(1960) 12 BOM CK 0015

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 404 of 1959

Trimbaksa Ramasa Vyawahare		APPELLANT
	Vs	
Habib Mohamad		RESPONDENT

Date of Decision: Dec. 23, 1960

Acts Referred:

- Central Provinces and Berar Municipalities Act, 1922 - Section 22A, 22B

Citation: (1961) 63 BOMLR 721

Hon'ble Judges: Kotval, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Kotval, J.
In this revision application I am concerned with an election dispute arising from the general elections recently held to reconstitute

the Buldana Municipal Committee. The dispute is between persons who had stood for election from, ward No. 16 of Buldana town. This ward has

two seats, a general seat and a reserved seat. The applicant Trimbaksa and opponents Nos. 4, 5 and 6, Syed Habib, Premchand and Laxman,

respectively, were contesting the election from the general seat, whereas applicant No. 2 Janardhan and opponents Nos. 2 and 3, Gopal and

Janabai, respectively, were contesting the election from the reserved seat. Opponent No. 1 Habib Mohammad was the petitioner before the Civil

Judge, Senior Division, Buldana. Prior to the present election, he was also elected as a member of the municipal committee from the general seat

from the old ward No. 12.

2. The election was governed by the Madhya Pradesh Municipal Electoral Rules, as recently amended. According to the election programme, the

last date for the receipt of nomination papers was March 31, 1959; the scrutiny of the nomination papers was to take place on April 1, 1959; the

last date for the withdrawal of candidates from election was April 7, 1959; allotment of symbols was to take place on April 13, 1959; and the

election was to take place on May 6, 1959. The Sub-Divisional Officer was appointed the Supervising Officer by the Collector under Rule 8.

3. It is not in dispute that Habib Mohammad''s nomination was duly accepted by the Supervising Officer. He was also allocated a symbol, namely,

a pair of scales ï¿½rjktqï¿½. Thus, according to the petitioner, he was fully accepted as a candidate for the election by the Supervising Officer; had

a legal right to go through the poll, and at that stage no one could legally prevent him from being a candidate and submit himself to the vote of the

people. It is also not in dispute that as a result of certain other proceedings commenced against Habib Mohammad, he was not considered fit to

stand as a candidate for election and his ballot box was, on the date of the election, removed from the polling booth under orders of the

Supervising Officer. How this transpired may now be stated.

4. Sections 22-A and 22-B of the C. P. and Berar Municipalities Act, 1922, impose certain special disabilities upon the president, vice-president,

and members of a municipal committee. Those sections make stringent provisions for the prompt payment of municipal dues by these persons and

prescribe the consequences of non-payment. Section 22-A requires that within 15 days from the expiration of each quarter, the committee shall

prepare a list of all the members and office bearers who were in arrears for six months from the date on which the tax became due and submit it to

the Deputy Commissioner. If no notice of demand has been previously served by the committee, the Deputy Commissioner is enjoined to serve a

special notice on the defaulter calling upon him to pay the arrears within 30 days from the date of service. If, however, notice has already been

issued by the committee, then the disqualification contemplated ensues automatically u/s 22-B of the Act.

5. Habib Mohammad, as I have already said, was a sitting member from the old ward No. 12, but during his membership he fell into arrears with

his taxes. On the date of the present election he had not paid a sum of Rs. 314.43 nP. by way of taxes for the period from April 1, 1958, to

December 31, 1958. The taxes from April 1, 1958, to June 30, 1958, became due on June 30, 1958, and so a notice was issued to him along

with some other defaulters u/s 22-A(1) of the Act to pay up the arrears. This notice, it is not in dispute, was issued on January 15, 1959, prior to

the date on which Habib Mohammad filed his nomination paper and a list was submitted to the Deputy Commissioner showing Habib Mahammad

as a defaulter. While the various stages prior to the election were taking place, the Collector was considering the cases of these defaulters and on

April 22, 1949, the Collector passed an order in which he declared that four members of the Municipal Committee had failed to pay taxes due

from them from April 1, 1958, till December 31, 1958, and he, therefore, ordered that they were disqualified from holding membership of the

Municipal Committee with immediate effect. One of them was Habib Mohammad.

