(1965) 03 BOM CK 0034

Bombay High Court

Case No: Civil Revision Application No. 459 of 1963

Sk. Ahmad Sk. Abdulla		APPELLANT
	Vs	
Giridhar Bhagwansa Jirapure		RESPONDENT

Date of Decision: March 5, 1965

Acts Referred:

- Bombay Civil Courts Act, 1869 - Section 16
- Provincial Insolvency Act, 1920 - Section 73

Citation: (1965) 67 BOMLR 845

Hon'ble Judges: Wagle, J; Kotval, J

Bench: Division Bench

Judgement

Wagle, J.
This is an application in revision u/s 20-A(5) of the C.P. & Berar Municipalities Act, 1.922, The facts which need a mention are the following:

2. On June 16, 1962, election for a seat in Ward No. 9 of the Achalpur Municipal Committee was held at which the present petitioner obtained 190 votes, opponent No. 1 obtained 153 votes and opponent No. 2 obtained 59 votes. The petitioner having obtained the largest number of votes was declared elected. Against this declaration of the result, the present opponent No. 1 Girdharsa filed an election petition No. 10 of 1963 before the District Judge, Amravati.

3. The ground urged for the contention that the petitioner was not entitled to be elected was that he was an undischarged insolvent. Section 15(j) of the C.P. & Berar Municipalities Act, 1922, mentions that no person who is, under the provisions of any law for the time being- in force, ineligible to be a member of any local authority, shall be eligible for an election or nomination as a member of a committee. The contention of opponent No. 1 was that under the provisions of Section 16(1)(f) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter called the Zilla Parishads Act), an undischarged insolvent is not eligible for being elected to the

Zilla Parishad. Under the provisions of Section 15(j) of the C.P. & Berar Municipalities Act, therefore, he is ineligible to be a member of the Municipal Committee. The said opponent also contended that the petitioner should be unseated and that he being the person who had obtained next largest number of votes should be declared as elected for the said seat. The learned District Judge having considered the contentions of the parties and the evidence led by them held that the petitioner was an undischarged insolvent. The learned District Judge also held that there is no reason why the present opponent No. 1 should not be declared to have been elected, and declared him elected after setting aside the election of the present petitioner. Against this order the present application in revision has been filed by the petitioner whose election was set aside.

4. Mr. Mandlekar, who appeal''s for the petitioner, contends that, in the first instance, the entire order should be set aside for the reason that the District Judge had no authority to act as a Judge under the provisions of Section 20-A of the C.P. & Berar Municipalities Act. Mr. Mandlekar''s contention was that the plain meaning of the authorisation u/s 20-A (2) of the C.P. & Berar Municipalities Act was that a, person, who was specially empowered by the Provincial Government in this behalf had alone the authority to entertain and dispose of such election petitions. Mr. Mandlekar in this connection relied upon the provisions of Section 20-A, Sub-section (2), which reads as follows:

(2) Such petition shall be presented to the District Judge or Additional District Judge or to a Civil Judge especially empowered by the State Government in this behalf within the local limits of whose jurisdiction the election or selection was held and no petition shall be admitted unless it is presented within fourteen days from the date on which the result of such election or selection was notified.

Mr. Mandlekar''s contention in this respect was that in order to enable either the District Judge or the Additional District Judge, or a Civil Judge, it was necessary that he was to be empowered by the Provincial Government in this respect and that, unless this special empowerment was received by him from Provincial Government, neither the District Judge, nor the Additional District Judge, nor the Civil Judge had jurisdiction to entertain any election petition u/s 20-A. In this connection Mr. Mandlekar referred to a decision of a Single Judge of this Court, Yeshwant v. Nandkishore [1961] N.L.J. 235 which favoured the view that was propounded by Mr. Mandlekar.

