

(1957) 10 AHC CK 0006

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Application No. 217 of 1956

Babu Ram

APPELLANT

Vs

Peragi and Another

RESPONDENT

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**Date of Decision:** Oct. 15, 1957**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 2, 6
- Uttar Pradesh Panchayat Raj Rules, 1947 - Rule 25

**Citation:** AIR 1958 All 362 : (1958) 28 AWR 307**Hon'ble Judges:** Randhir Singh, J**Bench:** Single Bench**Advocate:** J.S. Trivedi, for the Appellant; B.K. Dhaon and B.N. Roy, (for No. 2) and Hyder Husain and H.N. Misra, (for No. 1), for the Respondent**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

Randhir Singh, J.

This is a petition for a writ of certiorary under Article 226/227 of the Constitution of India for the quashing of an order dismissing an election petition instituted by the petitioner Babu Ram, challenging the election of opposite party No. 1 to the office of Pradhan Gaon Sabha Ra-soora, District Sitapur.,

2. It appears that out of two rival candidates, namely the petitioner and opposite party No. 1, opposite party No. 1 succeeded in getting a majority of votes and was declared elected. An election petition was then instituted by the present petitioner for the setting aside of the election of opposite party No. 1. This election petition was presented to the Sub-Divisional Officer, Sitapur but was transferred to Sri Harish Chandra, Judicial Officer and Additional Sub-Divisional Officer, Sitapur.

The question as to whether a Sub-Divisional Officer, who was competent to entertain an election petition arising out of an election of Pradhan to a Gaon Sabha within his jurisdiction, had a right to transfer the same to another Assistant Collector of the First Class designated as Additional Sub-Divisional Officer by some order of the Collector and if such an authority had a jurisdiction to decide it has already been decided in the negative by a Full Bench of this Court in [Kedar Nath Vs. S.N. Misra and Another](#), It is, therefore, clear that opposite party No. 2 had no jurisdiction to decide the election petition.

3. Another point, which has been raised on behalf of the opposite parties, is that no question of jurisdiction was raised before the Election Tribunal and as such this Court in the exercise of its writ jurisdiction should not permit the petitioner to raise a plea of want of jurisdiction. Reliance has been placed on [Gandhinagar Motor Transport Society Vs. State of Bombay](#), as also on another case of this Court in [Basant Singh Vs. Janak Singh](#), . In both of these cases it has been observed that if a plea of jurisdiction has not been taken up before the original tribunal, a plea of want of jurisdiction should not be allowed to be raised in a petition for a writ of certiorari.

No doubt the power exercised by this Court in issuing writs is discretionary and if a person has omitted to challenge jurisdiction in an inferior tribunal, he should not be heard on that point in a writ petition. In some later cases, however, a distinction has been drawn between cases, in which the Court was not wholly incompetent to entertain a matter but was debarred from entertaining it on account of territorial or some other similar want of jurisdiction, and cases in which the objection went to the root of jurisdiction in which event the Court was competent to quash the orders in spite of the fact that a plea of jurisdiction was not raised at the earliest opportunity or before the Tribunal. In the Full Bench case of this court, [Bhagirathi and Others Vs. The State](#), Malik C. J. observed.

"After careful consideration, brother Agarwala and I took the view that the provisions of Section 49 (2) of the U. P. Panchayat Raj Act do not go to the root of the jurisdiction of the Bench and that if no objection has been taken to the constitution of such a Bench by either party in accordance with the provisions of Rule 84 (b), it is not open to them to raise that point in a writ petition under Article 226 or 227 of the Constitution."

The distinction has been clearly brought out in a later Division Bench case of the Bombay High Court in [S.C. Prashar and Another Vs. Vasantsen Dwarkadas and Others](#), It is not necessary to reiterate the arguments and the observations made in this case. Reference has been made not only to the other cases of the High Courts in India but also to various cases decided in England. I agree, if I may say so with respect, with the observations made in the above Bombay case. If a point raised goes to the root of jurisdiction but has not been raised before a Tribunal, the plea can be raised and will be considered in an application for a writ.

The plea of jurisdiction, which has been raised in this Court about the competence of the Additional Sub-Divisional Officer to entertain and hear an election petition would, if substantiated, go to the very root of the jurisdiction and as such there is no good ground for refusing to entertain this plea in this Court. An Assistant Collector of the First Class designated as Additional Sub-Divisional Officer by a Collector has no existence in law and as such has no jurisdiction to entertain an election petition.

