

(1966) 03 GUJ CK 0004
In the Gujarat High Court

Somalal Nathjibhai Siroyia

APPELLANT

Vs

Arjandas Jodharam and Others

RESPONDENT

Date of Decision : 02-03-1966

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 15, 15, 15(2), 15(2)
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1967) 8 GLR 337

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

Bench : Single Bench

Judgement

N.K. Vakil, J.—In this petition, the decision of the District Judge, Panch-mahals, at Godhra, holding that the District Judge has jurisdiction to decide election petitions u/s 15 of the Bombay Municipal Boroughs Act 1925 is challenged. In 1962 June, election for the Godhra Borough Municipality was held. The result of the election in ward No. 1 was declared on 18th June 1962 wherein the petitioner and respondents Nos. 1 to 4 were declared elected and respondents Nos. 6 to 18 were declared as unsuccessful. Respondent No. 5 filled an election petition in the Court of the District Judge, Panchmahals at Godhra u/s 15 of the Bombay Municipal Boroughs Act. The petition was contested. At the stage of hearing, it appears, the respondent No. 5 put in an application contending that as the learned District Judge was not appointed as required u/s 15(2) of the Bombay Municipal Boroughs Act to conduct the inquiry, he had no jurisdiction to hear the petition. The learned Judge heard the preliminary objection and decided that he had jurisdiction. The grounds on which the learned Judge held that he had jurisdiction inter alia were that the rule of stare decisis was in favour of the view that the District Judge is the competent authority to hear such petitions, that at no time after the Municipal Boroughs Act came into force in 1925, the State Government had been called upon to issue a notification specially empowering the District Judge by a general or special notification to hear election petitions. Under the Bombay Civil Courts Act, 1869, the District Court is the principal Court of civil jurisdiction and the District Judge presides over it and as such has

jurisdiction to decide all matters filed in his Court. The learned Judge also seemed to think that the Bombay High Court was of the same view and placed reliance particularly on two decisions which I shall refer to later. On the interpretation of Sub-clause (2) of Section 15, the learned Judge observed that in his opinion if the inquiry was to be held by a Judge below the grade of the District Judge, then only the State Government had to issue either a special or general notification. He refused to follow the direct authority of the Saurashtra High Court in *Ratilal Fulabhai v. Chunilal M. Vyas* A.I.R.1951 Bom 15 on the ground that the Bombay High Court was of his view. After giving due consideration to the provisions of law, the reasoning given by the learned Judge in his judgment and the decisions cited therein, with respect, I am unable to accept the conclusion reached or the reasoning of the learned District Judge for reasons that follow.

2. Mr. B. D. Shukla appearing for the respondent No. 5 fairly conceded that he found it difficult to support the decision.

3. The short point involved in this petition is whether under Sub-section (2) of Section 15, the District Judge has the authority to hear and decide the petition without being appointed by the State Government either specially for the case or for such cases generally. Before I proceed to consider this important legal aspect, it would be necessary to reproduce verbatim Sub-sections (1) and (2) of Section 15 of the Municipal Boroughs Act which are material for the decision of this point.

15(1) If the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, apply to the District Court of the district within which the election has been or should have been held, for the determination of such question.

(2) An inquiry shall thereupon be held by a Judge, not below the grade of an Assistant Judge, appointed by the State Government either specially for the case or for such cases generally; and such Judge may, after such inquiry as he deems necessary and subject to the provisions of Sub-section (3), pass an order confirming or amending the declared result of the election, or setting the election aside. For the purpose of the said inquiry the said Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any inquiry shall be paid; such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure. The decision or order shall be conclusive.

