
(1959) 12 MP CK 0012
Madhya Pradesh High Court
Case No: M.P. No. 67 of 1959

Ramchander Bhagwandas

APPELLANT

Vs

Second Additional District Judge
and others

RESPONDENT

Date of Decision: Dec. 24, 1959

Acts Referred:

- Central Provinces and Berar Municipalities Act, 1922 - Section 20A

Citation: (1960) JLJ 261 : (1959) MPLJ 379

Hon'ble Judges: P.V. Dixit, C.J; N.M Golvalker, J

Bench: Division Bench

Advocate: A.P. Sen, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

In this case the Petitioner seeks a writ of prohibition restraining the Second Additional District Judge, Raigarh, (opponent No. 1) from enquiring into and disposing of a petition filed by the second opponent Kishanlal u/s 20-A of the C. P. and Berar Municipalities Act, 1922, challenging the election of the Petitioner as a member from a ward to the Municipal Committee, Kharsia.

Section 20-A of the Act, so far as is material here, runs as follows:

(1) No election or selection notified u/s 20 shall be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition shall be presented to the District Judge or Additional District Judge or to a Civil Judge especially empowered by the Provincial Government in this behalf within the local limits of whose jurisdiction the election or selection was held and no

petition shall be admitted unless it is presented within fourteen days from the date on which the result of such election or selection was notified.

The petition, which Kishanlal, the defeated candidate, filed, was headed: "In the Court of the 1st Civil Judge, Raigarh, Election Petition u/s 20-A of the C. P. and Berar Municipalities Act, 1922." It was presented on 27th June 1958 before Shri Acharya, who was not on the date of the presentation of the petition a Civil Judge, First Class, but was the First Additional District Judge, Raigarh. Under a notification issued on 6th November 1947, the Government had empowered all Judges of the Courts of Civil Judges, First Class, to enquire into and dispose of election petitions arising within their respective jurisdictions. At the hearing of the election petition, the applicant raised the preliminary objection that the election petition was not presented to the proper authority; that after the coming into force of the M. P. Courts (Amendment) Act, 1950, abolishing the distinction between Civil Judges, Class-I, and Civil Judges, Class II, no fresh notification was issued by the Government u/s 20-A; that, therefore, the petition could not be presented and enquired into by any Civil Judge; that the election petition having been addressed to the Court of the Civil Judge, First Class, could not be entertained by the Additional District Judge; and that, therefore, Shri Acharya had no jurisdiction to enquire into the petition as an Additional District Judge. It appears that the petition was later on transferred by the orders of the District Judge from the Court of Mr. Acharya to the Court of Mr. Mukasdar, Second Additional District Judge, Raigarh. The Petitioner further raised the objection that the District Judge had no power to transfer the petition from the Court of one Additional District Judge to that of another. The preliminary objection raised by the Petitioner was overruled by Shri Mukasdar, Second Additional District Judge, Raigarh.

Having heard Shri A. P. Sen, Learned Counsel for the Petitioner, we have reached the conclusion that this petition must be dismissed. The objection raised by the Petitioner as to the jurisdiction of the Additional District Judge to enquire into the election petition assumes that the Judges mentioned in Sub-section (2) of Section 20-A of the Act act as *persona designata* and not as Courts and that, therefore, the petition addressed to the Civil Judge, First Class, could not be enquired into by an Additional District Judge and could not also be transferred from one Additional District Judge to another. This is not so. In the consideration of the question whether a presiding officer is acting as a *persona designata* or a Court, the important points to be investigated are the source of his authority, the nature of proceedings and the action taken therein. A *persona designata*, as the phrase implies, is an individual as distinguished from a member of a class. It will be seen that Section 20-A confers power on the District Judge, or the Additional District Judge or a Civil Judge especially empowered to enquire into and dispose of an election petition. No specific single person is pointed out by this provision by name or other personal description for entertaining election petitions. To say that the authority for enquiring into the election petition is to be the District Judge or the Additional

District Judge or a Civil Judge, First Class, especially empowered and therefore the authority before whom an election petition is presented and who is trying acts as a persona designata is to deprive the phrase persona designata of all its real significance. The provision in Sub-section (4) that no appeal shall lie against the decision of the Judge on an election petition and the provision in Sub-section (5) that such decision would be open to revision by the High Court indicate that the Judges mentioned in Sub-section (2) function as Courts and not as persona designata. If these functionaries were intended to act as persona designata, then it would have been wholly unnecessary to provide that their decision would not be open to appeal or that it would be open to revision by the High Court. In that case, the decision would not have been either appealable or revisable as a matter of law. It is because that these authorities were required to determine election matters as Courts and as a part of their general jurisdiction that the Legislature thought it necessary to insert a provision that their decisions would not be appealable but open to revision. If Sub-sections (4) and (5) had not been inserted in Section 20-A, then the decisions of election Judges would have been, under the ordinary law, appealable as well as open to revision. Section 20-A (2) is an instance of enlargement of jurisdiction of Court subject to restrictions on the appealability of the decision. It seems to us unnecessary to dwell on the matter further. The present case belongs to the category of the cases reported in *National Telephone Company Ltd. v. Postmaster General*, 1913 A.C. 546 and [K. Parthasarathi Naidu Garu Vs. C. Koteswara Rao Garu and Another](#). On these authorities, it seems to us impossible to hold that the District Judge, or the Additional District Judge or the Civil Judge, First Class, mentioned in Sub-section (2) of Section 20-A acts as a persona designata when he enquires into and disposes of an election petition. A similar view has been taken by Division Bench of this Court in *Bhojraj v. The State of Madhya Pradesh*, 1958 M P L J 459 where it has been observed with reference to Sub-section (2) of Section 20-A that "there is no question of creating ad hoc tribunals. The intention of the law is manifest. Power is given to Courts of Civil Judicature and is to be exercised by them as part of their general jurisdiction."

If then, as we think, the Judges mentioned in Sub-section (2) act as Courts, the election petition filed by Kishanlal could be entertained and enquired into by the First Additional District Judge, before whom it was presented, or by the Second Additional District Judge to whom it was subsequently transferred by an order of the District Judge, even though the petition was headed as "In the Court of the 1st Civil Judge, Raigarh.....". The incorrect description in the heading was merely a technical defect not going to the root of the jurisdiction of the Additional District Judge to enquire into the petition actually presented before him. The District Judge had power to transfer the election petition from the Court of the First Additional District Judge to that of the Second Additional District Judge during the course of the distribution of work. In paragraph 5 of the judgment in *Bhojraj*'s case, 1958 M P L J 459, observations have been made indicating that a District Judge could by a

distribution memo, transfer an election petition from one Court to another Court competent to try it. Therefore, in our opinion, the Second Additional District Judge has jurisdiction to enquire into and try the election petition filed by Kishanlal.

In regard to the Learned Counsel for the applicant's contention about the absence of a notification u/s 20-A after the coming into force of the M. P. Courts (Amendment) Act, 1956, it is sufficient to say that in the view we have taken it is unnecessary to consider the effect of the absence of a notification in this case. It may be added that in Bhojraj's case (1) it has been pointed out that the empowering of certain Civil Judges, First Class, u/s 20-A before the enactment of the Amendment Act of 1956 is in no way affected by the absence of a fresh notification u/s 20-A.

For these reasons, this petition is rejected. As none appeared on behalf of the opponents, there will be no order as to costs. The outstanding amount of security deposit be refunded to the Petitioner.