

(1959) 12 BOM CK 0012

Bombay High Court**Case No:** Special Civil Application No 172 of 1959

Narayan Bansi

APPELLANT

Vs

Ratanlal Jankilal

RESPONDENT

Date of Decision: Dec. 1, 1959**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

Citation: (1960) 62 BOMLR 236**Hon'ble Judges:** Tambe, J; S.T. Desai, J**Bench:** Division Bench

Judgement

Tambe, J.

Petitioner Narayan and Ratanlal, respondent No. 1 hereto, were the two contesting candidates at the general election of the Amravati Town Municipal Committee in Vidarbha. They were contesting for a seat from ward municipal committee in Vidarbha. They were contesting for a seat from ward Municipal committee in Vidarbha. They were constesting for a seat from ward No. 10 of the said municipality. Respondents Nos. 2 and 3 also had filed their nomination papers for that seat but had withdrawn their candidature. Poll was taken on May 1, 1959. As a result of the counting that took place on May 2, the petitioner was declared elected by the Supervising Officer. Before the result of this election was notified by the Deputy Commissioner, Amravati, in the Official Gazette, as required by the provisions of the C.P. & Berar Municipalities Act, hereinafter called the Act, respondent No. 1 filed an election petition on May 11, 1959, before the District Judge, Amravati, challenging the election of the petitioner. He also presented a separate application praying that an ex parte injunction be issued against the Deputy Commissioner prohibiting him from publishing in the Official Gazette the name of the petitioner as an elected member from ward No. 10. The District Judge, respondent No. 4 hereto, passed an ex parte injunction as prayed for by respondent No. 1 on that day i.e. on May 11, 1959. The petitioner then made an application for

vacating the injunction and contested the grant of injunction on several grounds. His application was dismissed and by his order dated May 21, 1959, the District Judge has affirmed the ex parte injunction. It is against this order that the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India, wherein he prays for an appropriate writ, quashing all the proceedings before the District Judge, the order made by him on May 21, 1959, and a mandate to the District Judge not to proceed with the petition.

2. Mr. G.R. Mudholkar, learned Counsel for the petitioner, has raised two points before us: (i) that the election petition filed by respondent No. 1 in the Court of the District Judge against the petitioner was premature inasmuch as it was filed prior to the notification in the Official Gazette by the Deputy Commissioner, the District Judge, therefore, was acting without jurisdiction in entertaining the petition as well as in making the impugned order and (ii) even assuming that the election petition filed by respondent No. 1 was tenable, the District Judge had no jurisdiction to issue an injunction against the Deputy Commissioner specially when he was not a party to the election petition.

3. Turning to the first contention of the petitioner, Section 20A of the Act which deals with election petitions reads as follows:

(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... 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.

Laying emphasis on the clause "no petition shall be admitted unless it is presented within fourteen days from the date on which the result of such election was notified" Mr. Mudholkar argues that the statute in clear terms prohibits institution of an election petition before the result of the election is notified; starting point for presentation of the petition is the date of notification of the result and the posterior limit is the expiry of fourteen days from the date of the notification. Mr. B.R. Mandlekar, learned Counsel for respondent No. 1, on the other hand contends that the aforesaid clause only fixes the posterior limit and does not prohibit institution of an election petition prior to the date of notification. According to him, an election petition could be filed at any time after the result of the election has been declared by the Supervising Officer but not later than fourteen days from the date of the notification. He places reliance on two decisions reported in *Avi J. Cama v. Banwarilal* [1953] Nag. 267 and *Venkati v. State of Madhya Pradesh* [1954] N.L.J. 644. The decision of rival contentions raised on behalf of the petitioner and respondent No. 1

thus depends on the true construction of Section 20A of the Act.

4. It is beyond dispute that if the words of a statute are precise and clear then they must be followed and no occasion to interpret them arises. But then Section 20A does not in clear terms say either that no election petition shall be filed till the result of an election is notified or that an election petition could be presented on the declaration of its result by the Supervising Officer but within fourteen days of the date of its notification.

5. The Municipalities Act is enacted to make better provision for the organization and administration of municipalities in the territories formerly known as "Central Provinces and Berar". Chapter II thereof under which Sections 10 to 23 fall deals with the constitution of Committees, resignation of president, vice-president or member; filling in of the casual vacancy and removal of a member etc. from his office. We are here concerned with the relevant provisions relating to the constitution of a municipal committee.