6. As required by the Rules, the order was published in the official gazette on April 30, 1959. Since Habib Mohammad was also standing for re-

election in the elections which were impending, the Collector ordered that the Supervising Officer of the elections should be informed that u/s 22-B

of the Act Habib Mohammad was disqualified for non-payment of municipal taxes and that ""he should not be allowed to participate in the election

till the disqualification is removed. He should inform the candidate forthwith."" The major part of the arguments in this revision was directed to

showing that the latter part of the order which I have quoted above was without jurisdiction and could not have the effect of disallowing Habib

Mohammad from contesting the election. Pursuant to the Deputy Commissioner''s order, a memorandum was sent to the Sub-Divisional Officer,

Buldana (the Supersiving Officer), on April 22, 1959, which he presumably received the same day. Habib Mohammad failed to pay the arrears till

the date of election, viz. May 6, 1959, and the Supervising Officer, therefore, removed his ballot box from the polling booth on the date of the

elections. He was thus excluded from the election. The election petition out of which this revision application arises challenged not merely the order

of the Collector excluding Habib Mohammad from the election but also the action of the Supervising Officer in removing the ballot box on the date

of the elections. The Civil Judge, Senior Division, has upheld Habib Mohammad''s contention, allowed his election petition, and declared the

election from ward No. 16 void. He held that, therefore, casual vacancies had arisen.

7. On the merits of the questions raised in the election petition, the Civil Judge, Senior Division, has held that the petitioner Habib Mohammad was

undoubtedly in arrears with the taxes and that, therefore, he was clearly disqualified for being a member or for standing for election. A point was

raised before him on behalf of Habib Mohammad that the disqualification u/s 22-B(b) is only as regards ""re-election"", ""re-nomination"" or ""re-

appointment"" and those words thus did not cover a general election such as was held in the present case but merely a bye-election. That point the

learned Civil Judge decided against Habib Mohammad.

8. Having, however, held that Habib Mohammad was a defaulter in the payment of taxes and that he was accordingly disqualified for re-election

until the arrears due by him to the Committee had been paid up, the trial Judge went on to consider whether the Collector could, notwithstanding

such a disqualification, restrain him from contesting the election at the stage at which the Collector ordered him to be excluded. The view which the

trial Judge took was that Habib Mohammad was duly nominated and was also allotted a symbol and that, therefore, the election having progressed

a great deal and the question about his eligibility having been determined there was a finality attached to those steps, and that, therefore, he could

not be deprived of his right to contest the election by the removal of his ballot box at the final stage of the poll. He held that that amounted to

cancellation of the nomination duly examined, scrutinised and accepted, and that neither the Collector nor the Supervising Officer had the power to

disturb the order accepting the nominations made by the Supervising Officer. In the words of the trial Judge,

once the stage for the elections was set, I don''t find any legal authority vested in the Collector or the Supervising Officer to disturb or interrupt or

modify the legal course that the election has to run once the scrutiny is completed and the candidates are found duly nominated, even though some

of them have incurred a disability subsequent to the date of the scrutiny or some, whose nominations were found to be improper had acquired

eligibility before the date of polling.

He also held that by the exclusion of Habib Mohammad the other contestants had been given an unfair advantage and the result of the election had

been materially affected. He, therefore, declared the election void in respect of the general and reserved seats from ward No. 16 and declared that

casual vacancies had occurred. The applicants in revision u/s 20-A(3) of the Act have challenged these findings before me. Section 20-A(5)

requires that I must satisfy myself that the decision is contrary to law or that the Court has exercised jurisdiction not vested in it by law or has failed

to exercise a jurisdiction vested in it by law.

