(1960) 12 BOM CK 0012

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 394 of 1960

Trikamji Damji — APPELLANT

Vs

Bhikalal Wadilal Shah — RESPONDENT

Date of Decision: Dec. 23, 1960

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Representation of the People Act, 1950 - Section 7

Citation: (1961) 63 BOMLR 732

Hon'ble Judges: Kotval, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Kotval, J.
This is an application for revision u/s 20-A(3) of the C.P. and Berar Municipalities Act, 1922. It relates to a municipal election dispute. General elections were recently held in several municipalities in the Vidarbha area. In this revision, I am concerned with the election of members from ward No. 7 of the Karanja Municipal Committee. The applicant Trikamji, son of Damaji, who moved the election petition, was one of the candidates for election from the said ward. Opponents Nos. 1 to 4 had also filed their nomination papers, but opponents Nos. 3 and 4, Kisan Kondba Jadhao and Nivritti Pandu Shende, respectively, withdrew their candidature within the time fixed. The nomination of opponent No. 2 Ramchandra Ganu Jadhao was rejected by the Supervising Officer and that rejection has not been disputed. Therefore, at the election there were only two contestants, namely, the applicant Trikamji and opponent No. 1 Bhikalal "Wadilal Shah. Bhikalal has been declared elected and Trikamji was defeated. The voting was 349 votes for Bhikalal and 46 votes for Trikamji.

2. The programme announced by the authorities for holding the election was as follows:

(i) The last date for filing the nomination paper was December 13, 1958.

(ii) The scrutiny of nomination papers was to take place on December 17, 1958.

(iii) The last date for withdrawal of candidature was December 27, 1958.

(iv) The election was to take place on January 1, 1959.

3. Prior to the date of the scrutiny of nomination papers, Trikamji had taken objection to the nomination of Bhikalal, his only rival at the election, but that objection was overruled.

4. The objection raised by Trikamji to the nomination of Bhikalal was that he was not eligible for election by virtue of the provisions of Section 15(1) of the Act. It was alleged that he had directly or indirectly an interest in a contract with the Karanja Municipal Committee. Bhikalal had advanced to the Committee two sums of money as follows:

Rs. 10,000 on August 17, 1958; and

Rs. 5,000 on September 13, 1958.

For these advances, the Committee had passed a resolution, and an officer of the Committee executed pro notes in favour of Bhikalal. On the date of his nomination, as also on the date of scrutiny, namely, December 17, 1958, these loans had not been satisfied and, therefore, it was urged that the opponent Bhikalal should be held to have an interest in the contract of loan made between him and the Committee. The objection was overruled by the Supervising Officer in a short order as follows:

The objector is heard. The Municipal Committee informs that the Municipal Committee had taken loan from the candidate Bhikalal Wadilal. That he has no other interest in the business of the M. C. It does not appear to be a contract or interest in M. C"s affairs as envisaged u/s 15(1) of the Municipalities Act.. .Objection is, therefore, rejected.

5. The election was originally fixed for January 14, 1949, but it could not be held on that date because the applicant moved this Court by way of an application under Articles 226 and 227 of the Constitution. That was Special Civil Application No. 2 of 1959 which was rejected by this Court on March 11, 1959. Nothing however turns upon that rejection because this Court did not express its view on the merits of the objection. It held that the applicant had another remedy open by way of an election petition which he ultimately filed. A petition to the Supreme Court of India was also rejected summarily. During the pendency of proceedings in the High Court stay was granted and, therefore, the election which was to be held on January 14, 1959, had to be postponed. After the rejection of the Civil Application the election was ultimately held on April 29, 1959, and the opponent Bhikalal was declared elected having obtained 349 votes against the petitioner"s 46 votes. Thereupon Trikamji filed an election petition on July 9, 1959, before the Civil Judge, Senior Division, Akola.

6. Bhikalal has in reply to the election petition alleged that the two loans which he had advanced to the Committee had been duly satisfied on January 8, 1959. At the hearing of the election petition, neither party, however, led any evidence whatsoever and submitted the dispute for decision upon the legal issues arising. There is, therefore, nothing before me from which it can be held that the loan was repaid to the opponent Bhikalal on January 8, 1959. However, on the submission of counsel for both the parties nothing turns upon such an allegation of repayment even if proved, because the loans were repaid after the order of the Supervising Officer was passed.