6. Before we proceed to examine the relevant sections falling in this Chapter, it is necessary to observe that the territory now termed as Vidarbha which formed part of the old Central Provinces and Berar or Madhya Pradesh has been integrated with the State of Bombay under the States Reorganisation Act as and from November 1, 1956. Subsequent thereto the Legislature of the present State of Bombay has materially amended this Act so far as the Vidarbha area is concerned by the Amending Act No. XVI of 1958. We have to construe the relevant provisions of the Act as they now stand after the amendment.

7. Generally speaking prior to the amendment a municipal committee consisted of elected members, selected members, i.e. members selected by the members elected and members nominated in certain circumstances. The president was elected by a direct election, i.e. by all the voters whose names were enrolled on the electoral roll of the municipality from amongst the persons residing in the municipality, possessing the qualifications of a voter and not disqualified under the provisions of the Act. Up to two vice-presidents could be appointed by the president, from amongst the members of the committee or from other persons residing in the municipality possessing the qualifications of a voter and not disqualified under the Act. Now, after the amendment the element of selection is taken away. A municipal committee is primarily constituted of elected members; its president is elected not by direct election but by the members from among their number; the committee has to have only one vice-president appointed by the president from among the members of the committee.

8. Section 10 provides that there shall be established for each municipality a committee having authority over the municipality. Each committee shall consist of not less than 10 members, the total number of members and the number of members of each of the classes specified in Sub-section (3) shall be fixed by rules

made under this Act. The committee is to consist of elected members; if how-over there is a failure to elect a member, the State Government is empowered to nominate a member to fill up the vacancy. Sections 11, 12, 13, 14 and 15 deal with qualifications and disqualifications of voters, preparation of electoral roll, qualifications and disqualifications of voters seeking election, division of the municipality into wards. The rules relating to election of members framed by the former State of Madhya Pradesh were also modified by the Government of the State of Bombay under Notification dated July 5, 1958. The Deputy Commissioner (Collector) of the respective area conducts the election proceedings with the aid of such officers as he may appoint. It is not necessary to recapitulate all of them except Rule 18A which was newly introduced under the Notification of July 5, 1958. It runs as follows:

The result of the election with full particulars regarding each candidate including the number of valid votes received by him shall be immediately communicated by the supervising officer to the Deputy Commissioner who shall u/s 20 forthwith notify in the Official Gazette the names of the elected members together with the names of any members nominated under Sub-section (4) of Section 10(i.e. on failure to elect a member).

9. Section 16(2) provides that the term of office for which all other members of a committee shall be elected, shall be fixed by the State Government by rules made under the Act, but shall not exceed three years. Sub-section (3) provides that notwithstanding anything contained in Sub-sections (2) and (2A) or in any rules made under the Act, an outgoing member shall, unless the State Government otherwise directs, continue in office until the election of his successor is notified.

10. Section 17 deals with filling in casual vacancy of a member.

11. Section 18 deals with the election of a president. Sub-section (7) provides that each committee shall have a president who shall be elected by the members among their number. Sub-section (2) deals with appointment of vice-president. Sub-section (5) provides that save as otherwise provided in this Act,

(a) the president shall hold office for such term not less than one year or not less than the residue of the term of office of the committee, whichever is less, and not exceeding three years, as the committee shall, previous to the election of the president, determine or until the expiry of the said term of office as member, but shall be eligible for re-election.

(b) ...(relates to the term of office of vice-president). Provided that the term of office of such president or vice-president shall be deemed to extend to, and expire with, the date on which his successor is elected or appointed, as the case may be." Second proviso and Sub-sections (4) and (5) are not material for purposes of this case. Sub-section (6) empowers the State Government to make rules regulating the manner of election of presidents and appointment of vice-presidents. In exercise of

the powers conferred under Sub-section (6) the State Government of Bombay has framed rules first under notification dated August 13, 1958, and finally under notification dated November 13, 1958, published in the Gazette of November 27, 1958. Material rules may be reproduced here:

12. Rule 3(7) provides that within twenty-five days of the notification of the names of the members of a committee in the Official Gazette u/s 22, the Collector (Deputy Commissioner) shall convene a meeting of all the members for the purpose of election of the President under Sub-section (7) of Section 18 and shall, unless it be an adjourned meeting held under Sub-rule (3), give at least seven days notice of the date, the hour and the place of such meeting to each member of the committee. Sub-rule (2) provides that an officer appointed by the Collector for the purpose shall be the Chairman of the meeting, or as the case may be, of any adjourned meeting. Sub-rule (5) provides that half the total number of members shall form a quorum. If there is no quorum at any time from the beginning of a meeting till voting is completed, the Chairman shall, after waiting for a reasonable period, adjourn the meeting to such hour on the following day or any other day fixed by him in that behalf. A notice of the adjournment shall be fixed upon a notice-board in the municipal office, and at such adjourned meeting, the election of the President shall be held whether there is quorum present or not.