5. Mr. Mandlekar, however, brought to our notice the fact that on this point there is a conflict of decisions of two Single Judges of this very Court. In Trimbaksa, Ramasa v. Habib Mohammad [1961] N.L.J. 117 one of us (Kotval J.) had a similar point for disposal, and it was held in that case that the words "especially empowered by the Provincial Government in this behalf" used in Section 20-A(2) of the C.P. and Berar Municipalities Act, only applied to the words "a Civil Judge" and did not apply to the words "the District Judge or Additional District Judge". Mr. Mandlekar, therefore,

contended, when this matter was placed before a Single Judge of this Court on March 11, 1964, that this point be referred to a Division Bench as there was a conflict.

6. As the point was of some importance in regard to the interpretation of a section, we called upon Mr. D.B. Padhye, Assistant Government Pleader, to assist us, and we are thankful to Mr. Padhye for the assistance given by him in placing his view before us. Having considered the arguments advanced in this case and the two judgments expressing a conflict of views, we are of opinion that the view expressed in the earlier judgment of a Single Judge of this Court in Trimbaksa Ramasa v. Habib Mohammad is preferable to the view expressed in Yeshwant v. Nandkishore. We may also point out that in the case before Mr. Justice Abhyankar in Yeshwant v. Nandkishore this point did not really arise. It was not necessary for the disposal of this point to arrive at a decision in the ease before the learned Judge. The point before the learned Judge was a little different from the point which is now before us. The facts of that case were that an election petition was filed before the District Judge and the District Judge, under the powers given to him under the Bombay Civil Courts Act, 1869, transferred the election petition for disposal to the Assistant Judge. The Assistant Judge in fact disposed of the election petition, and in a revision application filed u/s 20-A (5) of the C.P. & Berar Municipalities Act, the jurisdiction of the Assistant Judge was challenged before Mr. Justice Abhyankar.

7. The short point before Mr. Justice Abhyankar was whether there was authority in the District Judge to transfer the matter to the Assistant Judge under the provisions of the Civil Courts Act. The learned Judge considered the various authorities and came to the conclusion that any authority mentioned in Section 20-A (2), whether specially empowered or not, was an authority acting as a persona designata. Having come to this conclusion, the learned Judge further held that the provisions of the Civil Courts Act did not apply to such proceedings except to the extent to which they were especially made applicable, either by the Act or by any of the rules framed thereunder. No provision was brought to the notice of the learned. Judge wherein any authority entertaining an election petition under the provisions of Section 20-A of the C.P. & Berar Municipalities Act was given the power to transfer the election proceeding for disposal to another authority. In the absence of any such provision, the learned Judge came to the conclusion that the transfer to the Assistant Judge by the District Judge was bad and, therefore, the Assistant Judge had no authority to dispose of the election petition. The question whether the authority should have been specially empowered to exercise jurisdiction in respect of an election petition did not, in fact, arise before the learned Judge. This also seems to be the view taken by the learned Judge. In para. 11, at page 240, the learned Judge observes as follows:

...Even assuming that a District Judge or an Additional District Judge need not be empowered as contended by Mr. Mandlekar, there is no room for an argument that

an Assistant Judge could be an authority, though not enumerated or mentioned in Sub-section (2) of Section 20-A, which would still have the power to entertain or dispose of an election petition, merely by reason of Section 16 of the Bombay Civil Courts Act. In fact, in my opinion, the Bombay Civil Courts Act does not purport to create any power in the District Judge when he is acting as a persona, designata to transfer any application entertained by him under any special Act to his Assistant Judge.

8. The question that arose in Trimbaksa Ramasa v. Haibib Mohammad was, however, the exact question that now arises before us. The facts of that case were that an election petition was presented before the District Judge on June 10, 1959, during the period when the Courts of the Civil Judges were closed for summer vacation between May 3, 1959, and June 14, 1959. After the reopening of the Civil Courts the District Judge sent the election petition to the Civil Judge, Senior Division, for disposal. The contention taken up by the opponent in the election petition was that this presentation to the District Judge was not proper as he was not the authority empowered by the Provincial Government in this behalf u/s 20-A of the C.P. & Berar Municipalities Act. There is no dispute about this fact, viz. that the notification issued by the Provincial Government in this connection empowers only the Civil Judges, Class I, to hear election petitions u/s 20-A(2) of the C.P. & Berar Municipalities Act. No District Judge or Additional District Judge had till then been empowered by any notification issued by the Provincial Government u/s 20-A (2).

