

(1989) 07 GUJ CK 0003

In the Gujarat High Court

Case No : Letters Patent Appeal No. 140 of 1989 and Civil Application No. 775 of 1989

Ramanbhai Ambalal Patel

APPELLANT

Vs

Ishwarbhai Somabhai Patel and Others

RESPONDENT

Date of Decision : 03-07-1989

Acts Referred:

Gujarat Panchayats (Amendment) Act, 1962 — Section 24

Citation : AIR 1990 Guj 94 : (1989) 2 GLR 561

Hon'ble Judges : P.R. Gokulakkishnan, C.J; R.A. Mehta, J

Bench : Division Bench

Advocate : G.N. Desai, for the Appellant; S.D. Patel, for the Respondent

Judgement

Gokulakrishnan, C.J.—This Letters Patent Appeal is against the order passed by the learned single Judge in an interlocutory application, i.e. Civil Application No. 2197 of 1988 in Special Civil Application No. 6230 of 1988.

2. The short facts of this case are that there was a Notification to elect a Sarpanch of Ranoli Gram Panchayat issued on 21-05-1987. Nominations were called for and time was given to file nomination papers from 01-06-1987 to 03-06-1987. On 04-06-1987, there was a scrutiny of the nomination papers. Respondent No. 1 herein filled up his nomination papers on 29-05-1987 in two forms and submitted one of them on 01-06-1987 and the other on 03-06-1987. The District Development Officer has removed the respondent No. I from the office of Sarpanch, which post respondent No.1, was holding, by his order dated 03-06-1987. An objection was taken regarding the nomination papers filed by the respondent No.1 on 04-06-1987. The said objection was overruled by the Scrutiny Officer and the 1st respondent No.1 was permitted to contest the election. In the election, respondent No. 1 was declared elected as Sarpanch. Being aggrieved by the order passed by the Scrutiny Officer, the appellant herein filed an Election Petition before the Civil Judge (Senior Division), Vadodara, under S. 24 of the Panchayat Act. The Civil Judge (S.D.), Vadodara, who is constituted

as the Election Tribunal under the Act, by his order dated 08-09-1988, set aside the election of the respondent No. 1. Aggrieved by the said order, the 1st respondent herein has filed Special Civil Application No. 6230 of 1988 on 12-09-1988. On 06-10-1988, the Additional Development Commissioner, who is the appellate authority over and above the District Development Officer, on appeal, set aside the order of the District Development Officer passed by him on 03-06-1987, removing the 1st respondent from the office of Sarpanch under S. 49 of the Panchayat Act. Immediately, respondent No.1 came forward with Civil Application No. 2197 of 1988 for the purpose of staying the order of the Election Tribunal, which, according to him, is bad since the setting aside of the election was purely on the ground that the District Development Officer has removed the 1st respondent from office under S. 49 of the Panchayats Act on 3-6-1987. The learned single Judge, hearing this Civil Application and finding that the election was set aside purely on the ground that the District Development Officer has removed the 1st respondent herein from office under S. 49 of the Panchayats Act granted stay of the order passed by the Civil Judge (S.D.), Vadodara in Election Petition No. 18 of 1987. Aggrieved by the said order, the appellant, who is the 1st respondent in the Civil Application, has come forward with the present Letters Patent Appeal.

2A. We have heard Mr. G. N. Desai only on the question of maintainability of the Letters Patent Appeal. The 1st respondent herein came forward with the Special Civil Application under Art. 227 of the Constitution of India to set aside the order passed by the Election Tribunal. In that Special Civil Application, Civil Application No. 2197 of 1988 was filed for staying the operation of the order passed by the Election Tribunal.

3. Section 24 of the Gujarat Panchayats Act deals with the determination of validity of election, as to the nomination of the Judge and the procedure thereon. It reads as under:

"24. (1) If the validity of any election of a member of a Panchayat is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question refers, such person may, at any time within fifteen days after the date of the declaration of the results of the election, apply to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division), (hereinafter referred to as "the Judge") having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question."

This Section clearly states that to the Civil Judge (Junior Division) and if there be no Civil Judge (Junior Division), then to the Civil Judge (Senior Division), who has ordinary jurisdiction in the area within which the election has been or should have been held, the dispute has to be referred. No doubt, as a persona designata such Judge is being nominated. Sub-section (2) of S. 24 reads as follows:

"24. xxx xxx xxx

(2) An enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purpose of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive."

Sub-section (4) of S. 24 reads as follows:

"24. xxx xxx xxx

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit -

(a) any application to be compromised or withdrawn, or

(b) any person to alter or amend any pleading, unless he is satisfied that such application for compromise or withdrawal of the application for such alteration or amendment is not bona fide and not collusive."