13. Rule 4 reads:

The Chairman shall, before proceeding to elect the President, call upon the members to determine the term for which the President shall hold office as required by the provisions of clause (a) of Sub-section (3) of Section 18.

Rule 5(3) reads:

After determination of the term of office of the President at the meeting, the Chairman shall read out to the meeting the names of all the candidates validly nominated and the names of the proposers and seconders.

Rule 5(4) reads:

If there is only one candidate he shall be declared duly elected. If there are more than one candidate, the Committee shall proceed to elect the President by means of the single transferable vote according to the procedure specified in the regulations in Appendix A to these rules.

Rule 6 reads:

The result of the election shall be immediately communicated by the Chairman to the Collector.

Rule 7 reads:

On receipt of the communication of the result of the election from the Chairman, the Collector shall forthwith notify the name of the member elected, as President in the official Gazette u/s 20.

14. Section 18A deals with the removal of the president or vice-president from his office by a vote of no confidence. Section 19 deals with filling in of casual vacancies of president or vice-president. Section 20 provides that an election or nomination of a member, election of a President and the appointment of a vice-president of a committee shall be notified in accordance with rules made under this Act and such persons shall enter on their respective offices from the date of such notification.

15. Material part of Section 20A we have already reproduced.

16. The aforesaid provisions show that under the Act as it now stands, a municipality is normally constituted of elected members the only exception being nomination of a member by the State Government to fill in a vacancy occasioned by failure to elect a member. The election is conducted by the respective Deputy Commissioner. Results of the elections are to be communicated by the Supervising Officers immediately to the Deputy Commissioner. On receipt of the results the Deputy Commissioner is enjoined with a duty to forthwith notify in the Official Gazette the names of the elected members. On their names being notified they enter office; till that date, i.e. till the date of the notification, the outgoing members continue in office. After the notification, the Deputy Commissioner is enjoined with a duty to convene a meeting of all the elected members for the election of a president from among them; this has to be done within twenty-five days of the notification of the names of the elected members. The Deputy Commissioner has to appoint a Chairman to preside at such a meeting. The Chairman is enjoined with a duty to communicate to the Deputy Commissioner the result of the election; immediately on receipt of the result, the Deputy Commissioner is enjoined with a duty to forthwith notify in the Official Gazette the name of the elected president. It is only then that the president enters office. He has then to appoint a vice-president from among the members, and it is in this manner that a municipality is constituted. It would thus be clear that between the declaration of the result by the Supervising Officer and the notification of the name of the elected members in the Official Gazette as duly elected members there is a very little gap. So also is the case in the matter of the election of the president. It is only after their names are notified that they enter office. Unless the newly elected members enter office the outgoing members do not go out of their office.

17. All these provisions would indicate that the election proceedings relating to the election of members or president end with the publication in the Official Gazette of a notification declaring the members or president elected at the election.

18. As a general rule the cause of action to challenge an election by an election petition would arise only when the election proceedings are complete. The reason

therefore appears to be that the election proceedings should not be unduly retarded or protracted. In [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), after examining the various authorities *Fazl Ali J.*, who delivered the judgment of their Lordships of the Supreme Court, observed (p. 234) :

The conclusions which I have arrived at may be summed up briefly as follows:- (1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

It is true that these observations were made while considering the provisions of the Representation of the People Act which relates to elections to the Legislatures, but the principle is of general application and would equally apply to elections to local bodies.