7. The main point argued on behalf of the two contesting parties is whether having regard to the admitted facts regarding the loan to the Committee, it can be held that Section 15(1) was infringed by the acceptance of the nomination of the opponent Bhikalal by the Supervising Officer. In the event of it being so held, a further and more fundamental point has been raised on behalf of Bhikalal that the petition presented by Trikamji to the Civil Judge, Senior Division, Akola, was presented to a Judge who had no jurisdiction whatsoever in the matter either to receive it or to adjudicate upon it. That objection is founded upon the provisions of Section 20-A (2) of the Act. I propose to dispose of that objection first because it is the more fundamental objection and affects the very jurisdiction of the trial Judge to deal with the matter at all. In order to indicate the exact nature of that objection, it is necessary to state some further facts.

8. The C.P. and Berar Municipalities Act, 1922 (II of 1922), came into force on January 6, 1923. At that time most of the provisions relating to elections to municipal committees in their present form were not in the Act. They were subsequently incorporated in the Act from time to time as elected representation was allowed in municipal committees in greater and greater measure. Section 20-A was originally inserted in the Act by Act No, XIV of 1947. The section has undergone further amendments by the Bombay Act No- XVI of 1958, but these amendments are not material for purposes of this revision application. Sub-sections (1), (2) and (3) of Section 20-A as amended run as follows:

20-A. (1) No election 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 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 was notified.

(3) Such petition shall be enquired into and disposed of according to such summary procedure as may be prescribed by rules made under this Act.

Acting under the powers given to it under Sub-section (2), the then Government of the Central Provinces and Berar issued a notification No. 3130-3360-M-XIII, dated November

6, 1947. By this notification the Provincial Government empowered "all Judges of the Courts of Civil Judges (Class I) for purposes of the said section within their respective jurisdictions." Though the Act, to which I shall presently advert, has undergone repeated and material changes, this notification has not been changed, nor has it been superseded or substituted by any other notification and it is the only notification conferring jurisdiction to try municipal election petitions. The question that has been raised is whether having regard to this notification, the trial Judge in this case, the Civil Judge, Senior Division, Akola, had the authority u/s 20-A (2) to try the present petition. The petition, as I have said, was initially presented in his Court and tried by him throughout.

9. I may now state the several changes that took place in the classification and jurisdictions of Civil Judges in order to explain the present position- At the time of the C.P. Government"s notification dated November 6, 1947, there was in force the Central Provinces and Berar Courts Act, 1917 (I of 1917). By Section 17 of that Act, Civil Judges were divided into two classes, (1) Civil Judge, Class II, who had jurisdiction to hear and determine any suit or original proceeding of a value not exceeding Rs. 5,000; and (2) Civil Judge, Class I, who had jurisdiction to hear and determine any suit or original proceeding of a value not exceeding Rs. 10,000. By the same section the District Court was given jurisdiction to hear and determine any suit or original proceeding without restriction as regards value. Then came into force on March 14, 1956, the Madhya Pradesh Courts (Amendment) Act, 1956 (II of 1956), by which the classification made between Civil Judges, Class I, and Civil Judges, Class II, was abolished and there was recognised only one class of Courts, viz., the Court of the Civil Judge. Incidental changes for purposes of appeal which were made in the C.P. and Berar Courts Act are not relevant for purposes of this revision. It may be noted that though the classification of Civil Judges into those of Class I and those of Class II, was abolished, still the old notification dated November 6, 1947, u/s 20-A(2) of the Municipalities Act empowering Civil Judges, Class I, was not amended or substituted and remained in force,

10. The next stage was reached when a part of the territories of the former State of Madhya Pradesh was, by virtue of the States Reorganization Act, included in the Bombay State. In consequence of that reorganization several Acts were passed applying the laws of the former State of Bombay to the new areas incorporated in the Bombay State, one such area being the Vidarbha region in which the Karanja Municipal Committee is situated. One of the laws extant in the Vidarbha regions of the former State of Madhya Pradesh which came to be affected was the C.P. and Berar Courts Act. It was affected by the Bombay Civil Courts (Extension and Amendment) Act, 1958 (No. XCIV of 1958), which purported to provide for uniformity in the law relating to the District Court and subordinate Civil Courts in the State of Bombay. That Act came into force on November 26, 1958. Section 2 of the Act applied the Bombay Civil Courts Act, 1869, to all the new parts of the State of Bombay as indicated in the preamble of the Act and extended its operation to those parts to which immediately before the commencement of the Act it did not extend. Section 3 repealed the C.P. and Berar Courts Act, 1917, subject to two

provisos to the section which I shall presently discuss. Therefore, the effect of Section 8 of the Bombay Act No. XCIV of 1958 was that the class of Civil Judges as contemplated by the C. P. and Berar Courts Act was wholly abolished. Notwithstanding these radical changes, the notification of the then Government of the C.P. and Berar dated November 6, 1947, empowering Civil Judges, Class I, u/s 20-A(2) of the Municipalities Act, to try municipal election petitions remained untouched.