Chapter II of this Act deals with the constitution of municipalities as the heading indicates. Sections 4 to 34A fall within this Chapter. The Chapter stands divided into what may be called seven sub-divisions. We are concerned, in this case with sub-division 3 which deals with election of Councillors of a municipal borough as

the sub-head indicates and Sections 9 to 171 fall within the sub-division (3), This Chapter provides inter alia for the election of municipal councillors for each municipality, the period of holding this office, preparation of lists of voters, and inclusion of the names of persons who can vote and be elected, disqualifications for becoming a councillor, disqualification of voters, right to vote setting up of a machinery to determine the validity of elections, rules of conduct during the course of election and penalties for breach thereof. By Section 15 the Legislature has set up the special machinery for the making of an application by a voter who intends to challenge the election of any councillor and the inquiry to be held in respect thereof. Now, if we have a look at Sub-section (1), it clearly indicates that it only provides for the forum where the application for the determination of the question shall be presented. It does not provide at all for the actual decision of the application that is to say, the procedure to be adopted or the person who shall have the authority to decide it. What is to follow after the application is presented, falls within the ambit of Sub-section (2). It provides that for deciding the application, an inquiry shall be held and it also provides for the appointment of persons who shall be authorised to hold such an inquiry. The word "thereupon" advisedly used by the Legislature in Sub-section (2), when read in proper context supports the construction I am placing on the provisions. It clearly connotes that on the filing of the application as provided in Sub-section (1), an inquiry will be held by a Judge as provided in Sub-section (2). This inquiry does not obviously fall within the scope and ambit of Section 9 of the CPC and therefore the mere fact that u/s 15(1) the election petition is to be filed or presented in the District Court, would not automatically authorise the District Judge to dispose of the matter under his ordinary civil jurisdiction unless it can be held that Sub-section (1) also vests in him special jurisdiction to hear and decide it. I have already indicated that such is not the case. It is only Sub-section (2) that speak of the inquiry to be held and the persons who are to be authorised to deal with and decide such petitions in the inquiry. So for the purposes of finding out whether the District Judge has the authority or not, one has to turn to Sub-section (2) and look for his powers therein and not under Sub-section (1).

4. Sub-section (2) says that an inquiry shall thereupon be held by a Judge and it also lays down who shall be that Judge. That Judge shall not be below the grade of an Assistant Judge and further that that Judge shall be appointed by the State Government either specially for the case or for such cases generally. It is only such Judge who has the authority to hold the inquiry and pass an order confirming or amending the declared result of the election or set aside the election. This to my mind is the plain and grammatical construction which can be placed on Sub-section (1) and Sub-section (2) of Section 15.

5. The learned District Judge has observed that in his opinion if the inquiry is to be conducted by a Judge below the grade of a District Judge, then only the State has to issue either special or general notification. The learned Judge has not supported his opinion by any attempt even to interpret Sub-section (2) which is

the material provision of law. In my judgment the qualifying clause "appointed by the State Government either specially for the case or for such cases generally" applies to the expression "Judge" and not to the expression "not below the grade of an Assistant Judge. " But even assuming for argument's sake that the correct construction is that the said expression qualifies the word "not below the grade of an Assistant Judge, which I have no doubt would not be the correct interpretation, even then it can only mean that appointment by notification is to be made only if a Judge below the grade of an "Assistant Judge" is to be authorised and judges who are not below the grade of an Assistant Judge would be entitled to conduct the inquiry and decide application. But such is not even the reasoning adopted by the learned Judge. With due respect, I hold that the said opinion of the learned Judge is erroneous and not warranted by the language of the relevant provisions of law.

6. It appears that attention was drawn to the fact that a notification had been issued by the Government of Bombay which has also been adopted by the Government of Gujarat under relevant provisions wherein joint Judges and Assistant Judges in all districts were empowered to hold inquiry of applications filed under Sub-section (1) of Section 15 of the Act. I have not been shown this Notification but it is reproduced by the learned Judge in his Judgment. The notification was relied upon in the District Court by the Advocate for the successful candidate to show that the District Judge was not authorised to decide the application. The learned Judge, however, observed that as there was no need to authorise the District Judge, the District Judge was not referred to therein. In my view the notification cannot have any relevancy in interpreting the provisions of Sub-sections (1) and (2) of Section 15.