9. Two further questions have been raised in this revision application. These relate to the validity of the presentation of the election petition by

Habib Mohammad and to limitation. For an undersanding of these points it is necessary to state some further facts. The result of the election was

announced by a gazette notification dated May 22, 1959. The petition out of which the present revision application arises was presented on June

10, 1959. The petitioner mentioned it in the cause title that he was presenting it to the District Judge, Buldana. u/s 20-A(2) the petition has to be

presented within fourteen days from the date on which the result of such election was notified, and obviously the presentation on June 10, 1959,

before the District Judge was beyond fourteen days. But it was the petitioner''s case that all the civil Courts were then closed for the summer

vacation and so there was no Court before which the petition could be filed, It is not in dispute that the Courts were closed for the summer

vacation from May 3, 1959, to June 14, 1959, and they re-opened after the vacation on June 15, 1959. According to the petitioner, he inquired

from a clerk of the District Judge and learnt that the District Judge was on leave, and since all the other civil Courts were closed, the clerk declined

to accept the petition or the deposit on May 26, 1959. The petitioner further alleged that, therefore, he went to Khamgaon on May 28, 1959,

where the Assistant Judge used to sit and was informed that that Court would not accept his petition as the Courts were closed for the summer

vacation. He, therefore, returned to Buldana and on June 2, 1959, he presented the petition to the clerk of the Court of the Civil Judge, Senior

Division, Buldana, who could not accept it as it was vacation and returned it to the petitioner for re-presentation on June 15, 1959. Meanwhile, on

June 10, 1959, the District Judge, Buldana, returned from vacation and resumed duties and, therefore, the petition was presented to him on June

10, 1959, and was accepted. The District Judge then sent it to the Civil Judge, Senior Division, for disposal. These facts are not disputed before

me and are clearly established from the several endorsements made by different officials on the face of the election petition itself. Upon these facts,

it has been contended on behalf of the applicants in revision that the election petition was not merely barred by time but that it was wrongly

presented, and the District Judge had neither jurisdiction to proceed with it nor to send it to the Civil Judge, Senior Division, to try it.

10. The election petition was tried by the Civil Judge, Senior Division, Buldana, to whom it was sent and he has held on these preliminary questions

that the petition was presented within time and that Habib Mohammad could rely on the provisions of Section 4 read with Section 29 of the Indian

Limitation Act. He has also held that even if it be held that the District Judge had no authority to receive or try the petition, the petition was within

time on the date on which it was received in his Court,

11. The points relating to the presentation of the petition and limitation were decided in favour of Habib Mohammad by the trial Court, and the

applicants in revision have contended that these findings were wrongly given. I would first of all dispose of these preliminary contentions. So far as

the presentation of the petition is concerned, the relevant provision of law is contained in Section 20-A, sub-ss- (1) and (2) of which 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.

12. I have already stated that the petition on the face of it was instituted ""In the Court of the District Judge, Buldana""; but it was ordered to be

transferred to Civil Judge, Senior Division, for disposal by the District Judge on the very day it was presented, that is to say, June 10, 1959. Now,

Sub-section (2) of Section 20-A. says that such a 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. The contention

is that the words ""especially empowered by the Provincial Government in this behalf"" govern all the three categories of Judges mentioned in the

sub-section, namely, the District Judge, the Additional District Judge and the Civil Judge, and that so far as the former two classes of Judges are

concerned, there is no valid empowering by the Provincial Government. The only notification in this respect is the notification No. 3130-3360-C-

XIII, dated November 6, 1947, issued by the then Provincial Government of the Central Provinces and Berar which is reproduced at page 179 of

the Municipal Manual, (1956). That notification merely empowered all Judges of the Courts of Civil Judges (Class I) to try the said election

petitions. It was urged that unless the District Judge before whom the petition was presented was ""especially empowered"" he had no jurisdiction to

receive the petition, much less to transfer it to the Civil Judge, Senior Division.

13. On behalf of the present opponent No. 1 Habib Mohammad, it was urged that the words "" especially empowered by the Provincial

Government in this behalf"" govern only the last-named category of Judges, namely, a Civil. Judge, and not the District Judge or Additional District

Judge. In support of the contention, on behalf of the applicants in revision reliance has been placed upon a decision of a single Judge of the High

Court of Nagpur in Purshottam v. G. V. Pandit A.I.R.[1950] Nag. 212. No doubt, that decision supports the contention on behalf of the

applicants.

