

(1968) 03 BOM CK 0030

Bombay High Court

Case No: Misc. Civil Application No. 165 of 1967

Collector, Buldana and others

APPELLANT

Vs

Shama Tukaram and others

RESPONDENT

Date of Decision: March 7, 1968

Citation: (1968) MhLj 450

Hon'ble Judges: N.L. Abhyankar, J; D.B. Padhye, J

Bench: Division Bench

Advocate: P.G. Palshikar, Asst. Govt Pleader, for the Appellant;

Final Decision: Allowed

Judgement

N.L. Abhyankar, J.

This is an application for review of an order passed by a Division Bench of this Court in Special Civil Application No. 619 of 1987 on 11-7-1967 [Shama Tukaram, v. Collector, Buldana (1).] One of us (Abhyankar J.) was a party to the Bench delivering the order. In that petition, a grievance was made that the programme for elections to the Village Panchayats in different villages including the village of Wadner Bholji was altered by the Mamlatdar and the dates originally fixed were so altered as to prejudice the rights of candidates or intending candidates who wanted to contest the election. One of the contentions urged before the Division Bench was that the authority to fix dates of various stages of election under rule 7 of the Bombay Village Panchayats Election Rules, 1959, promulgated under the Bombay Village Panchayats Act, 1968, was vested in the Mamlatdar but it was argued that under rule 2 (3) the word "Mamlatdar" has been defined. That definition originally was as follows:

"Mamlatdar" includes a Mahalkari, a Tahsildar and a Naib-Tahsildar if he exercise the powers of a Tahsildar:

Provided that where for any local area a Block Development Officer has been appointed, then in the case of a village situate within such local area, the Block

Development Officer shall be the Mamlatdar for the purposes of these rules." It will be seen that the definition, in view of the proviso, equated the Block Development Officer of the local area with the office of the Mamlatdar. It was therefore held by reference to this definition of "Mamlatdar" as it originally stood that election programme could not be altered by an officer other than the Block Development Officer, and accordingly in allowing the petition, the Division Bench directed that a fresh election programme should be drawn up by the proper authority in respect of election to ward No. 1 of village Wadner Bholji.

2. The election programme concerned therein was promulgated under the notification dated 8-6-1967 by Mr. A. G. Dhote, the then Tahsildar, Malkapur. This petition at the instance of the Collector, Buldana, seeks a review of this order so far as the observations of the Division Bench as regards the respective powers of the Mamlatdar and the Block Development Officer for fixing the dates of election and drawing up an election programme are concerned. It has now been brought to our notice that the original definition of "Mamlatdar" in rule 2 (3) has been amended by Notification No. VPA. 1163/81393-P. dated 23-12-1963 issued by the Co-operation and the Rural Development Department. Under this notification, the proviso to sub-rule (3) of rule 2 has been deleted. The effect of the deletion of the proviso is that the Block Development Officer in the area is no longer equated with the office of Mamlatdar, and the Block Development Officer could not, after 23-12-1963, either fix an election programme or alter the dates of election programme. The view taken in that decision of the Division Bench therefore is obviously not correct because that decision was given on the basis of a provision of the rule which was repealed prior to the decision and also prior to the fixation of the election programme for the village concerned.

3. It is unfortunate that neither counsel appearing on both sides brought to the notice of the Court that the proviso to rule 2 (3) of the Bombay Village Panchayats Election Rules was deleted. It also appears that the book which was referred to did not have the corrected provision of rule 2 (3). In view of this obvious mistake which has cropped in on account of reliance on the wrong rule we direct that in view of the change in the definition of "Mamlatdar", it is the Mamlatdar or an officer included in the definition of Mamlatdar in rule 2 (3) who will be the officer properly entitled to exercise the powers under rule 7 for fixing the dates of election etc. The direction in the penultimate paragraph of the order should also be understood in the same sense. As there is no appearance on behalf of the other side, the application is allowed but there will be no order as to costs.