7. As I have stated, if Sub-section (1) and Sub-section (2) are read without doing violence to the language thereof, they lay down that the inquiry is to be held by the Judge who is not below the grade of an Assistant Judge and who is appointed specially for the case or for such cases generally by the State Government by a notification. In other words, the legislature has provided two qualifying conditions precedent before a Judge will have jurisdiction to conduct the inquiry (i) that he must be a Judge not below the grade of an Assistant Judge and (ii) that even such a Judge shall have to be specially appointed either for the particular case or must be a person who is generally appointed for such cases. There fore even the District Judge for the purposes of holding the inquiry under Sub-section (2) has to be appointed either specially for the case or for such cases generally and he will have no jurisdiction unless and until such appointment is made by the State Government. As the record stands before me, no other notification appointing the learned District Judge who entertained and decided this matter is there and under the circumstances, one cannot escape the conclusion that he had no jurisdiction to decide the election petition.

8. In the view that I have taken, I am supported by the decision in *Ratilal Fulabhai v. Chunilal M. Vyas* AIR 1951 Bom 15 . In the said case the learned

Judges were concerned with the Bombay District Municipal Act, Section 22. But the provisions of the two sections are in pari materia. There, it was held that the District Judge could receive an election petition u/s 22 but he could not conduct an inquiry unless he was appointed by the Government to hold the inquiry. Before the learned Judge it was contended that it was not necessary to pass any order by the Government so far the District Judge was concerned and that an order was only necessary to be passed if any other Judge was to be appointed as a tribunal. This contention was negated by the learned Judges with the observation that such a construction of the section was clearly wrong because whoever was the Judge who was to conduct the inquiry whether he is an Assistant Judge or District Judge, must be either generally or specially appointed by the government. The learned District Judge of Godhra however felt that the Bombay High Court decisions in Narayan Maruti Vs. District Judge, Kolaba and Others, and Samsher Khan Mohamad Khan Vs. Jafar Ali Ahmedalli Saiyad and Others, were against the view taken by the Saurashtra High Court and they supported the view he has taken. To my mind, both these decisions are besides the point and the questions decided therein are not relevant to the question on hand. In the case of Samsher Khan Mohamad Khan Vs. Jafar Ali Ahmedalli Saiyad and Others, , the Court was concerned with Clause (3b) of Section 22 of the District Municipal Act which is a provision similar to the one with which we are concerned. There the learned Judge decided that under Clause (3b) of Section 22, the jurisdiction of the District Judge was not confined to cases of corrupt practices but was a wide jurisdiction where he had been given the power to compute and scrutinise the votes, to decide the validity of the votes, and after deciding the validity of the votes cast to declare which candidate has been elected. An election petition made to the Judge requesting him to scrutinize the voting paper and to permit the petitioner to establish his allegation that valid votes which were cast in his favour had been rejected and invalid votes in favour of the other candidate had been admitted cannot therefore be rejected on the ground that his jurisdiction u/s 22(3)(b) was confined only to the cases where there were allegations of corrupt practices. Now, nowhere in this case, the matter was in question that the learned District Judge deciding that particular petition was not appointed as required by the relevant provisions of Section 22 as is the dispute in the instant case. There, the dispute as can be seen from the above observations, was of entirely a different nature and the jurisdiction of the District Judge for want of his appointment to conduct the inquiry was never in question. Merely because there the learned Judge held that the District Judge had the authority to decide the question of the nature mentioned hereinabove, it cannot be said that the question which is in dispute in the instant case was also decided in the said case by the Bombay High Court. There, the District Judge's appointment to conduct the inquiry was a fact assumed.

9. Similarly in Narayan Maruti Vs. District Judge, Kolaba and Others, the points before the Court to be decided were entirely different from the one with which I am concerned in this case. In that case the Court was concerned with the

Bombay Municipal Act (III of 1901) and the Court on the construction of Section 15 of the said Act held that no jurisdiction was conferred upon the District Judge to decide whether any disqualification attaches to the councillor u/s 15. His jurisdiction is confined to deal with election petitions and an election petition by its very nature must be restricted to bringing before the Court either a malpractice, a corrupt practice or an irregularity that takes place in the course of the election. In the said case also the point as to whether the District Judge was required to be specially authorised by the Government for the purposes of holding the inquiry, was never raised and decided. Therefore, neither of these decisions can be said to be an authority supporting the view that the learned District Judge has taken.

