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Court : Allahabad

Decided On : Jan-08-1925

Reported in : AIR1925All380; 87Ind.Cas.51

Appellant : Abdul Rahman

Respondent : Abdul Rahman

Judgement :

Daniels, J.

1. This judgment relates to three connected appeals which have been laid before a Full Bench because of the extreme importance of the questions involved. The appeals challenge the validity of certain sections of the U.P. Municipalities Act. All three arise out of a contested election for seats on the Municipal Board of Muttra which was held in the early part of 1923. There were four candidates for three seats. A poll was held and the appellant, Abdur Rahman, son of Ismail, was one of the persons declared to be elected. Section 22 of the U.P. Municipalities Act, 1916, provides a special tribunal for the decision of disputes arising out of a Municipal election. Under the provisions of that section the respondent, Abdur Rahman, son of Zahuri, presented a petition against the election of the appellant, urging that it was vitiated by various corrupt practices. This petition was heard and determined by the Commissioner as an election Court under the provisions of the Act. The Commissioner upheld the petition, unseated the appellant and, under the powers

vested in him by Section 25, declared the respondent duly elected in his place. The appellant, Abdur Rahman, son of Ismail presented a petition for review to the Commissioner under Section 23(2)(f) and that application was rejected. He then filed the present appeal from the Commissioner's decision to this Court, notwithstanding the fact that by Section 23(2)(e) of the Act, it is declared that there shall be no appeal from the Commissioner's order either on a question of law or fact and that no application in revision against or in respect of that decision shall be entertain able. That appeal is F.A. No 455 of 1923. Besides filing this appeal he also filed a suit in the Court of the Subordinate Judge for various reliefs the principal of which were a declaration that he had been duly elected as a member of the Municipal Board and an injunction to restrain the respondent from acting as such member.

2. After that suit had been filed he applied for an adjournment which was granted on condition of paying Rs. 125 costs of the adjournment to the opposite party. He failed to pay these costs and his suit was dismissed for default, an application for further time being rejected. He subsequently applied to the, Subordinate Judge for restoration of the case and that application was rejected.

3. He has now filed F.A. No. 165 of 1924 from the order dismissing his suit for default, treating that order as a decree, and has also filed a first appeal from the order refusing to restore the suit. The latter appeal is F.A.F.O. No. 77 of 1924. The appellant was doubtful whether his relief lay by way of appeal or by way of application for restoration and to be on the safe side pursued both remedies.

4. The grounds of appeal in appeal No. 455 of 1923, which is the principal appeal, so far as it is necessary for us to consider them are:

1. That it is ultra vires of the U.P. Local Legislature to appoint any Court or tribunal for the trial or the exclusive trial of election cases or to appoint the Commissioner as the election tribunal.

2. That at any rate it is ultra vires of the U.P. Local Legislature to take away or restrict in any manner the powers of appeal or revision of this Court and to make the decision of the Commissioner final.

5. The plea that it is ultra vires of the Local Legislative Council to create a Court for the decision of election cases or indeed, as the appellant's learned Counsel argued, for any purpose whatsoever does not require any lengthy discussion. It is admitted that the words conferring legislative power on a Local Legislature under Section 79 of the Government of India Act, 1915, are very wide. That Legislature has been given a general power to make laws for the peace and good Government of the territories for the time being constituting the province. The only limitation imposed on the extent of this power is that the Legislature must not make any law affecting any Act of Parliament. For certain kinds of legislation the previous sanction of the Governor-General is required, though failure to apply for previous sanction is, by Sub-section (5) of Section 79, cured if the Act when passed is duly assented to by the Governor-General in pursuance of the Act. No question of assent arises in this case. The previous sanction of the Governor-General was obtained to the passing of the U.P. Municipalities Act, and that Act was duly assented to by the Governor-General after it was passed. If a wide general power to legislate for the peace and good Government of the Province does not include a power to devise means for deciding on the validity of a disputed election to a seat on a Municipal Board, it is difficult to know what it does include.

6. The appellant's learned Counsel laid stress on the difference between the language of Section 79 and that of Section 65 of the same Act, which provides for the legislative power of the Governor-General in Legislative Council. He argues that because the words 'for all persons, for all Courts and for all places and things' contained in that section are not produced in Section 79, it follows that the Local Legislature has no power to legislate for any Court. He might equally have argued from the omission of the words 'for all persons' that the Local Legislature has no power to pass laws affecting any person. The words 'to make laws for the peace and good Government of the territories for the time being constituting that Province' have been given a very wide construction in various cases, not only with reference to India but also to other portions of the Empire where similar words occur cf. *Ashbury v. Ellis* (1893) A.C. 339 The Local Legislature has in a number of instances both under the Indian Councils Act of 1861 and under the Government of India Act created tribunals for particular purposes or excluded the jurisdiction of the Civil Courts in particular cases. The enactments containing these

provisions have repeatedly come before the Courts and it has never hitherto been suggested that there was any doubt as to their validity. Village Courts were created by an Act of the Local Legislature in 1892. Special Judges to adjudicate on the indebtedness of encumbered proprietors were appointed under the Bundelkhand Encumbered Estates Act of 1903, and under the Bundelkhand Land Alienation Act of the same year the enforcement of certain classes of decrees was taken away from the Civil Courts and vested in the Collector. The Oudh Civil Courts Act has been twice amended by the Local Legislature. If the Local Legislature has no power to create Courts it can equally have no power to modify the constitution or powers of Courts already existing. Finally by a Local Act of 1920 village panchayats were established and were vested with both Civil and Criminal powers.