11. By the application of the Bombay Civil Courts Act, 1869, a slightly different " hierarchy of Courts was established in the Vidarbha region. That Act also contemplated District Courts and civil Courts subordinate to the District Court, but it interposed two other categories of Courts in between the District Court and Courts subordinate to the District Court. These were the Courts of the Joint Judges and Assistant Judges. Section 22 of the Bombay Act says that Judges of such Courts as are subordinate to the District Judge shall be called Civil Judges and Section 24 prescribes that Civil Judges shall be of two classes, namely, a Civil Judge, Senior Division, and a Civil Judge, Junior Division. The jurisdiction of a Civil Judge, Senior Division, extends to all original suits and proceedings of a civil nature and the jurisdiction of a Civil Judge, Junior Division, extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value ten thousand rupees. This is subject to the power of the State Government to increase the limit of jurisdiction of a Civil Judge, Junior Division, up to Rs. 15,000.

12. Thus, while the Bombay Civil Courts Act classifies Civil Judges into Civil Judges of the Senior Division and Civil Judges of the Junior Division, the C. P. and Berar Courts Act originally classified them into Civil Judges, Class I, and Civil Judges, Class II. It was under the latter classification that the notification dated November 6, 1947, was issued, though later on that classification was abolished and there were only Civil Judges of one class under the C. P. and Berar Courts Act. The present election petition was presented to the Civil Judge, Senior Division, and has been tried and disposed of by him, and the question is whether it can be said having regard to the provisions of Section 20-A, Sub-section (2), of the C.P. and Berar Municipalities Act, that the notification of November 6, 1947, is sufficient to clothe him with authority to decide the petition. In other words, the question is whether the "Civil Judge, Class I" of the notification dated November 6, 1947, can be equated with any category of Civil Judge under the present dispensation.

13. Another point which was raised in the arguments and which is connected with the above point may also be noticed here. At one time, some doubt was entertained as to whether the words "especially empowered by the Provincial Government in this behalf" occurring in Sub-section (2) of Section 20-A qualify only the words "a Civil Judge" or whether they qualify the words "the District Judge or Additional District Judge" also. The doubt existed because of a conflict of authorities of two Courts but the question does not arise in this revision application. I have already held in Trinibaksa Ramasa v. Hdbib Mohamad (1960) 63 Bom. L.R. 721 that the clause only qualifies the words "a Civil Judge" and not "the District Judge or Additional District Judge". The question, therefore,

still remains whether the Civil Judge, Senior Division, who decided this election petition can be held to have been "especially empowered by the Provincial Government in this behalf" by virtue of the notification dated November 6, 1947.

14. Reverting to the provisions of Section 20-A (2), it seems to me that the intention of the Legislature was to have election petitions tried by Judges who were sufficiently senior and experienced and, therefore, it was not thought necessary in the case of the District Judge or Additional District Judge to lay down that they must be especially empowered. Most of the incumbents of these offices are Judges of considerable standing, but that is not so in the case of Civil Judges which is the lowest class in the hierarchy of Judges contemplated both by the Bombay Civil Courts Act, as also by the then extant C.P. and Berar Courts Act. Therefore, it was necessary to provide in the case of Civil Judges that the State Government shall have a choice as to whom to entrust the function of trying municipal election petitions. Now, the then Government of the C.P. and Bjerar when it issued the notification dated November 6, 1947, made a choice. It decided to entrust the trial of election petitions to Civil Judges of the highest class at that time, namely, the Civil Judges, Class I. It was obviously the intention of the notification to prevent Civil Judges of the lower class from trying election petitions, and that was in consonance with the policy behind Section 20-A(2). If that be the case, then the present petition, has also been tried by a Civil Judge of the highest class existing today under law in the Vidarbha region, namely, the Civil Judge, Senior Division, I do not see, therefore, how any substantial point as to want of jurisdiction arises beyond the highly technical argument that the notification dated November 6, 1947, has in terms not been complied with, because there are no longer any Civil Judges of Class I. The argument, if accepted, will result in this that in the present set up of Courts every petition can only be tried by the Court of the District Judge and by no other Court. This would render the purpose of the notification nugatory. Where a notification is extant and there arises a doubt as to its applicability, that interpretation should be placed upon it which would make it effective and not nugatory.