9. The contention taken up was, therefore, that the District Judge not being the person who is authorised by the Provincial Government had no authority to entertain a petition as it could not be presented to him and, therefore, he had no power to have seisin of it. All further proceeding that followed by an erroneous presentation did not properly dispose of any election petition. The result, as submitted, was that the election petition not having been properly presented, no valid orders could be passed thereon. In this case it was necessary for the learned Judge to consider the question whether the presentation of an election petition to a District Judge, who is not especially empowered in this respect u/s 20-A, was a proper presentation of the petition in order to make the petition a valid one. The learned Judge considered the clause and in particular, the wording of the clause, to hold that the presentation to the District Judge, although he was not specially empowered in this respect by the Provincial Government, was proper presentation within the meaning of Section 20-A(2) of the C.P. & Berar Municipalities Act. The learned Judge considered the particular clause, in Section 20-A(2), viz. "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". The view taken by the learned Judge in Trimbaksa Ramasa v. Habib Mohammad appears to be preferable to the view taken by the learned Single Judge in Yeshwant v. Nandkishore.

10. The wording of the clause clearly indicates the intention of the Legislature, There are three alternative authorities which are mentioned in the section. The first one is the District Judge, the second one is Additional District Judge and the third one is a Civil Judge. If it was the intention that the words "especially empowered by the Provincial Government in this behalf" were to apply to all the three authorities, then we are of opinion that the clause would definitely have been worded differently. The clause worded as follows, "the District Judge, the Additional District Judge, or a Civil Judge especially empowered by the Provincial Government in this behalf" would have made the meaning of the clause quite clear if it was the intention of the Legislature to have the later clause of especial empowerment applicable to all the three authorities. Mr. Padhye, who argued amicus curiae in this matter, contended that the intention of the Legislature has got to be gathered by the words used. His argument was that the word ''or'' between the words "District Judge" and the words "Additional District Judge" really made no difference to the phraseology so far as its meaning is concerned. Similar was his argument in respect of the use of the word "to" between the clause "the District Judge or Additional District Judge or," and the words "a Civil Judge". His view was that the words used by the Legislature were clear enough to indicate that the expression "especially empowered" was used in reference to all the three authorities and not with reference to the third authority only.

11. It, however, appears to us that if this meaning were to be given to that expression, the first word "or" between the words "the District Judge" and the words "Additional District Judge" would have no meaning at all. Similarly, the word "to" between the words "Additional District Judge or" and the words "a, Civil Judge" would also have no meaning. In other words the Legislature should be presumed to have used two words without attaching any meaning to them. Those words would be superfluous. If, however, the meaning of the words is to be given as an intention expressed by the Legislature that the expression "especially empowered by the Provincial Government" was only to apply to "a Civil Judge" which is the last alternative used, then, in our opinion, the first word "or" and the second word "to" have a definite meaning. By the use of the word "to" between the words "Additional District Judge or" and "a Civil Judge", a categorical distinction is brought between the two classifications. The first classification is "the District Judge or Additional District Judge" and the second classification is "a Civil Judge". If this expression is understood in this manner, then the word "or" as well as the second word "to" have a meaning and the meaning is quite clear, viz. that there was an intention of the Legislature to distinguish between the first category of "the District Judge or Additional District Judge" and the second category of "a Civil Judge", and that the expression "especially empowered" could only be with respect to the second classification viz. "a Civil Judge".