7. Other instances might be given from other Provinces, but these are sufficient to show that the power which is now challenged has been exercised and treated as valid by the Courts through a long series of years. We have no doubt whatever that a power to make laws for the peace and good Government of the Province included a power to direct that disputes of a particular kind shall be decided in a particular way and before a tribunal specially created for the purpose.

8. The appellant's main argument, however, was that the provisions of Sections 19 to 27 of the U.P. Municipalities Act derogate from the powers conferred on the High Court at Allahabad by Clause 11 of the Letters Patent and are, therefore, invalid. He originally suggested that they were invalid as interfering with the prerogative of the Crown but in view of the fact that the amendment of Section 84 of the Government of India Act, 1915, effected by the Government of India Act, 1916, expressly provides that no law of a Local Legislature shall be invalid solely because it affects the prerogative of the Crown and that by Section 2 of the latter Act this amendment was made retrospective, that position could no longer be maintained and he has frankly abandoned it. He has, however, argued that the powers of the High Court under the Letters Patent are declared by Section 106 of the Government of India Act, 1915, and that any attempt by a Local Legislature to derogate from those powers is an infringement of an Act of Parliament and, therefore, invalid under the express provisions of Section 79(4) of the Government

of India Act, 1915. It is unnecessary to consider this position because it is quite clear that the legislation, which is impugned, in no way interferes with the powers of the High Court under the Letters Patent. Clause 11 of the Letters Patent runs as follows:

And we do further ordain that the said High Court of Judicature for the North-Western Provinces shall be a Court of appeal from the Civil Courts of the North-Western Provinces, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law or regulations now in force.

9. The appellant wishes to treat the words 'shall be a Court of appeal from the Civil Courts of the North-Western Provinces' as meaning that an appeal shall lie from any order passed by any Civil Court. This is an untenable position. It was held as far back as 1820 that the right of appeal is not an inherent right of the subject but only exists where it is expressly conferred by statute. *The King v. Hanson* 4 Baru & Ald. 519. That view has been more than once affirmed the Privy Council; e.g., *Meenakshi Naidoo v. Subramania Sastri* (1888) 11 Mad. 26 and *Rangoon Bolatoung Co. v. The Collector, Rangoon* (1912) 40 Cal. 21. The words cited lay down that the High Court is to be the supreme appellate tribunal (subject of course to any further appeal which may be allowed to His Majesty in Council) from the Civil Courts of the Province and from the Courts under the superintendence of the High Court and the concluding words of the clause state the cases in which an appeal can be brought. It is pointed out that no provision was made in Clause 11 for rights of appeal which might be thereafter conferred. This was probably considered to be sufficiently provided for by Clause 35 which makes the Letters Patent subject to the legislative powers of the Governor-General in Council. In the Letters Patent of the more recent High Courts the omission has been supplied by the insertion of the words 'or as may after that date be declared subject to' appeal by competent legislative authority.' It may be added that the appellant's argument breaks down at the outset unless the term 'Civil Courts' used in the Letters Patent can be held to include such a Court as that Created by Section 22 of the U.P. Municipalities Act. It is not strictly necessary to decide the point but in the opinion of the majority of us these words were never intended to cover a tribunal created

under a particular statute for a particular purpose.

10. There is equally little foundation for the contention that the Commissioner sitting as an election Court is subject to the superintendence of this Court. The power of superintendence rests on Section 107 of the Government of India Act, which extended it to all Courts subject to the High Court's appellate jurisdiction. There is no other provision of law to which appeal can be made as conferring a power of superintendence in this case. It is very difficult to argue that the election Court is under the appellate jurisdiction of the High Court when the Act which creates it expressly declared that there shall be no appeal from any of its decisions. The appellant relies on the fact that by Section 23(e) of the Municipalities Act the Commissioner is empowered to refer a question of law to the High Court. He relies on expressions in certain decisions which speak of a power of reference as being a modified form of appellate jurisdiction, e.g., *Sheo Narayan Prasad v. King-Emperor* (1918) 3 P.L.J. 581. With all respect to learned Judges who are responsible for these decisions there is a radical difference between the two things. A right of appeal is a right conferred on the suitor. A power of reference, such as is given in this case is a power vested in the Court. It lies in the sole discretion of the Court to exercise it or not to exercise it. An appeal presupposes a decree or order already passed against which the appeal is directed. The power of reference is exercised while the case is still pending in order to enable the Court to arrive at a correct decision. It is beside the mark to urge that when a reference is made the Court making it is bound to abide by the decision of the Court of reference. This is merely, the natural corollary of allowing a reference. It would be absurd to ask the highest Court in the Province to adjudicate on a question of law if the Court which made the reference were to be at liberty to disregard the decision. In the case of *In re Rattansee Parshottam* (1900) 24 Bom. 471 the Bombay High Court held that it had no revisional jurisdiction over the proceedings of the C insular Court of Muscat, even though it was obligatory on the Consul to refer his proceedings for the order of the High Court in certain cases. A familiar illustration of the power of reference is that contained in the Kumaun Rules. Under Rule 17 of those rules the Local Government can refer for the opinion of this Court any final decision of the High Court of Kumaun; but this certainly does not make either the Local Government or