19. There is also another aspect to the question, the historical background relating to the constitution of tribunals empowered to decide election disputes. In the absence of any statutory provision the right to decide questions affecting the validity of an election of a member vests in the body to which the member has been elected. It is that right that is delegated to the election tribunal constituted by the statute. In the aforesaid decision *Fazl Ali J.* further observed (p. 236) :

Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

20. If that be the true position, then the question of deciding validity of the election of a member would naturally arise when he becomes a member of that body; in other words, when he enters on his office. As already pointed out, under the Act an elected member enters on his office from the date of notification. It would therefore be, in our view, reasonable to assume that the right to challenge an election provided for u/s 20A of the Act arises when the Deputy Commissioner notifies in the Official Gazette the name of the elected member under Rule 18A referred to above.

21. Further, acceptance of the contention raised by Mr. Mandlekar would result in protracting the election proceedings, disturbing the time schedule provided for in the various provisions of the Act and rules made thereunder, and confusion in the working of the system. If a challenge to the election of a member is allowed on the declaration of the result, but prior to its notification, then naturally on a good cause being shown the election tribunal would prevent notification of his name in the Official Gazette. In that event, the elected member does not enter on his office;

consequently under Sub-section (5) of Section 16 the outgoing member continues in office. Under Rule 18A the Deputy Commissioner has to forthwith notify in an Official Gazette the names of elected members. A problem is created before him whether he should notify the names of the elected members minus the name of the member notifying whose name is prohibited by the Court, or whether he should wait till the election petition is decided. The Deputy Commissioners of different districts may take different views. In the event he chooses to adopt the latter course, the election of the president is indefinitely withheld. In the event he chooses to follow the former course, it may lead to startling results. Under Rule 3 of the rules framed under Sub-section (6) of Section 18 the Collector (Deputy Commissioner) has to convene a meeting within twenty-five days for electing a president. Notice of that meeting has to be given to all the members. As already stated the outgoing member is still continuing to be a member of the municipality and the Collector will naturally have to give notice of this meeting to that member. He thus not only gets a right to vote at the meeting convened for the election of the president, but can even offer himself for the post of president. It is difficult to assume that the Legislature intended that the outgoing member should vote at the election of a new president or that he should get a right to contest the election for the post of the president. We should not be understood to be expressing our views as regards the validity of the vote cast by such an outgoing member or of his candidature for the election of the post of the president. All what we intend is to illustrate the confusion which is likely to be caused if the contentions of Mr. Mandlekar were accepted.

22. In *Shannon Realties v. St. Michel* [1924] A.C. 185 Lord Shaw of Dunfermline observed (p. 192) :

...Where the words of a statute are clear they must, of course, be followed; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

In our judgment, therefore, the right conferred u/s 20A of the Act to challenge an election arises only on the result of the election being notified. The view taken by us would ensure smooth progress of election proceedings and their completion within the time schedule provided in the Act and the rules framed thereunder.

23. Mr. Mandlekar next contended that the view taken by us is likely to result in refusal of an adequate remedy to prevent a disqualified or not duly elected person from acting as president. In this connection he referred us to the proviso to Sub-section (5) of Section 18 of the Act, which is to the effect that the term of the outgoing president expires with the date on which his successor is elected. It is the contention of Mr. Mandlekar that on the declaration of the result by the Chairman of the meeting that a particular person is elected as president, the outgoing president

ceases to hold office, the incoming president assumes office. Some days are bound to elapse before his name is notified. During that period the incoming president will officiate. A person entitled to challenge his election will have no remedy to go to the election tribunal and obtain an order restraining him from entering on his office. The argument, in our opinion, is not well made. It is true that on the declaration of the result the outgoing president ceases to hold office, but it is not correct to say that the incoming president simultaneously enters on his office. Section 20 in terms provides that the elected president shall enter on his office from the date of notification. Further under the new amended rules there is hardly any gap of time between the declaration and notification of the result in the Official Gazette by the Deputy Commissioner. The Chairman is enjoined with the duty to immediately forward the result to the Collector and the Collector is enjoined with the duty to forthwith publish it in the Official Gazette. As soon as the result is notified the person entitled to challenge election can institute proceedings and obtain necessary orders preventing the president from discharging the functions of his office on making out a good case.

24. It is next contended by Mr. Mandlekar that the election tribunal had jurisdiction to decide the question and it has decided it. It, therefore, cannot be said that it has acted without jurisdiction. We should not, therefore, interfere with its decision. This contention has very little merit. It is well-settled that a writ of certiorari will be issued for correcting errors of jurisdiction, and when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. On the view taken by us, the District Judge had no jurisdiction to entertain the election petition as the election of the petitioner was not notified in the Official Gazette. In entertaining the petition and in "making an interim order the District Judge has clearly acted without jurisdiction. The error is manifest on the face of the record. His order is, therefore, liable to be quashed: [Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others](#) .