14. In that decision, Mr. Justice Kaushalendra Rao took the view that the words ""especially empowered by the Provincial Government in this

behalf"" qualify all the three categories of Judges mentioned in the sub-section, and the reason why the learned Judge so held was that an election

could be called in question by more than one petition and, therefore, upon the interpretation that the qualifying words only govern '"' a Civil

Judge'"', the result would be that such a petition could be presented either to a Civil Judge who has been empowered by the notification, as also to

the District Judge and the Additional District Judge, though not empowered. He held that that would result in a possible conflict of decisions. The

reasoning was thus put by the learned Judge at page 213, column 2 of the AIR report:

...It could not have been the intention of the Legislature that simultaneous enquiries should go on with respect to the same election before different

authorities having co-ordinate jurisdiction leading to a possible conflict of decisions.

He, therefore, held that the view was preferable that the qualifying words were intended to apply to all the three categories of Judges mentioned in

the subsection.

15. Undoubtedly, the consideration which weighed with the learned Judge was, with all respect, a weighty consideration. But it seems to me that

the assumption on which it was based, viz. that it would lead to a possible conflict of decisions, was not well-founded. One or the other party to

the proceedings can always bring it to the notice of the Court that another proceeding in which the same issues were involved was pending or

subsequently commenced. The District Judge would then have the power to transfer one or the other proceeding or try both himself so as to avoid

a conflict,

16. The principal duty of a Court in construing a provision of law is first of all to interpret the provision, and only if there is any doubt as to its

possible interpretation can extraneous considerations such as the difficulties or anomalies that such an interpretation would create, be taken into

account. Purshottam''s case moreover has been now overruled by the Madhya Pradesh High Court in Bhojraj Vs. The State of M.P. and Others, .

The view taken in that case was that the text of the sub-section itself indicates that the words ""especially empowered by the Provincial Government

in this behalf"" govern only ""a Civil Judge"" and not the other categories, namely, the District Judge or Additional District Judge. The Division Bench

stressed the use of the word ""or"" to divide the words ""District Judge or Additional District Judge"" from ""a Civil Judge"", and they observed (p. 287)

:

The effect of the use of the words ''or'' and ''to'' is to create two categories, the first is comprised of the District Judge and Additional District

Judge, and the second, of the Civil Judge. The qualifying clause, therefore, cannot by any rule of construction or grammar be carried beyond Civil

Judge.

With all respect, I prefer the view taken by the Division Bench of the Madhya Pradesh High Court and hold that the words ""especially empowered

by the Provincial Government in this behalf"" occurring in Sub-section (2) of Section 20-A of the Act govern only the preceding words ""a Civil

Judge"" and not the words ""the District Judge"" and ""Additional District Judge.

17. Upon this view, the position would be that the District Judge and the Additional District Judge would have co-equal jurisdiction with a Civil

Judge duly empowered. The District Judge needs no empowering and would undoubtedly have jurisdiction in trying these election petitions.

Therefore, the presentation to him on June 10, 1959, was a valid presentation. I may here state that so far as the present applicants are concerned,

they have not pressed before me the other contention as to jurisdiction raised in Civil Revision Application No. 394 of 1960 that the notification

which empowers Civil Judges (Class I) as contemplated by the then prevalent C. P. and Berar Courts Act, 1917, does not cover and cannot

apply to Civil Judges, Senior Division, as contemplated by the Bombay Civil Courts Act, 1869. I hold that the presentation of the petition was a

proper presentation.

18. Then I turn to the question of limitation. The result of the election was notified in the official gazette on May 22, 1959. The election petition has

to be presented within 14 days from that date. It was actually presented on June 10, 1959, so that prima facie it was barred. In this respect, the

petitioner before the trial Court merely claimed that the time during which the Courts were closed should be excluded. Undoubtedly, the petitioner

did not present his petition on the expiry of the vacation which was on June 14, 1959, but earlier i.e. on June 10, 1959, because the District Judge

was available on that date. But up to June 10, 1959, in my opinion, he would undoubtedly be entitled to exclude the time because the election

having been notified in the official gazette on May 22, 1959, when the Civil Courts were closed, he could present the petition certainly on the day

they re-opened. In fact, he has presented it earlier when the District Judge was available. In my opinion, Section 29 of the Limitation Act read with

the provisions of Section 4 would be applicable to the present proceedings. There appears to be no decision on the point, but there is nothing to

show that Section 4 would not apply to an election petition under the C. P. and Berar Municipalities Act. It is a ""special law"" as contemplated in

Section 29. Therefore, Section 4 would be attracted . I hold that Habib Mohammad''s election petition was within time and I confirm the findings

of the trial Judge on this question.