15. Looking at it from another point of view, namely, from the point of view of their comparative jurisdictions, it is clear that the Civil Judge, Junior Division, as contemplated by the Bombay Civil Courts Act has the self-same jurisdiction as the Civil Judge, Class I, had under the C.P. and Berar Courts Act, namely, to try all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value Rs. 10,000. But the Civil Judge, Senior Division, has jurisdiction to try all original suits and proceedings of a civil nature under the Bombay Civil Courts Act which no Civil Judge under the C.P. and Berar Courts Act could try. Under the C.P. and Berar Act that jurisdiction was given to the Additional District Judge-a class which no longer exists under the Bombay Act. The Civil Judge, Senior Division, therefore, is a Judge having much higher jurisdiction than the Civil Judge, Class I, under the C.P. and Berar Courts Act. The petitioner thus had the advantage of having his petition tried by a Judge not only possessing infinitely higher jurisdiction but unlimited original jurisdiction. I am unable to see, therefore, how the objection to the jurisdiction of the trial Judge in the instant case

has any substance. In my opinion, the dichotomy adopted by Section 20-A, Sub-section (2), was between three classes, namely, the District Judge, the Additional District Judge, and the Civil Judge especially empowered. That classification considered Civil Judges especially empowered as a class. The intention of the notification was to appoint Civil Judges of the highest class, and since the present petition has been tried by a Civil Judge also of the highest class, it can be held that the notification duly empowered him. The post of the Civil Judge, Senior Division, under the present dispensation can always be equated with that of the erstwhile Civil Judge, Class I. The objection raised to the jurisdiction of the trial Judge in the instant ease cannot be sustained. At any rate it appears to me to be of a very technical nature and not of any substance. No prejudice whatsoever has been caused to the petitioner either.

16. The trial Judge, when faced with the objection, disposed it of by relying upon the proviso to Section 8 of the Bombay Act No. XCIV of 1958. As I have said above, Section 2 of that Act applied the Bombay Civil Courts Act to the Vidarbha region, and Section 8 repealed the C.P. and Berar Courts Act. The first proviso to the section then saved certain acts done and actions taken. There was also a second proviso which saved pending proceedings, which is not attracted in the present case. The first proviso to Section 8 runs as follows:

Provided that such repeal shall not affect the previous operation of the Acts, Ordinance or Order so repealed and anything done or any action taken (including the districts formed, limits defined, courts established or constituted, appointments, rules or orders made, functions assigned, powers granted, seals or forms prescribed, jurisdiction defined or vested, notifications or notices issued, and proceedings instituted) by or under the provisions thereof shall in so far as it is not inconsistent with the provisions of the principal Act, be deemed to have been done or taken under the corresponding provisions of the principal Act and shall continue in force unless and until superseded by anything done or any action taken under the principal Act:

The trial Judge held that under this proviso the notification dated November 6, 1947, must be deemed to "continue in force" unless superseded.

17. I am unable to accept this view, because, in my opinion, upon its terms the first proviso to Section 8 of the Bombay Act No. XCIV of 1958 cannot apply. The crucial words in the proviso which govern the words "anything done or any action taken" are "by or under the provisions thereof". The word "thereof" has reference to the opening words of the proviso "shall not affect the previous operation of the Acts, Ordinance or Order so repealed". Therefore, the effect of the proviso is that only anything done or any action taken under any of the Acts, Ordinance or Order so repealed is saved. Now, the relevant Act which is repealed by Section 8 is the C.P. and Berar Courts Act, 1917, but the notification dated November 6, 1947, was not a notification issued in pursuance of any provision of the C.P. and Berar Courts Act, 1917, but a notification u/s 20-A, Sub-section (2), of the C.P. and Berar Municipalities Act. Therefore, it was not "anything dope or any

action taken" under any of the provisions which were repealed by the Bombay Act No. XCIV of 1958. The trial Judge failed to notice the effect of the crucial words "by or under the provisions thereof" in the first proviso to Section 8. That proviso will not be applicable here. In conclusion, therefore, I hold that the decision of the Civil Judge, Senior Division, wag correct, although for different reasons. I hold that the trial of the election petition before the Civil Judge, Senior Division, was valid and he had jurisdiction to receive and try the election petition.