25. It is next necessary to consider the two decisions on which reliance was placed by Mr. Mandlekar in support of his contention; viz. *Avi J. Cama v. Banwarilal and Venkati v. State of Madhya Pradesh*. On a closer scrutiny of the reasoning of the learned "Judges deciding those cases and the provisions of the Act construed in those decisions it becomes clear that they are of little assistance to him.

26. Facts in *Avi J. Cama v. Banwarilal* were: From ward No. 39 of the City of Nagpur the petitioner and respondent No. 1 in that case and one Mr. Singhai were candidates for the election of councillor to the Corporation of the City of Nagpur. Respondent No. 1 had also filed his nomination paper for ward No. 40. Before scrutiny, he informed the Returning Officer that he withdrew his candidature for ward No. 39 but would be contesting election only from ward No. 40. The Returning Officer, however, accepted his nomination paper for ward No. 39 and rejected that for ward No. 40. At the election, respondent No. 1 secured highest number of votes and was, therefore, declared elected. The petitioner then moved the High Court of

Judicature at Nagpur under Articles 226 and 227 of the Constitution for quashing his election and for declaring that she should be deemed to have been elected. One of the contentions raised by respondent No. 1 was that the petitioner had an adequate remedy of filing an election petition and, therefore, the petition should not be entertained to which the petitioner countered that it was not open to her to file an election petition unless respondent No. 1's name was notified in the Official Gazette and, therefore, she had no other adequate remedy. In deciding the Controversy the learned Judges were construing the provisions of the City of Nagpur Corporation Act. The decision primarily turned on the provisions of Section 16 of that Act. That section provided that though a councillor declared elected cannot enter on his office before the notification, he would be deemed to have entered on his office for the purpose of selection of councillors. Under the Act, therefore, as it then stood an anomalous position arose; by declaration of the result the person became entitled to act as a member for certain purposes but was not entitled to act as a member for certain other purposes till his result was notified in the Official Gazette. Deo J., who delivered the judgment of the Division Bench, observed (p. 276) :

... Although a Councillor declared elected cannot enter on his office before the notification u/s 16, the proviso to that section provides that he should be deemed to have entered on his office for the purpose of selection of Councillors u/s 9 from the date of his election.... If a person is disqualified to be elected, it must be open to a voter to prevent him from entering on his office, even for the limited purpose of selection of Councillors, by having recourse either to a District Court u/s 428(1) or to this Court for a writ of quo warranto. Otherwise, a disqualified person will function as a Councillor and may be able to affect the composition of the Corporation and the election of Mayor and the Deputy Mayor.

Further:

...By virtue of the proviso to Section 16 of the Act an elected candidate is deemed to have entered on his office from the date of his election for the purpose of selection of Councillors u/s 9 of the Act. The cause of action for challenging the election therefore arises on the date of election.

It would thus be clear from the observations quoted above that the principle of law stated therein is that the right to challenge an election arises when the elected candidate becomes entitled to enter on his office. It does not run counter to the view taken by us but on the other hand is in accord with it. Under that Act a member declared elected got a right to enter on his office for certain purposes and it is under those circumstances that it was held that the right to challenge an election arose on the declaration of the result.

27. Second decision reported in *Venkati v. State of Madhya Pradesh* relates to the construction of the C.P. and Berar Local Government Act. Under that Act also the

position was just the same as was under the City of Nagpur Corporation Act, viz. that the person declared elected entered on his office for certain purposes on the declaration of the result itself.

28. The provisions of the Act which we have to construe are, now after the amendment, materially different from those of the City of Nagpur Corporation Act and the C.P. and Berar Local Government Act. Under the Act a member who is declared elected does not enter on his office for any purpose whatsoever till the result of his election is notified in an Official Gazette. The decisions relied upon, therefore, have no application to the facts and circumstances of the present case.

29. In view of our decision on the first contention it is not necessary to decide the second contention raised by Mr. Mudholkar.

30. In the result, the rule is made absolute. The order made by the District Judge on May 21, 1959, is hereby quashed and a writ of prohibition shall issue prohibiting the District Judge from proceeding with the case. Cost will be borne, as incurred.