12. It also appears to us that there is good reason for it. The reason is connected with the jurisdiction of these various authorities. The jurisdiction of the District

Judge and the Additional District Judge was unlimited, where-as the jurisdiction of the Civil Judge was limited to Rs. 10,000 at that time. If this jurisdictional difference is taken into account, the intention of the Legislature appears perfectly clear viz. that in order to enable a Civil Judge to have a power on par with the District Judge or the Additional District Judge, a special notification was necessary from the Provincial Government empowering a Civil Judge u/s 20-A. In other words, a selection was to be made by the Provincial Government from the third authority, mentioned in Section 20-A (2), which would bring those persons on par jurisdictionally with the first category which includes the District and the Additional District Judge.

13. To our mind, the expression used by the Legislature is clear enough to indicate that a distinction between the classifications which include the District and the Additional District Judges and the classification of a Civil Judge was definitely made by the Legislature by the two words used-the first word "or" between the words "District Judge" and "Additional District Judge", and the word "to" between the words "Additional District Judge or" and the expression "a Civil Judge."

14. One of the earlier decisions of the Nagpur High Court which was also mentioned in Yeshwant v. Nandkishore, was a decision of a Single Judge reported in Purushottam v. G.V. Pandit. [1950] N.L.J. 520. The view taken by the learned Single Judge in this case was that the words "especially empowered" refer to all the three authorities. This question, however, was subsequently reconsidered by the Madhya Pradesh High Court in Bhojraj Vs. The State of M.P. and Others, and the Division Bench presided over by Hidayatullah C.J. (as he then was) came to the conclusion that the view expressed in the earlier decision of Purushottam v. G.V. Pandit was not acceptable. The reasons given are the same as are now placed before us by Mr. Dharmadhikari, viz. that the proper meaning has to be given to the first word "or" and the second word "to". We agree with the opinion expressed in the case, Bhojraj v. State. This judgment of the Madhya Pradesh High Court was followed by a Single Judge (Badkas J.) of this Court in Kewalchand Kanhayalal v. Manoharbhai Babarbhai. (1959) Civil Revision Application No. 493 of 1958, decided by Badkas J., on February 18, 1959 (Unrep.).

15. One of the grounds upon which the view to the contrary was expressed by Kaushalendra Rao J. in Purshottam v. G.V. Pandit and by Abhyankar J. in Yeshwant v. Nandkishore, was that if the meaning which we have given to it were to be given, then there was a likelihood of a conflict between the three authorities in regard to the same election petition. The argument advanced was that if an election petition were filed before each of the three authorities, then each of the three authorities might decide the matter differently and that there would thus be a conflict. The notification issued by Government in the instant case also raises a likelihood of a conflict. The notification issued by Government authorises all Civil Judges of Class I to hear such election petition u/s 20-A of the C.P. & Berar Municipalities Act. If at a particular place more than one Civil Judge, Class I, are posted, then a conflict is likely

in respect of the present notification also. However, we do not think that that should be one of the matters which should determine the interpretation of sections. Whether a conflict arises or not and what would happen if a conflict arises, is not a matter which should persuade us to come to a different conclusion when the plain meaning1 of the section is different.

16. A further argument advanced by Mr. Dharmadhikari in this connection was that the view taken earlier that an authority which acts under the provisions of Section 20-A of the C.P. & Berar Municipalities Act is a persona designata cannot be supported on the plain reading of Section 20-A of that Act and the provisions of the C.P. & Berar Civil Courts Act I of 1917. Section 20-A(2) mentions the authorities who should entertain election petitions. Section 20-A(5)(b) gives the power to the High Court to entertain an application in revision where the Court has exercised jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law. The clause is not that the revisional jurisdiction is against the decision of a Judge acting as persona designate, but the clause uses words to mean that the revision lies against an order of a Court which has exercised a particular jurisdiction. Mr. Dharmadhikari contended that the use of the word "Court" would make it abundantly clear that the authority whether empowered or not which was mentioned in Section 20-A(2) was exercising its authority as a Court and that, therefore, there was no scope for any argument that the authority was acting as a persona, designatia. The second point urged in this connection by Mr. Dharmadhikari was that the expression "within the local limits of whose jurisdiction the election was held" giving the localized jurisdiction to the authority u/s 20-A (2) also supported the view that the authority was acting as a Court, and not as a persona designata.