18. Then I turn to the question on the merits. I have already set forth the facts upon which the point turns. The opponent Bhikalal had advanced Rs. 15,000 in two amounts of Rs. 10,000 and Rs. 5,000 on August 17, 1959, and September 13, 1959, respectively, to the Karanja Municipal Committee. On the date on which his nomination paper came to be scrutinised those loans were still outstanding and the opponent Bhikalal held two pro notes signed on behalf of the Committee in his favour. Now, Section 15(1) provides as follows:

No person shall be eligible for election or nomination as a member of a committee, if such person-.,.

(1) has directly or indirectly any share or interest in any contract with, by or on behalf of the committee, while owning such share or interest:

Provided that...in case (1) the disqualification may be removed by an order of the Deputy Commissioner in this behalf.

Explanation.-A person shall not, by reason of being a share-holder, in, or a member of, any incorporated or registered company, be deemed to be interested in any contract entered into between the Company and the committee.

19. The Explanation is not attracted in the instant case because there is no company involved here. The crucial question which arises upon the terms of Clause (1) is whether having regard to the facts which I have stated, the opponent Bhikalal had, on the date on which the objection to his nomination came to be considered, namely, on December 17, 1958, "directly or indirectly.. .any... interest in any contract with.. .the committee". Now, the trial Judge, though he has held that Clause (1) was not infringed in the instant case, has not given any categorical finding as to whether there was a contract or not, and if the former, whether the opponent Bhikalal had any share or interest therein directly or indirectly. He has merely held in para. 8 of his judgment:

The transaction in the present petition was but a mere loan advanced by the respondent No. 1 to the Municipal Committee and in view of this ruling relied upon by him the matter was quite out of the mischief of the Act.

The ruling referred to is the decision of the Nagpur High Court in K. C. Sharma v. Ramgulam [19S4] Nag. 571. That was a case where a candidate had entered into a

contract of lease with the Municipal Committee in respect of three plots of land towards which he had only paid l/4th of the premium and the balance was due by him to the Committee on the date on which his nomination came to be considered. There were further acts also alleged, all of which were acts of leasing out immovable property belonging to the Committee. A division Bench of the then High Court of Nagpur held that once the lease was given and all that remained to be done was to pay the rent, the contract of lease was completely executed and it was held that there was no contract subsisting. As to this decision, I had observed in Rohit Kumar Sahu v. State of M.P. (1956). Miscellaneous Petition No. 437 of 1956, decided by Kotval J., on October 29, 1956 (Unrep.), that the decision in K. C. Sharma"s case goes counter to the view taken by their Lordships of the Supreme Court of India in Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others, , and that

Since the pronouncement of their Lordships of the Supreme Court of India in Chatturbhuj"s case the view taken in K. C. Sharma v. Ramgulam Choube is at least open to doubt even if it be not held that it is impliedly overruled.

20. It was pointed out to me that the decision in Rohit Kumar Sahu v. State of M.P. was subsequently reversed by a Division Bench of the Madhya Pradesh High Court in Tejilal Vs. State, . But as I read that decision, the decision in Rohit Kumar Sahu v. State of M.P. was not reversed on the point now before me. It was reversed on the ground that

Where determination of controverted questions of fact is involved, Article 226 of the Constitution cannot properly be invoked.

There was a controversy on a question of fact in that case. On the point involved as to whether K. C. Sharma"s case was still good law, their Lordships left the question open as may be seen from para. 5 of their judgment, which is as follows:

On facts, the case is covered by the decision of a Division Bench of this Court in K. C. Sharma v. Ramgulam Choubey. Kotval J., however, was of the opinion that the decision in that case should be deemed to be overruled by Chaturbhuj Vithaldaa v. Moreshwar Parashram. The case of the Supreme Court was of a continuing contract for supply of goods to the Central Government and not of a contract of transfer of immovable property, which was the matter for consideration in the case of K. C. Sharma. However, it is not necessary to consider this question in the view that we hold of the present case. (Italics are mine).

Therefore, the decision in Tejilal"s case cannot preclude my considering the question in the present case. In any case, the decision of the Madhya Pradesh High Court is not binding on me.

