannot be controlled by the provisions of another Act unless the provisions of the one have bearing on the provisions of the other".

Secondly the two enactments are not in *pari materia* as we will shortly demonstrate. Thirdly, the same Legislature, though aware of existence of such provisions in the earlier enactment, chose not to incorporate the same in the Act and, therefore, legislative intention behind both these provisions must be assumed to be different. We may hasten to mention at this stage that section 259 of the Maharashtra Code is analogous to section 211 of the repealed Bombay Land Revenue Code, 1879. Reverting to the scheme of the Maharashtra Code, it would be seen that it has an independent chapter XIII dealing with appeals and revisions. Appeals and revisions are not provided for anywhere else. Section 247 makes every order passed by a revenue and survey officer appealable to higher authority as detailed under Schedule E. There are many hierarchies in the Schedule. But number of appeals is restricted to two. Thus almost every order under the Maharashtra Code is made appealable to the higher authority subject to the maximum limit of two in each case. Section 257 deals with revisional

jurisdiction of the State Government as well as certain authorities. It is in the context of the above scheme that section 259 will have to be read. There is neither a general provision relating to appeals nor is second appeal provided against any order in the Act. The procedural Schemes under the two enactments thus are altogether different and. therefore, it would be wholly impermissible to interpret the expressions in the Act with reference to their use in the Maharashtra Code.

10. Following decisions relating to the revisional jurisdiction u/s 115 of the CPC in the context of provision of section 17(2) of the Payment of Wages Act were also brought to our notice on behalf of the respondents. (1) AIR 1945 94 (Nagpur) , (2) Jogendra Nath Chatterjee and Sons Vs. Chandreswar Singh, , and (3) A. C. Arumugham and others vs. Jawahar Mills Ltd., Salem, AIR 1956 Mad 79. Section 17(1) of the PW Act provides for appeal to the District Court against certain orders passed by the Authority. Save as provided therein the order is made final u/s 17(2). Controversy arose as to whether even the revisional jurisdiction of the High Court u/s 115 of CPC is barred. Various High Courts took a view that such an order is a "case which has been decided by any Court" as contemplated u/s 115 and hence revision lies though further appeal does not lie. The provisions of the Act as well as the PW Act are also not in pari materia. As a result the ratio of these decisions will have no application to the provisions of the Act.

11. We are fortified in the view we are taking also by a decision of Gujarat High Court in the case of Dahiben Ishwarlal vs. Vyas and others, 1960 Gujarat Law Reporter I (Vol. 1), to which our attention was drawn on behalf of the petitioner. It relates to section 88C(5) of the Bombay Tenancy and Agricultural Lands Act, 1948 under which the decision of the Mamlatdar, subject to the appeal to the Collector, "shall be final". Section 76 of the said Act deals with revisional jurisdiction of the Revenue Tribunal over the order passed by the Collector and contains a non-obstante clause. Yet, upon harmonious construction of the two provisions, a view was taken that the order passed u/s 88C(5) was final and not subject to the revisional jurisdiction.

12. Thus we conclude that no revision u/s 155 of the Act is maintainable before the State Government against an appellate order passed by the Commissioner u/s 33 (5) of the Act and, therefore, the impugned order of entertainment of the revision and so also of stay is wholly without jurisdiction. It is quashed and set aside. The petition is allowed and the rule is made absolute in the above terms. No order as to costs.

13. At this stage learned counsel for respondent No. 2 has prayed for continuance of the status quo for a period of two weeks from today to enable respondent No. 2 to move this Court for invoking writ jurisdiction for quashing the order of the Commissioner. Since stay is operating for quite a long period and the revision must have been filed bona fide, we order maintenance of status quo for a period of two weeks from today as prayed for.