17. In this connection it was pointed out that the C.P. & Berar Courts Act, 1917, did not give jurisdiction officer wise, but the jurisdiction was only court-wise. There was no particular jurisdiction given to a Judge as such, but the jurisdiction was of the Court and it was to be exercised by the presiding officer. If, therefore, the Judge did not have any particular jurisdiction as unrelated to a Court, then Mr. Dharmadhikari contended that the expression "within the local limits of whose jurisdiction" must have reference to the Court which was presided over either by the District Judge or by the Additional District Judge or by the Civil Judge. Mr. Dharmadhikari''s contention, therefore, was that if the authority, which had the jurisdiction to entertain election petitions u/s 20-A(2) was not a persona designata but a Court, all these questions, which arose by reason of the presentation and the exercise of jurisdiction, could not, in fact, arise. However, though we find good substance in this argument we think that it is not necessary to go into this discussion so far as the present case is concerned. This present case has to be disposed of upon the interpretation of the expression "to the District Judge or Additional District Judge or to a Civil Judge especially empowered by the Provincial Government in this behalf". Having come to a conclusion that, the last expression "especially empowered by the

Provincial Government in this behalf" qualifies only the words "a Civil Judge", it is not necessary to enter into a further discussion upon a question whether the authorities mentioned in Section 20A(2) act as persona designata or as a Court.

18. In the result, we hold that the learned District Judge, although he was not especially authorised in this behalf by the Provincial Government, had the authority to entertain the election petition u/s 20-A and to dispose it of.

19. Mr. Mandlekar''s further contention in this case was that the order passed by the learned District Judge in the election petition No. 10 of 1963 was partly erroneous. He did not seriously dispute the contention advanced that the undischarged insolvent was not eligible for being elected as a member of the Municipal Committee. It was also pointed out by Mr. Dharmadhikari that Section 73 of the Provincial Insolvency Act was clear enough to indicate that no undischarged insolvent was entitled to seek an election to any local authority. The Municipal Committee of Achalpur being a local authority Section 73 was clear enough to indicate that the petitioner was not entitled to be elected. However, the learned District Judge relied upon Section 16(1)(f) of the Zilla Parishads Act along with the provisions of Section 15(j) of the C.P. & Berar Municipalities Act.

20. Mr. Mandlekar''s contention, however, was about the later portion of the Judge''s order, viz. that the present opponent No. 1 be declared to have been elected. The submission was that the petitioner having been found ineligible for election, the number of votes which he had obtained, viz. 190, should have been considered by the learned District Judge as capable of being obtained by any one of the other candidates. Opponent No. 1 had obtained 153 votes and opponent No. 2 had obtained 59 votes. There is no evidence on record to suggest an inference that the votes which were obtained by the petitioner would all have been obtained by opponent No. 1 or that such number of votes would have been obtained by opponent No. 1 as would give him a, majority over the votes obtained by opponent No. 2. In this state of events, it is not possible to come to any conclusion that, if the petitioner were not to stand for the election and the votes were to be redistributed between the other candidates, opponent No. 1 would have obtained a majority of votes. Mr. Mandlekar, therefore, contended that, in the present case, the only order that could have been passed by the learned District Judge was to set aside the election and direct a fresh election. We accept this contention of Mr. Mandlekar and hold that the order passed by the learned District Judge declaring opponent No. 1 as elected is bad and should be set aside.

21. In the result, this petition is partly allowed. The order of the District Judge holding that the present petitioner is not eligible for election is upheld, but the order declaring opponent No. 1 as elected is set aside. A fresh election will be necessitated for the vacant seat. In the events that had happened, we direct the parties to bear their own costs.