19. Then I turn to the questions on merits. As I have indicated above, the trial Judge held that Habib Mohammad was obviously disqualified to be

elected a member because he had not paid up the arrears of municipal taxes, whether on the date of nomination or on the date of election. Neither

the facts nor the said findings have been challenged before me by Mr. G. S. Padhye appearing on behalf of the opponent Habib Mohammad. On

the contrary, it was conceded even in the arguments before me that the arrears had not been paid even till the date of the filing of the petition. To

that extent, the finding was in favour of the applicants. But the trial Judge then went on to consider what was the effect of that disqualification, and

the question which, according to him. to be decided was posed by him as follows:

The next question is whether the action of the Collector is legal. Now we have here a very complicated position. The election has progressed to a

stage when the next stage was the polling day and here is one of the candidates who has been duly nominated and assigned a symbol who has

incurred a fresh disqualification thereafter and who could have paid off the arrears and removed it, after the notice, but does not do so and invites

the disqualification. Obviously he is disqualified to be elected a member. Can the Collector restrain him from competing at the election thereafter?

(Sic)

After an examination of the rules and the provisions of the Act, the learned Judge reasoned as follows:

What the impugned order has done is that a ballot box of the applicant was taken away and those of the rest were kept at the poll. This amounts to

cancellation of the nomination duly examined and proper after scrutiny and disturbing the order of the nominations as placed by the supervising

officer, allowing an unfair advantage to other contestants.

The learned Judge further observed that election was a continuous process consisting of several stages of which nomination is one such stage, and

once each stage is over some sort of finality is imparted to that stage and it cannot be re-opened. He, therefore, held that the act of the Supervising

Officer in removing the ballot box of Habib Mohammad and his decision that he should not be allowed to participate in the election amounted to a

fresh scrutiny of the nomination paper of Habib Mohammad cancelling the previous order accepting his nomination and

hence the act of the Supervising Officer in disallowing the petitioner to participate in the election after certifying his eligibility is illegal and amounts

to the rejection of the nomination of the petitioner which he was not competent to do at the stage.

The trial Judge also held that this affected the result of the election and, therefore, he set aside the entire election and declared that casual vacancies

had occurred in the general and reserved seats of ward No. 16 of Buldana Town. Sections 22-A and 22-B of the Act provide as follows:

22-A. (1) Within fifteen days from the expiration of each quarter, a committtee shall-

(a) prepare a list of all members, including the president and vice-presidents, who have failed to pay any tax due by them to the committee within

six months from the date on which such tax became due;

(b) issue to every person included in the said list a notice of demand requiring him to pay the arrears within thirty days from the date of service of

such notice; and

(c) submit a copy of the list to the Deputy Commissioner.

(2) On receipt of the list, the Deputy Commissioner shall, if he finds that a notice of demand has not been issued to any person included therein,

issue to such person a special notice of demand requiring him to pay the arrears within thirty days from the date of the service of such special

notice.

(3) The Provincial Government may make rules under this Act providing for all matters connected with the administration of this section.

22-B. Any president, vice-president or member of a committee-

(a) shall cease to hold office, if he fails to pay the arrears of any tax due by him to the committee in accordance with any notice issued u/s 22-A;

and

(b) shall be disqualified for re-election, re-nomination or re-appointment to any such office until the arrears due by him to the committee have been

paid and a certificate in this behalf has been granted to him in the manner prescribed by rules made under this Act.