21. The decision in K. C. Sharma"s case relied upon two decisions of the High Court in England in Tranton v. Astor ILR (1917) 383 and in Boyse v. Birley (1869) L.R. 4 C. P. 296, to be found also reported in Volume 17 of the Weekly Reporter, page 827. Tranton

v. Astor was a case where it was claimed that an elected member of Parliament was disqualified under the House of Commons (Disqualification) Act, 1801 (41 Geo. III, c. 52). The facts were that the member of Parliament who was elected, Mr. Astor, had owned a newspaper in which he had accepted for publication various advertisements from Government. Mr. Justice Low held that such transactions did not amount to contracts or agreements within the meaning of the legislation and they were casual and transient transactions. The reasoning in the words of the learned Judge was as follows (p. 386):-

...It was argued that every transaction which might in law be a contract could not be included, as, for instance, ordinary sales or purchases across the counter. I will say at once that I think that the real and sufficient answer to the claim of the plaintiff in this action is that even if a Government department acting directly does give an order to a newspaper for the insertion of a Government advertisement in a particular issue of the newspaper, and the newspaper accepts and inserts the advertisement, and that is all, such a transaction is not a contract or agreement within the meaning of this legislation at all, and such casual or transient transactions are not the kind of contracts covered by these statutes, but that what are meant to be covered are contracts of a more permanent or continuing and lasting character, the holding and enjoying of which might improperly influence the action both of legislature and the Government.

22. In Royse v. Birley the contract alleged was of an even simpler character. Birley was elected a member of Parliament. He had supplied goods and fulfilled his part of a contract with the Secretary of State for India in Council before he was elected. The goods were to have been paid for on acceptance. The goods were accepted but he was not in fact paid till after the election. It was held in those circumstances that he did not hold a contract within the meaning of the statute so as to make his election void. It is to be noticed that in Boyse v. Birley the contract had completely worked itself out by the delivery of the goods to the Secretary of State for India and acceptance by the latter, and all that remained to be done was the payment of the money. Almost under identical circumstances, this Court has also taken the same view. In Lal Shyam Shah v. V. N. Swami (1958) First Appeal No. 18 of 1958, decided by Kotval and Tambe JJ., on March 13/14, 1958 (Unrep.). a Division Bench held that in such a case, it must be held that there was no contract subsisting. That was a case arising under the provisions of the Representation of the People Act, 1951, and the wording of Section 7, Clause (d), of that Act is slightly different from the wording of Section 15, Clause (1), of the C.P. and Berar Municipalities Act. But the question whether interest in a contract existed or not is the same. In that case, an elected member of Parliament was a partner in a firm which had supplied goods to the Railways. The Railways had accepted the goods and had even passed the bill but had only to make payment. Tambe J. in delivering the judgment on behalf of the Bench held as follows:

The General Manager had issued orders to return the deposits and issue cheques therefor. After these orders the Syndicate had written to the railway administration for giving it a certificate that the contract of supply of goods was fully discharged and the railway administration by its letter dated 18/21-1-1957, Ex. R. 47, issued a certificate to

the Syndicate to the effect that there was no contract for supply of wooden sleepers pending then between the parties. On these facts, in our opinion, no dispute relating to the contract for supply of goods or the return of the security deposits on termination of the contract of supply of goods had remained outstanding between the parties. The contract stood fully discharged and nothing had remained to be done except the routine matters of issue of cheques in pursuance of the orders of the General Manager. Mr. Bobde contends that the railway administration could have gone back on its words and could have refused to pay the amount if it had found that the goods supplied were defective in some way or there was any deficiency in the quantity claimed to have been supplied. In our opinion, there is no scope for such a contention in view of the facts established in this case. Mr. Bobde further contends that the the railway administration was liable to pay full amount of the deposits to the Syndicate; it had not paid the full amount; it had issued only the cheques; the amount credited in the bank account of the Syndicate was after deducting the discount; this loss had fallen to the Syndicate; the Syndicate could have raised an objection and claimed the full payment of deposits; the contract, therefore, was not discharged. This contention also, in our opinion, does not arise. It was open to the Syndicate to accept the orders of the General Manager and treat the contract as discharged. It is well established that one of the modes by which a contract could be discharged is by an agreement between the parties and this, in our opinion, has happened in this case, and the contract between the Syndicate and the railway administration for supply of wooden sleepers was discharged by a contract between them as evidenced by the correspondence terminating with the letter of the railway administration of 18/21-1-1957 (Ex. R. 47). And this has happened after final settlement of accounts between parties. There was no likelihood of any dispute arising between the parties relating to the said contracts of supply of goods.

