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Shiv Kumar and ors. Vs. State

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Court : Allahabad

Decided On : Feb-14-1962

Reported in : AIR1963All395; 1963CriLJ118

Judge : Kailash Prasad, J.

Acts : Code of Criminal Procedure (CrPC) (CrPc), 1898 - Sections 195(1) and 195(2); Uttar Pradesh Municipalities Act - Sections 22

Appeal No. : Criminal Reference No. 173 of 1961

Appellant : Shiv Kumar and ors.

Respondent : State

Advocate for Def. : Assistant Government Adv. and ;K.M. Lall Hajela, Adv.

Advocate for Pet/Ap. : C.S. Saran and ;T.N. Sinha, Advs.

Disposition : Reference accepted

Judgement :

Kailash Prasad, J.

1. This is a reference by the Additional Sessions Judgeof Aligarh recommending that the order of the Magistratedated 31st October, 1960 directing that the criminal casepending against Shiva Kumar and four others shall proceed,be Quashed.

2. On 17-12-1957 Sri Shiva Kumar was elected president of the Municipal Board, Atrauli (district Aligarh). His rival candidate Sri Madan Mohan filed an election petition on 13-1-1958, challenging the election of Sri Shiva Kumar. The District Judge of Aligarh was appointed as Election Tribunal to dispose of the said petition. He decided the petition on 31-5-1958 and held that the election of Sri Shiva Kumar was invalid. He accordingly set aside the election. In its judgment the Election Tribunal observed that certain forgeries and other glaring irregularities were committed by Sri Shiva Kumar and others which should be thoroughly enquired into through the Criminal Investigation Department. In view of these observations, the State Government got the matter investigated through the C. I. D. As a result of investigation, a charge sheet was submitted by the police against Sri Shiva Kumar and four others in the Court of a Magistrate, for offences covered by Clause (b) and (c) of Sub-0 (1) of Section 195 of the Cr. P. C. Thereupon an objection was taken by Sri Shiva Kumar and others that the Magistrate should not have taken cognizance of the offences mentioned in the charge-sheet except on the com-plaint in writing of the Election Tribunal, because the offences are alleged to have been committed in and in relation to proceedings before the Tribunal. The contention of Sri Shiva Kumar and others was that the Election Tribunal was a Court within the meaning of Section 195, Cr. P. C. The prosecution, on the other hand, contended that the Election Tribunal was not a Court.

3. The learned Magistrate held that the District Judge of Aligarh, who was appointed by the State Government as the Tribunal to hear the election petitions, was only a persona designata or at least a quasi-judicial authority and was not a Court. He accordingly rejected the objection of Sri Shiva Kumar and others and ordered the case to proceed.

4. Against this order, Sri Shiva Kumar and others went in revision before the Sessions Judge. The Sessions Judge held that an Election Tribunal, constituted under the U. P. Municipalities Act, is a Court within the meaning of Section 195, 'Cr. P. C. He has, therefore, made this reference with the recommendation mentioned above.

5. The only point that arises for determination is whether a tribunal, constituted by the State Government under the U. P. Municipalities Act, for hearing an election petition is a Court, within the meaning of Clauses (b) and (c) if Sub-section (1) of Section 195 of the Cr. P. C. or not.

6. The essential features of a Court and its necessary attributes which distinguish it from a quasi-judicial tribunal having the trappings of a Court, have been explained and laid down by the Supreme Court in Virindar Kumar Satyawadi v. State of Punjab : 1956 CriLJ326 . Their Lordships observed at p. 157:

'It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it .....

It also imports an obligation on the part of the authority to decide the matter on a consideration of evidence adduced, and in accordance with law.'

7. It is, therefore, to be examined if an Election Tribunal constituted under Section 22 of the U. P. Municipalities Act possesses the necessary attributes of a Court as laid down by the Supreme Court.

8. Section 23 of the U. P. Municipalities Act deals with the method of inquiry by an election tribunal and lays down the procedure to be followed by it. The section runs to the following effect:

'23. Procedure. -- (I) Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the C. P. C. in regard to suits, shall, so far as it is not inconsistent with this Act or any rule and so tar as it can be made applicable, be followed in the hearing of election petitions:

(2) Provided that -

(a) Two or more persons whose election is called in question may be made respondents to the same petition, and their cases may be tried at the same time,

and any two or more election petitions may be heard together; but, so far as is consistent with suth joint trial or hearing, the petition shall be deemed to be a separate petition against each respondent;

(b) the (Election Tribunal) shall not be required to record or have recorded the evidence in full, but shali make a memorandum of the evidence, sufficient in its opinion for the purpose of deciding the case;

(c) the (Election Tribunal) may at any stage of the proceedings, require the petitioner to give further security for the payment of all costs incurred or likely to be Incurred by any respondent;

(d) the (Election Tribunal) for the purposes of deciding any issue, shall only be bound to require the production or, or to receive, so much evidence, oral or documentary, as it considers necessary;

(e) during the hearing of the case (the Election Tribunal may refer a question of law to the High Court under Order XLVI of the First Schedule of the Code of Civil Procedure 1908, but there shall be no appeal either on a question of law or fact, and so application in revision against or in respect of the decision of the (Election Tribunal).

(f) any person considering himself aggrieved by the decision may apply for review to the Tribunal, within thirty days from the date of the decision and the Tribunal may thereupon review the decision on any point: Provided that In computing the period of limitation, the provisions of Sub-section (2) of Section 12 of the Indian Limitation Act, 1908 shall apply.'