4. After this writ petition and similar other writ petitions had been filed, the State Legislature has amended the U. P. Panchayat Raj Act by Act, XIX of 1957. The learned counsel for the opposite parties has relied on these amendments and it has been argued that after the amendments, which have been given a retrospective effect, the orders passed by an Additional Sub-Divisional Officer should be held to be valid. By Section 2 of Act XIX of 1957 a new Sub-clause (ss) has been added to Section 2 of the U. P. Panchayat Raj Act. It is as follows :

"(ss) "Sub-divisional Officer" includes an Additional Sub-divisional Officer designated or appointed as such by the appropriate authority.""

Section 6 of the Amendment Act which has also been relied upon reads as follows :

"6 (a) all orders made (except an order or judgment which has already been set aside before the commencement of this Act), actions or proceedings taken, directions, issued or jurisdiction exercised by any Additional Sub-divisional Officer, prior to the said commencement, under or in accordance with the provisions of the Principal Act or any rules made thereunder, which would have been validly and properly made, taken, issued or exercised, as the case may be, if Clause (ss) had been part of Section 3 of the Principal Act, shall be and be deemed to have been as good and valid in law as if the amendments made in Section 3 of the Principal Act by this Act had been in force at all material dates; and

(b)....."

On the basis of the above two sections of the Amendment Act it has been argued that an Additional Sub-Divisional Officer can be appointed or designated by the appropriate authority and by the validation made u/s 6, the amendment has been given a retrospective effect so much so that the Act would be deemed to have stood amended as at present, from the very beginning. It is no doubt open to the State Legislature to give retrospective effect to any amendment or law and the learned counsel for the applicant has not been able to show any law which would invalidate such an amendment. The amendment would, therefore, be good.

It has, however, been argued on behalf of the applicant that the position of the opposite party does not improve even after this amendment. There is no provision made by the Legislature for the appointment of an Additional Sub-Divisional Officer in the Land Revenue Act or in any other enactment except under the U. P. Panchayat Raj Act. As pointed out above, a Sub-Divisional Officer has been made to include an

Additional Sub-Divisional Officer designated or appointed as such by the "appropriate authority. This "appropriate authority" has, however, not been indicated in this amendment Act or in the original Act.

The learned counsel for the opposite parties has not been able to point out if there was any "appropriate authority" for appointment of an Additional Sub-Divisional Officer in any other enactment also. The words "appropriate authority" will, therefore, be given their ordinary dictionary meaning. It has been urged on behalf of the opposite parties that the State Government is u/s 18 of the Land Revenue Act, empowered to place any Assistant Collector of the First Class in charge of a Sub-Division and it is this Assistant Collector who is popularly known as Sub-Divisional Officer.

On this analogy it has been argued that the State Government or the Collector--if the powers are so delegated to him, can also appoint an Additional Sub-Divisional Officer. I am unable to accept this contention. Wherever the appointment of an Additional Officer has been contemplated, a provision has been made for such appointment in the Act itself. In Section 24 of the Oudh Courts A.ct provision has been made for appointment of Additional District Judges. Similarly in Section 8 of the Bengal, Agra and Assam Civil Courts Act provision has been made for the appointment of Additional District Judges. In the Criminal Procedure Code also we find that there is a provision for appointment of Additional Sessions Judges and Additional District Magistrates in Section 9, Sub-section 3 and Section 10, Sub-section 2.

In the U. P. Land Revenue Act itself there is a provision in Sections 13 and 14A for appointment of Additional Commissioners and Additional Collectors. It would thus appear that wherever it has been found necessary to appoint additional officers provision has been made for their appointment by the Legislature and it cannot therefore, be argued that the authority, which was competent to appoint Sub-Divisional Officers, would also be deemed to have authority to appoint Additional Sub-Divisional Officers or designate Assistant Collectors of the First Class as Additional Sub-Divisional Officers.

There being no provision for appointment or designation of Additional Sub-Divisional Officers and there being no indication as to who was the "appropriate authority" for such appointments, it will not be possible to appoint or designate Additional Sub-Divisional Officers and the amendment made by Section 2 of Act (XIX of 1957) does not in any. manner validate the appointments of any persons as Additional Sub-Divisional Officers. The amendment is, therefore, practically infructuous so far as the present writ petition is concerned.

The Sub-Divisional Officer, Sitapur, in whose jurisdiction the Gaon Sakha of which the Pra-dhan was elected, lay was the only competent authority to entertain and hear an election petition under the provisions of Rule 25 of the U. P. Panchayat Raj

Rules and he had no authority to transfer it to any other person designated as an Additional Sub-Divisional Officer unless that designation had been made by an authority competent to do so. The order passed by opposite party No. 2 dated 28th of June, 1956 dismissing the election petition of the petitioner is, therefore, quashed and the petition will be deemed to be pending. Under the peculiar circumstances of this case I, however, make no order as to costs.