It is to be noticed that both these sections deal with certain consequences of non-payment of municipal dues by only a limited class of persons,

namely, the persons who were previously members or certain stated office bearers of the municipal committee. These sections do not apply to the

ordinary voter at a municipal election, Upon it being determined that any member of a municipal committee or its president or vice-president has

not paid his taxes as prescribed by Section 22-A, two disabilities ensue so far as the defaulting party is concerned. Under Clause (a) of Section

22-B, he ""shall cease to hold office"" if he fails to pay the arrears in accordance with the notice issued to him u/s 22-A; and under Clause (b) he

shall be disqualified for re-election. .. to any such office"" until the arrears due by him to the committee have been paid and a certificate granted to

him as prescribed by the rules. By the creation of both these disabilities (I advisedly do not use the word ""disqualification"" here in order to maintain

a distinction between that subject separately dealt with in Section 15 and the one dealt with here) the statute has made special provision to meet a

special case. It is clear that the intention of the Legislature was to prevent members and certain office bearers from taking advantage of the fact that

they were members or office bearers, to delay or not pay at all their legitimate dues to a body of which they were members or office bearers. The

object behind the enactment was to prevent a certain species of malpractice which, it is common knowledge, was extensively rampant.

20. Section 15 deals with the general disqualifications of candidates for election and lays down as many as nine disqualifications in its several

clauses. But it is of some importance to notice that none of those disqualifications make any reference to the disqualification mentioned in Clause

(6) of Section 22-B. Some reference was made in the arguments to Clause (j) of Section 15 to suggest that the disqualification u/s 22-B also

becomes a disqualification u/s 15. Clause (j) of Section 15 runs as follows:

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

(j) is under the provisions of any law for the time being in force, ineligible to be a member of any local authority;...

It was urged that this clause covered the disqualification u/s 22-B and that, therefore, there was no reason to regard the disability u/s 22-B as on

any special footing. Even assuming that the words in Clause (j) of Section 15 ""any law for the time being in force"" apply to the provisions of the C.

P. and Berar Municipalities Act itself and not to any law other than that Act, still Clause (j) of Section 15 only says that a person shall not he

eligible for election or nomination as a member of a committee if under the provisions of any law for the time being in force, he is ineligible to be a

member of any local authority. Those words may conceivably have a reference to Clause (a) of Section 22-B which deals with eligibility to

continue to hold office, but it can in no case refer to Clause (b) of Section 22-B which refers to the disability to stand for re-election etc., at all. It

must, therefore, be held that so far as Clause (b) of Section 22-B is concerned, it makes a special provision for and visits certain special

consequences upon sitting members or the president or vice-presidents of a committee, who have not paid their taxes. I have already referred to

the reasons why the Legislature made these salutary provisions, and in view of those reasons it is understandable that the disability under Clause

(6) of Section 22-B is a disability specially provided for and it is a disability over and above the several disqualifications to which every person is

generally subject under the provisions of Section 15. Once such a disability is specially imposed it is also understandable that such a disability could

come into effect at any time and at any stage of an election and does not stand on a par with the disqualifications mentioned in Section 15.

21. The next point that may be noticed so far as the provisions of Section 22-A and 22-B are concerned is that unlike the disqualifications in

Section 15, the attaching of the disability contemplated u/s 22-B does not require the interposition of anybody nor order of any officer. The

disability is automatic in its operation. No doubt, u/s 22-A, the committee has first of all to give a notice if arrears have not been paid within six

months from the date on which such tax becomes due, requiring payment within thirty days. If such a notice has not been given, then a further

power is given to the Deputy Commissioner to serve a special notice of demand requiring payment within thirty days from the date of the service of

the special notice, This shows the anxiety of the Legislature to see that every member and office bearer pays up what is due by him to the

committee regularly and the Legislature has vested plenary powers of recovery in the Deputy Commissioner. But there is no provision in Section

22-A to the effect that in the event of the notice not being complied with the Deputy Commissioner shall make an order disentitling a defaulting

member or office bearer from standing for an election. On the other hand, the use of the words ""shall be disqualified for re-election"" in Section 22-

B, Clause (5), are unqualified and clearly indicate that the consequence is automatic and does not await the passing of any order by any authority.

Upon this view, in the instant case the order of the Collector passed on April 22, 1959, was hardly necessary. I must regard it as an order passed

ex abundanti cautela and so a mere superfluity. Whether the Collector held or did not hold that Habib Mohammad was disqualified, he was by

operation of the law automatically disentitled to stand for election. I stress the special nature of this disability and the manner in which it takes effect

because it seems to me that the trial Judge did not sufficiently grasp its nature and in consequence failed to consider its true scope and effect.