23. These eases referred to above are, in my opinion, wholly distinguishable upon the facts from the present ease. In the present case, the opponent Bhikalal advanced Rs. 15,000 to the Committee in lieu of which he held pro notes in his possession. The amount admittedly carried interest which the Committee was bound to pay. It can hardly be disputed that where a creditor advances money to his debtor upon certain terms as to payment of interest and repayment, a contract between the parties does arise. There is no question here of the contract having been executed or fulfilled. The Committee had not on the date of the scrutiny of the nomination papers repaid anything to the opponent Bhikalal. It has been repaid subsequently but that is hardly relevant. The opponent Bhikalal held in his possession pro notes which evidenced the contract and upon which he could sue the Committee. The words used in Section 15, Clause (1), are "has directly or indirectly any share or interest in any contract". If the lending of money gives rise to a contract, as I think it does, the question is: Had not the opponent Bhikalal directly or indirectly any interest so far as that contract was concerned? The meaning of the word "interest" as given in the Shorter Oxford Dictionary, volume I, is "legal concern; pecuniary stake". In Hasarimal v. The Crown [1940] Nag. 133 the word "interested" in the following clause in Section 45(1) of the C.P. Municipalities Act fell to be construed:-"directly or

indirectly interested in any contract made with such committee" and the Nagpur High Court held that the word must be given the wide meaning that it carries in ordinary parlance and that it included "an interest in money". If that be the meaning, there is to my mind absolutely no doubt that the opponent Bhikalal was legally concerned in or had an interest in the return of that money. He had a pecuniary stake in that money. Moreover, it is to be noticed that the words used are "directly or indirectly" and, therefore, although it may be argued that the pro note was a substitute for the money advanced it seems to me that nevertheless the opponent Bhikalal would continue to have indirectly an interest in the contract with the Committee, one of the terms of which was that the money should be repaid. He was interested in enforcing the clause as to repayment on demand.

24. Mr. Natu supported by Mr. Palsikar on behalf of the opponent Bhikalal urged that the mere relationship of creditor and debtor would not give rise to a eon-tract. The following passage from the decision in Royse v. Birley was relied upon. The passage is as follows (p. 829, col. 2) :

Mr. Birley had been converted into a mere creditor of the Government, whose claim was ascertained and whose right it was to receive his money. It would be an injustice to say that the mere delay of payment on the part of the Government, or the mere debt of the Government, should have the effect of disqualifying him. Comparing the various sections with one another, it occurs to me that it is not in the spirit or the expressed intention of the Act, that the mere relation of debtor and creditor arising out of some former contract should itself effect a disqualification. If it were it would be impossible to avoid the absurdity contemplated by Mr. Mellish, that the mere non-payment of a small balance to a Government contractor, whether by reason of there having been a dispute shortly before an election, or even from an accidental leaving out of a few pence or a few pounds, should constitute a status of incapacity to sit in Parliament. If this absurdity is created by the letter of the Act we have no option but to adopt it, but we have the preliminary duty to be quite sure that the Legislature did intend such a state of things before we pronounce it to be law.

The case to which Willes J. was referring in this passage was wholly different upon the facts. In that case, as I have shown above, the goods had already been supplied and accepted on behalf of the Secretary of State, and all that remained to be done was the payment of money, and it was with reference to that relationship that Willes J. used the words "Mr. Birley had been converted into a mere creditor of the Government". The learned Judge was not contemplating a case of any subsisting money-lending transaction as in the instant case where the entire contract consists of an advance on the one hand and an agreement to repay on the other, upon certain terms. In that case, the contract was to supply goods which contract had been fulfilled and completely executed and all that remained to be done was to receive the admitted amount from the Government. The use of the word "creditor" in the above passage was in connection with those facts and cannot, in my opinion, be extended to the facts of the present case. No authority has been shown to me to induce me to hold that a moneylending transaction where the debtor

was still under an obligation to return the money is yet not a contract.