Reading both these sub-sections, it is clear that for the purpose of the said enquiry, the said Judge may exercise all the powers of the Civil Court and his decision shall be conclusive. It has also been provided that notwithstanding anything contained in the Code of Civil Procedure, the Judge shall not permit: (a) any application to be compromised or withdrawn, or (b) any person to alter or amend any pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is bona fide and not collusive. Reading all these sub-sections and also the main sub-section 24(1), it is clear that the Gujarat Panchayats Act contemplates constitution of an Election Tribunal for the purpose of deciding the dispute arising out of an election. Such a Tribunal constituted under the provisions of Sec. 24 is having all the trappings of a Civil Court. Mr. Desai, the learned Counsel appearing for the appellant, correctly submitted that the short question before this Court is as to whether the Judge nominated is a persona designata without having the trappings of a Court or whether he is a Tribunal having all the trappings of a Court to come under the supervision of the High Court under Art. 227 of the Constitution of India. As we have discussed in paragraph supra, the provision of S. 24 clearly establishes that a Judge is nominated as a persona designata with all the trappings of a Civil Court to act as an Election Tribunal to decide the election dispute, Mr. Desai cited the decision in the case of Rathod Bhojaji Shantuji Vs. Pathan Nasir Khan Kesharkhan and Others, , for the proposition that a Judge nominated for deciding the election disputes is a persona designata and also for the proposition that he has no power to transfer a case. We do not think that this case has any relevance to the point in issue. In that case, it has been held that a Civil Judge (Junior Division) who has been posted as a Joint Judge under S. 23 of the Bombay Civil Courts Act, 1869, at a place where there is no Court of the Civil Judge (Junior Division), has no independent Court where suits and proceedings can be filed. It has been further held in that decision that in Mehsana there being no Court of a Civil Judge (Junior Division) where civil work

can be filed, the Civil Judge who has such jurisdiction, being the Civil Judge (Senior Division), it is he who is such a persona designata under S. 15 of the Act, and that he cannot transfer an election petition filed before him nor can he delegate his power to try such an application to another Judge. There is absolutely no difficulty in appreciating this judgment since a person specifically nominated to perform an act has no power to transfer it to some other person.

4. The next case cited by Mr. G. N. Desai is the one in the case of Somalal Nathjibhai Siroyia Vs. Arjandas Jodharam and Others, . This is also a decision dealing with S. 15 of the Bombay Municipal Boroughs Act, 1925. It has been held in this decision that unless a Court is nominated as persona designata, the mere fact that a Court is directed to receive the application and nothing further, cannot act as an Election Tribunal. We do not think that this case has any relevance to the question that has been posed before us in this Letters Patent Appeal.

5. Yet another decision cited by Mr. G. N. Desai is the decision in the case of Patel Kanchanbhai Mangalbhai and Another Vs. Maneklal Maganlal Gandhi and Others, . This is a case, where a direct Special Civil Application was filed under Art. 226 of the Constitution of India against the order of the Election Tribunal. A Division Bench of our High Court observed (at p. 28 of AIR):

"There is no hard and fast rule that where there is an alternative remedy, the Court should not entertain a petition under Art. 226 or refuse to grant relief to the petitioner. There is always a discretion vested in the Court to entertain the petition and grant relief to the petitioner notwithstanding the existence of the alternative remedy. Of course the discretion is a judicial discretion and the exercise of it must consequently depend on the facts and circumstances of the case."

It has been further held by the Division Bench that (at p. 28 of AIR):

"Held, on the facts, that merely because a petitioner allows his alternative remedy to get time-barred, it does not mean that he can have indulgence of the Court in a writ petition under Art. 226, but in a case like the present where the question as to the existence of the alternative remedy was a highly debatable one, it would not be right to refuse relief to the petitioners if they are otherwise entitled to the same merely on the ground that they did not pursue the alternative remedy."

It is clear from the above facts of this case, the High Court was moved under Art. 226 of the Constitution directly against the result of the election. Further, it is not a case where the Court was moved after the order on the election petition. The principles enunciated in this decision can be easily accepted and that will not in any way help the learned Counsel appearing for the appellant to contend that the Letters Patent Appeal is maintainable under Clause 15 of the Letters Patent. Considering all these aspects of the case and also the fact that the Letters Patent Appeal has been filed against an interlocutory order passed by the learned single Judge in the main Special Civil Application, which was filed under Art. 227 of the

Constitution of India, the Letters Patent Appeal is not maintainable. When especially a Letters Patent Appeal under Clause 15 of the Letters Patent is not maintainable even if there is a final order in the main Special Civil Application, it cannot be thought of to entertain a Letters Patent Appeal under Clause 15 of the Letters Patent in respect of an interlocutory order passed in such a Special Civil Application. For all these reasons, we are of the view that there is absolutely no point in the contentions raised by the appellant herein that the Letters Patent Appeal is maintainable. For all these reasons, this Letters Patent Appeal is dismissed as not maintainable. Notice is discharged.

6. Mr. G.N. Desai, appearing for the appellant, states that the ad interim relief in terms of paragraph 13(A) granted in Civil Application No. 775 of 1989 as early as 18-4-1989 may be continued for a further period of four weeks in order to enable the appellant to approach the Supreme Court for necessary relief. In as much as the ad interim relief granted by us is continued from 18-4-1989 and in order to enable the appellant to test the correctness of the order passed by the learned single Judge, before the higher forum, we extend the ad interim relief granted in Civil Application No. 775 of 1989 for a further period of three weeks from this date.

7. Appeal dismissed.