22. I next turn to examine the powers of the Supervising Officer under the Madhya Pradesh Municipal Electoral Rules, and the procedure

prescribed for the holding of elections. It is necessary to consider these because of the view taken by the trial Judge that once a nomination under

the rules comes to be accepted, the disqualification u/s 22-B, Clause (6), even though incurred, cannot result in the candidate being excluded from

election.

23. These rules have been recently amended and considerable changes have been made after the C. P. and Berar Municipalities Act was amended

by the C. P. and Berar Municipalities (Bombay Amendment) Act, 1958 (XVI of 1958). The present elections are governed by the rules as

amended. Rule 2 deals with the preparation of the list of voters and prescribes how it is to be maintained. Rule 7 prescribed that at least nine

weeks before an election, the Deputy Commissioner or the Tahsildar shall fix the days, hours and places of polling for each ward; and Rules 8-A

and 8-B lay down that the hours and days of polling shall be fixed and duties prescribed for polling officers. Rule 9 deals with the nominations and

how they are to be received and scrutinized. Rule 10 prescribes that the Supervising Officer shall declare the candidates for each ward held to be

duly nominated and further provides for the declaration of a sole candidate as elected in the event that there is no contest. Rules 11-B and 11-C

deal with the rights of electors and their duties.

24. It will be noticed that there is no provision in the Electoral Rules making it incumbent upon the Supervising Officer to ensure that once a

candidate is nominated and his nomination paper is accepted, he shall be allowed to partake in the election. There is not even a provision that a

ballot box shall be provided for every candidate once he is nominated. It was urged that Rule 15 indirectly assumes it because it provides that the

polling officer shall be furnished with as many ballot boxes as may be necessary marked with the colour and symbol of the candidates. But here

again, by the use of the word ""candidates"" it must necessarily mean candidates who are lawfully entitled to stand as candidates. In the instant case,

upon the findings reached by the trial Judge --findings which are not disputed before me-Habib Mohammad had incurred a disqualification u/s 22-

B and was not entitled to be a candidate. It is clear, therefore, that in these rules there is no positive requirement of law that a ballot box must be

provided for"" each candidate once he is duly nominated. There is also nothing in the Act or the Rules to suggest that any one of the stages

contemplated in the Rules has been given finality by the Rules or the Act. The authorities referred to by the learned Judge are all authorities which

deal with parliamentary or other elections but not municipal elections and in any event none of them was concerned with a special provision of law

like the one to be found in Section 22-B. Even assuming that the process of election is a continuous process, still what I have to consider here is:

What is the effect of the statutory provision for disqualification made u/s 22-B, Clause (b), upon this continuous process, and whether

notwithstanding that the law requires that a president, vice-president or member of a committee shall be disqualified for reelection, re-nomination

or re-appointment to any such office if he fails to pay up the arrears, it must be held that such a provision ought not to be given effect to and is

rendered nugatory or of no effect simply because the process of election has gone beyond a certain stage? It seems to me that in the absence of

any provision to that effect in the Act or in the Rules it is impossible to hold that the disqualification clearly laid down by Clause (b) of Section 22-

B should not be enforced simply because a candidate has been nominated or his nomination paper scrutinized and accepted or because the last

date for withdrawal of nomination has expired or because he has been allotted a symbol or because the date for the final polling at the election is

very close.

25. As I have said, the provisions made in Sections 22-A and 22-B were made with the salutary object of checking a growing evil of members

and office bearers of committees taking undue advantage of their offices and not paying their taxes to the committees. I have shown that, therefore,

the Legislature made separate and special provision to penalise such persons from being re-elected or re-nominated or re-appointed. It seems to

me that it would be defeating the purpose of the law to hold that if by some means, either by misrepresentation or by suppression of facts, a

candidate can once get his nomination accepted by the Supervising Officer or successfully delays the discovery of the fact that he has not paid the

municipal taxes he should thereby be enabled to get over a positive disqualification created by law.