10. But on the contrary there is a later decision of the Bombay High Court in *Yeshwanta Mahadeo v. Nandkishore* 63 B.L.R. 628 wherein several authorities have been referred to and the observations made by the learned Judges are very helpful in deciding the point before me. In the said case, the learned Judge was concerned with Section 20A(2) of the C. P. & Berar Municipalities Act, 1922 and it was held that the District Judge or the Additional District Judge or the Civil Judge had no jurisdiction to decide an election petition unless they were specially appointed by a notification, in that behalf. It was further held that the authority appointed to inquire into the election disputes was a *persona designata* and not a Court. Therefore where a District Judge entertains an election petition u/s 20A(2) of the Act, he had no power to transfer the petition to any other *persona designata* viz. either Additional District Judge or the Civil Judge specially empowered. In the said case the jurisdiction of the Assistant Judge to entertain or to deal with the election petition with which the Court was concerned was raised. The objection as to jurisdiction was that the election petition could not be presented to the District Judge unless he was specially empowered as required by Section 20-A(2) of C. P. & Berar Municipalities Act, 1922. It was further contended that there was no notification empowering the District Judge or Assistant Judge to hear the election petition u/s 20-A of the C. P. & Berar Municipalities Act. It was also contended that the District Judge had no jurisdiction to transfer the petitions to the Assistant Judge. Sub-section (2) of Section 20-A of the C. P. & Berar Municipalities Act, 1922 provides as follows:

Such petition shall be presented to the District Judge or Additional District Judge or a Civil Judge specially empowered by the State Government in this behalf within the local limits of whose jurisdiction the election was held....

It was observed by the learned Judge that the question that fell for decision was whether special empowerment by a notification by the Provincial Government was necessary in the case of a District Judge or an Additional District Judge or whether the words "especially empowered by the Provincial Government in this behalf governed only the third category of officer, namely, a Civil Judge. This was a very similar question that arose for consideration as is before this Court. On the construction of the section the learned Judge came to the conclusion that the

Legislature intended that any of the authorities enumerated in Sub-section (2) of Section 20-A of the Act was to act as *persona designata* and not merely by virtue of the office already held by them and that such authority had to be specially empowered by the State Government by a notification. In the said case it was conceded that in exercise of powers of Sub-section (2) of Section 20-A, such a notification was issued by the then Government of Madhya Pradesh in 1947. Under that notification, Civil Judges of Class I were empowered to hear and dispose of election petitions u/s 20-A, but there was no notification empowering either District Judge or Additional District Judge to entertain and dispose of election petitions under the Municipalities Act. It was further observed that in the opinion of the learned Judge, it was never the intention of the Legislature that a notification especially empowering was only necessary in the case of a Civil Judge either of Class I or Class II and that such a notification was not necessary in the case of District Judge or an Additional District Judge. In the course of the discussion the decision in *Jagmohan Surajmal v. Venkatesh Gopal Ranade* 35 B.L.R. 89 has been referred to and certain observations quoted therefrom are extremely helpful for the purposes of the question in the instant case.

11. In the case of 35 B.L.R. 89, the District Judge who heard the application had set aside the election of one Jagmohan and had declared that the candidate Venkatesh was duly elected. Jagmohan took the matter to the High Court and the dispute raised was that u/s 15 of the Bombay Municipal Boroughs Act (XVIII of 1925) the Tribunal which was appointed to hear the petition was not a Court but a *persona designata*. Relying upon some previous decisions of the Bombay High Court, a contention was raised that the determination of compensation payable by Municipal Committee u/s 198 of the Municipal Act was made revisable by the High Court and reliance was placed on a Full Bench decision in *Parthasaradhi Naidu v. Koteswar Rao* ILR 47 Mad 369 which had taken a view contrary to the decisions of the Bombay High Court. In repelling the contentions in the said case, the Bombay High Court observed as follows:

We are however concerned with Section 15 of the Act of 1925. Comparing that section with the corresponding Section 22 of the Act of 1901, we find that there was an amendment, but the amendment was the substitution of the words "District Court" for those of "District Judge" in the Act of 1901. The difficulty, in fact, had been in the case dealt with by Sir Norman Macleod in *Gangadhar v. Hubli Municipality* that the application had been presented to the Clerk of the Court and not to the District Judge personally and this was clearly the difficulty sought to be got over by the change. Sub-section (2) however, is substantially what it was in the Act preceding the present one, ? and that is what we have to interpret. u/s 15 an application has to be made to the District Court under Sub-section (1) and an inquiry has then to be held by the District Judge or Assistant Judge specially empowered under Sub-section (2) by Government. The same sub-section then goes on further to empower the specially empowered Judge to summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole

or any part of the costs of such enquiry shall be paid; and such costs shall be recoverable as if they had been awarded in a suit under the CPC and that the decision or order shall be conclusive.

It seems to me that clearer case of persona designata is hard to find. It is not the District Court, but one of its officers who has to be specially designated. Such officer does not exercise his ordinary powers in summoning and enforcing the attendance of witnesses, but those specially conferred upon him by the section. Further costs are not recoverable under the ordinary powers of the District Court, but recoverable as if they had been awarded in the case of the exercise of its original jurisdiction. In these circumstances, it seems clearly to have been the intention of the Legislature to provide for these applications being heard by one of the officers constituting the District Court not in the exercise of his ordinary Civil jurisdiction, but in special circumstances, which are consistent only with his being a persona designata for the purposes of this section of the Act.

From these observations, it is clear that while interpreting this very Section the learned Judge deciding that case held that u/s 15, an application was to be made to the District Court under Sub-section (1) and an inquiry was then to be held by the District Judge or Assistant, Judge specially empowered under Sub-section (2) of the Act.

12. One judgment of the Nagpur High Court was also relied upon in the case of 63 B.L.R. 628. In the said case of Purshottam v. G.V. Pandit 1950 N. L. J. 520 the learned Judge deciding that case came to the conclusion that the words "specially empowered by the Provincial Government in this behalf, qualify not only "Civil Judge Class I" but also "District Judge" and "Additional District Judge". The difficulty of accepting any other interpretation and holding that it was not necessary especially to empower the District Judge or the Additional District Judge was fully set out by the learned Judge in the said decision.

13. These observations of the various learned Judges in the aforesaid decisions, fully support the view I have taken that under Sub-section (2) of Section 15, the qualifying clause of the special appointment or the general appointment by the Government applies not only to Judges lower in grade than the Assistant Judge but to all Judges viz. District Judges, Additional Judges, Joint Judges and Assistant Judges. Merely because no contention had been raised (even assuming that that was a fact) on this score at any time since the Act came into force in 1925, it can be no test of the correct meaning and scope of Sub-section (2) of Section 15. The learned District Judge in holding that he, as the District Judge, had jurisdiction to decide the petition, relied upon the provisions of the Bombay Civil Courts Act, 1869. This is an error on his part. In the light of the discussion aforesaid and the decisions cited by me, the question has to be considered on the interpretation of Section 15 of the Municipal Boroughs Act, 1925. The election petition u/s 15 is not an ordinary civil matter and as such is not triable by any Civil Court. A special tribunal is contemplated to be appointed for holding the inquiry. The District Judge, merely because he presides over the

District Court, does not by virtue of his being a District Judge, get any jurisdiction to hold the inquiry under Sub-section (2) of Section 15. The District Court is only authorised to receive the application and nothing further. For the inquiry, the Judge not lower in grade than the Assistant Judge has to be appointed by a special or general notification.

14. The result is that the learned District Judge, Godhra in whose Court the election petition was filed, had the authority to receive the said petition but as it has not been proved or shown on the record of this case that he had been either specially or generally authorised to hold an inquiry under Sub-section (2) of Section 15, he had no jurisdiction to hold that inquiry and hear the petition and the learned District Judge was in error in holding that he had jurisdiction to decide the election petition. I, therefore, set aside the order passed and allow this Special Civil Application. No order as to costs. Rule made absolute.