the Kumaun Courts' subject to the superintendence of this Court.

11. It was further argued that if the Commissioner as an election Court sanctions a criminal prosecution for perjury or a kindred offence an appeal might lie to this Court under Section 476B of the Criminal Procedure Code. It has already been held by this Court in *Ram Nath v. Emperor* A.I.R. 1924 All. 684, that no revision lies from the Commissioner's order in such a case. Whatever doubts may be entertained as to whether the Commissioner acting as an election Court is a Civil Court within the meaning of Clause 11 of the Letters Patent he is certainly not a Civil Court within the meaning of the Civil Procedure Code or of Section 476 of the Criminal Procedure Code.

12. Even, however, if a power of superintendence existed this would not suffice to give a right of appeal such as is claimed in this case. However widely the power of superintendence may be construed it clearly does not extend to conferring a right of appeal in cases where an appeal is expressly barred by statute.

13. It is hardly necessary to consider the last portion of Clause 11 of the Letters Patent. No such things as Municipal elections were known in the Province at the time when the Letters Patent were issued, so the right of appeal now claimed clearly had no existence.

14. In support of the two remaining appeals it is argued that even if Sections 19 to 27 of the Municipalities Act are valid they do not exclude the right of suit. Section 9 of the Civil Procedure Code declares that Civil Court shall have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred; It is quite true that it is not stated in so many words that there shall be no right of suit. It is also true that in two places in the Act, Sections 164 and 321, there are provisions expressly barring the right of suit in particular matters. But the whole scheme of Sections 19 to 27 clearly implies an intention that the election of any person as a member of a Board shall only be challenged by an election petition presented in accordance with the Act. The inquiry held by the Commissioner is not a mere summary inquiry subject to the result of a suit. The commissioner is armed with all the powers of a Civil Court and his decision is intended to be a final settlement of the question in dispute.

15. The ordinary rule is that where the statute which creates the right also prescribes a specific remedy the person aggrieved is limited to the remedy so prescribed. As this Court observed in *Sham Lal v. Bindoo* (1904) 26 All. 594 with reference to a similar contention under the Guardians and Wards Act, a separate suit if permitted, might result in two opposite decisions, equally final and equally binding, one declaring an election valid and the other declaring it invalid. The matter was well put by Sir Lawrence Jenkins, Chief Justice of Bombay High Court in *Bhaishankar Nanabhai v. The Municipal Corporation of Bombay* (1907) 31 Bom. 604:

But under Section 33 the Chief Justice has jurisdiction to determine the validity of a contested election, and so he is the tribunal appointed by the Act for that purpose.

But where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts, for they never had any; there is no change of the old order of things; a new order is brought into being.

16. The case of *Ashby v. White* (1703) 2 Lord Raymond 938, which is the foundation of the judgment in *Municipal Board of Agra v. Ashrafi Lal* A.I.R. 1922 All. 1, relied on by the appellants has no application here. In that case Ashby, as a burgess of the borough of Aylesbury, was awarded damages on the ground of a wrong done to him by the refusal of the defendants to allow him to record his vote at a Parliamentary election. The judgment of Chief Justice Holt, which was affirmed by the House of Lords, was based on the principle that where a legal right has been infringed the law must provide remedy, and the only remedy open to the plaintiff was by means of an election at law. That case cannot be cited as an authority for the proposition that a right of suit must lie in all cases, notwithstanding that a special remedy is provided by statute.

17. We are, therefore, clearly of opinion that there is no right of suit in the present case.

18. These findings are sufficient for the disposal of all three appeals. We may note in conclusion that one contention of the appellant was that the respondent was illiterate and, therefore, ineligible for election. This was no part for the appellant's original case before the Commissioner though it was pressed on the application for review. The respondent was present in the Court and it was found on examining him that he can both read and write Urdu. The appellant's case is in fact like a house of cards which collapses at whatever point it is touched.

19. For the reasons already given we dismiss all three appeals with costs including in this Court fees on the higher scale. In F.A. No. 455 of 1923, we allow a special fee of Rs. 200 the receipt of which has been certified.

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