26. The trial Judge took the view that when the Supervising Officer removed the ballot box of Habib Mohammad in the instant case, that amounted

to the cancellation of his nomination duly accepted after scrutiny. I am unable to appreciate that reasoning in face of the provisions of Section 22-

B. Clause (b). Admittedly, the Supervising Officer was acting in consonance with those provisions and was attempting to enforce them. There was

no question here of the cancellation of any nomination, but what was actually done was that it was found that the candidate whose nomination had

been accepted was disqualified for standing for re-election and, therefore, he was not allowed to be a candidate at the election.

27. The trial Judge also held that such a clear rejection of the nomination of Habib Mohammad before the poll

obviously affected the result. There is bound to be an unfair advantage gained by the other contestants when the box of the applicant was

withdrawn.

The trial Judge did not state what was the unfair advantage which the other contestants gained. I am rather inclined to think that the chances of

election of the other candidates improved because Habib Mohammad was knocked out. At the most, it may be said that the voters were deprived

of the opportunity to vote for Habib Mohammad. But I do not see what was unfair in the other candidates getting the votes to which Habib

Mohammad was admittedly not entitled because he could not stand, at all.

28. The matter may be looked at from another angle. The learned Judge has declared the election of the applicants before me void. Such a

declaration can only be given under some authority of law. That authority is conferred upon the Judge by Rule 17 of the Municipal Election Petition

Rules, 1947. Rule 17 thereof runs as follows:

Save as hereinafter provided in this rule, if, in the opinion of the Judge,-

(a) the election or selection of a candidate has been procured or induced, or the result of the election or selection has been materially affected, by

corrupt or illegal practice; or

(b) any corrupt or illegal practice specified in the rules framed u/s 176, Sub-section (2), clause (ii), has been committed by an elected or selected

candidate or his agent; or

(c) the result of the election or selection has been materially affected by any irregularity in respect of a nomination or by the improper reception or

refusal of a vote, or by any non-compliance with the provisions of any of the rules framed u/s 10, Sub-section (4), and Section 17, Sub-section

(1), and Section 18, Sub-section (6),

the election or selection of the candidate shall be void:

29. These rules are made u/s 20-A(5), The power of the Judge to grant relief is circumscribed by these rules, and unless a case can be brought

under Rule 17, there is no power in the Judge to declare the election void. Now, admittedly upon the facts of the present case, there is no corrupt

or illegal practice alleged against the applicants. Therefore, Clauses (a) and (b) of Rule 17 will not be attracted. The question then is whether the

case can possibly be brought under the provisions Clause (c) of Rule 17. The removal of the ballot box cannot have the effect of ""the improper

reception or refusal of a vote"". These words, in my opinion, refer back to the Madhya Pradesh Municipal Electoral Rules which deal with the

acceptance of a vote in the event of a dispute or the refusal to permit a person to vote. Then there is the last clause of Section (c) of Rule 17,

which speaks of the non-compliance with the provisions of any of the rules framed under certain sections. They are Section 10, Sub-section (4),

Section 17, Sub-section (1), and Section 18, Sub-section (6). Section 10(4) refers to the election of a Harijan candidate and prescribes that any

vacancy due to the failure to elect such a person may be filled up by nomination by the State Government. Section 17(1) refers to casual

vacancies, which is not the case here. The present Section 18(5) deals with the power of the State Government to make rules for regulating the

manner of election of presidents and the appointment of vice-presidents. In the light of the present Section 18(6), Rule 17(c) makes no sense. Even

having regard to the old Section 18(6) it is difficult to understand to what provision it was intended to refer. No doubt, Section 18 as a whole deals

with the election of president and appointment of vice-presidents, which is not the case here. It is clear, therefore, that upon the grounds made out

in the present petition and even accenting the findings of the learned Judge, he had no power to declare the election of the applicants void having

regard to the provisions of Rule 17 of the Municipal Election Petition Rules. No other power to declare the election void has been pointed out to

me. I must hold, therefore, that the declaration granted by the learned Judge declaring the election of the applicants void was not in accordance

with law and that in declaring the election void, he has exercised a jurisdiction not vested in him by law.

30. I, therefore, allow the application for revision, set aside the order of the trial Judge and dismiss the election petition filed by opponent No. 1

Habib Mohammad. The opponent Habib Mohammad shall pay the costs of the election petition and of this revision and bear his own. The

applicant in revision shall be entitled to a refund of his security deposit.