25. Mr. Palsikar then relied upon a decision of the Supreme Court of India in The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, and urged that the giving of the pro note itself amounted to a conditional payment and that, therefore, it was open to the creditor to accept unconditionally the Committee"s pro note in complete discharge of the claim for return of the money and that was what was actually done in the present case and, therefore, there was no contract subsisting between the parties. The authority relied upon by Mr. Palsikar was a case under the provisions of Section 4 of the Indian Income Tax Act. In the first place, it was nowhere pleaded on behalf of the opponent Bhikalal that the pro notes were accepted by him unconditionally in complete discharge of the claim for the money advanced. But even assuming that he had so accepted them, the condition remained attached to the contract and to the extent of that condition, the opponent Bhikalal still continued to have an interest, because if the pro notes were to be dishonoured on demand, he would have to take steps to enforce them. I also think that somewhat different considerations would prevail in interpreting a statute like Section 15 of the C.P. Municipalities Act than prevailed in interpreting a fiscal statute like the Income Tax Act. The case relied upon, in my opinion, does not apply upon the facts of the present case.

26. In Nariman v. Municipal Corporation of Bombay ILR (1923) Bom. 809 : 25 Bom. L.R. 689 a Division Bench of this Court laid down that the real test in cases of this kind must be whether there was a continuity of the contract and whether the liability that remained to be fulfilled under a contract would create a conflict between the interest and the duty if the person concerned returns to office. In the present case, there is absolutely no doubt in my mind that upon election, the opponent Bhikalal"s interest and duty would conflict. If the question of repaying the loan had arisen before the Committee, any dispute could have been raised on behalf of the Committee, such as the payment of a certain rate of interest or the amount of interest or whether the sum should be paid in one or more instalment or instalments should be asked for from the Court. All these were matters in which the duty of the opponent Bhikalal as a municipal member, which duty was to safeguard the interests of the Committee, would conflict with his interest in the repayment of the amount advanced.

27. Some reference was made to various provisions of the Representation of the People Act, particularly Section 7 thereof, but, in my opinion, the wording of that section is wholly different from the wording of Section 15(1), and no useful purpose will be served by a discussion of those provisions.

28. It was also urged that great injustice would be caused in a given case if a person merely advancing money to a committee was held disqualified. I must not be understood to lay down that in every case where money is due from a committee to a person standing as a candidate for election, the disqualification must ensue. Bach case, in my opinion, would turn upon its own facts. In the present case, there is no doubt that

opponent No. 1 would have such an interest in a contract as would disqualify him u/s 15(1). In the passage I have quoted from Royse v. Birley, Willes J. contemplated such cases of hardship and observed that if there was some delay in payment on the part of the debtor, it would be an injustice to hold that it would have the effect of disqualifying the creditor. No such hardship exists so far as elections tinder the C.P. and Berar Municipalities Act are concerned. Such cases of hardship were within the contemplation of the Legislature and, therefore, the saving provisions of the proviso to Section 15 have been incorporated. It is always open to a candidate who may have a fear that because of monies due from the Committee to him, he may be disqualified, to move the Deputy Commissioner and to have such disqualification removed. Therefore, the apparent hardship of the case is completely mitigated here. In the instant case, as soon as the objection to the nomination was taken, the opponent Bhikalal could have moved the Deputy Commissioner, and I have no doubt that he would have got the proper relief. Instead of doing that, he contested the position and insisted that no contract had taken place and he had no such interest in a contract as is hit by Section 15(1).

29. In the result I am unable to accept the finding of the trial Judge that Clause 15(1) was not infringed in the case. I, therefore, set aside the order of the Civil Judge, Senior Division, and allow the election petition. I hold that the opponent Bhikalal was not eligible for election, that his nomination paper was wrongly accepted by the Supervising Officer and that, therefore, his election is void.

30. Mr. Mandlekar on behalf of the petitioner then urged that if the opponent Bhikalal was not eligible for election and his election is void, then the petitioner Trikamji would remain the only candidate in the field and ought to have been declared elected. I do not think I can accede to such a contention. Opponents Nos. 3 and 4, Kisan and Nivritti respectively, withdraw their candidatures and they have alleged in the written statement that they withdrew because the nomination of Bhikalal, opponent No. 1, had been accepted. If it had not been accepted, they would have contested the election against the petitioner Trikamji. Apart from this, the petitioner has only got 46 votes, whereas the opponent Bhikalal got 349 votes. I do not think that in the circumstances, the petitioner Trikamji can claim that he should be declared duly elected. The application for revision is allowed with costs, the order of the trial Judge is set aside and the election of Bhikalal Wadilal Shah is declared void under Rule 17 of the Municipal Election Petition Rules. It is also declared that a casual vacancy has occurred in ward No. 7 of the Karanja Municipal Committee. The petitioner shall be entitled to a refund of his security deposit.