9. Section 25 says that if the Election Tribunal, after making such enquiry, as it deems necessary, finds in respect of any person whose election is called in question by a petition, that his election was invalid. It shall dismiss the petition as against such person. It further provides that if the Election Tribunal finds that the election of any person is invalid, it shall either declare a casual vacancy to have been created, or declare another candidate to have been duly elected.

10. A perusal of Section 25 makes it clear that it is incumbent on the Tribunal to make any enquiry before coming to a decision. In view of Section 23, the provisions of C. P. C. are to be followed by the Tribunal unless they are Inconsistent with any provision of the U.P. Municipalities Act or any rule made thereunder. Clause (d) of Sub-section (2) of Section 23 makes it obligatory on the Tribunal to receive evidence adduced by parties. Of course, power is given to the Election Tribunal to receive only so much evidence as it considers necessary and the Tribunal is not required to give reasons if it rejects any evidence. This power of controlling the evidence is inherent In every Court and on account of this restrictive power of the Tribunal it cannot be said that it is not charged with a duty to decide disputes in a 'Judicial manner' as the term is explained by the Supreme Court. The expression 'during the hearing of the case' in Clause (e) of Sub-section (2) of Section 23 clearly implies that the parties are entitled to be heard in support of their 'Claim. As the Tribunal is bound to receive evidence and to hear the parties, it clearly Imports an obligation on the part of the Tribunal to decide the matter on the consideration of the evidence adduced before it. Then there is a general provision with regard to the application of the C.P.C. Consequently proceedings before an Election Tribunal constituted under the U. P. Municipalities Act approximate in all essential matters to proceedings in Civil Courts and the Tribunal possesses the necessary attributes of a Court.

11. The learned counsel, appearing in support of the contention that the Magistrate could take cognizance of the offences on the charge sheet submitted by the police, also placed reliance oh the decision of the Supreme Court referred to above. He argued that the Supreme Court in holding that a returning officer under the Representation of the People Act was not a Court, pointed out that there was a marked difference between the procedure which a returning officer was entitled to follow in dealing with objections filed before him and the procedure that was prescribed for the trial of election petition by an Election Tribunal under Sections 90 and 92 of the Act. The learned counsel further developed his argument by urging that the Supreme Court field the proceedings before an Election Tribunal under the 'provisions of the Representation of the People Act, to approximate in all essential matters to proceedings In Civil Courts, because the tribunal has to follow the procedure prescribed under Sections 90 and 92 of the

Act and as the provisions of Section 23 of the U. P. Municipalities Act are not identical with the provisions of Sections 90 and 92 of the Representation of the People Act, proceedings before an Election Tribunal under the U. P. Municipalities Act cannot be deemed to approximate in all essential matters to proceedings In Civil Courts.

12. This argument requires a comparison of Section 23 of 1he U. P. Municipalities Act with Sections 90 and 92 of the Representation of the People Act. Section 90 provides for procedure before an Election Tribunal under the Representation of the People Act. Sub-section (1) says that an election petition shall be tried by the tribunal, as nearly as may be, in accordance with the procedure prescribed under the Code of Civil Procedure to the trial of suits, provided that the tribunal shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence Is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

Sub-section (2) of Section 90 provides for the application of the Indian Evidence Act. Other Sub-sections of Section 90 provide for joining a candidate as respondent and for amplification of particulars of corrupt practices and contain a direction that a petition should be tried as expeditiously as possible. Section 92 enumerates the powers of the Tribunal in matters of discovery and inspection, enforcing the attendance of witnesses, compelling the production of documents, examining witnesses on oath, granting adjournments, reception of evidence taken on affidavit and issuing commissions for the examination of witnesses.

Although there is no section in the U. P. Municipalities Act corresponding to Section 92 of the Representation of the People Act enumerating the powers of the Tribunal in the matters of discovery and inspection, issuing of commissions etc. yet there are clear provisions in the U. P. Municipalities Act investing an Election Tribunal under the Act with all those powers. Section 24, which deals with powers of Election Tribunal, lays down that a tribunal shall have the same powers and privileges as a judge of a civil court and may, for the purpose of serving a notice or issuing any process or doing any such other act, employ any peon or other officer.

Section 23 of the U. P. Municipalities Act provides for the application of the C. P. C. before an Election Tribunal in so far as they are not inconsistent with the provisions of the U. P. Municipalities Act. The provisions relating to discovery and inspection, summoning of witnesses, issuing of commissions for examination of witnesses as contained in the C. P. C. are not inconsistent with any provision of the U. P. Municipalities Act or rules framed thereunder. An Election Tribunal under the U. P. Municipalities Act, therefore, possesses all the powers, by virtue of the application of the provisions of the C. P. C. to proceedings pending before it as are contained in Section 92 of the Representation of the People Act.

Provisions of Section 23 are in substance similar to those of Section 90 of the Representation of the People Act. In fact there is no basic difference between the provisions of Section 23 of the U. P. Municipalities Act and those of Section 90 of the Representation of the People Act. The only difference between the two sections is that under Section 90 of the Representation of the People Act an Election Tribunal has to record its reasons in writing where it refuses to examine any witness, but no such duty is imposed on an Election Tribunal under Section 23 of the U. P. Municipalities Act. This difference does not affect the character of an Election Tribunal under the U. P. Municipalities Act as a Court. Every Court has Inherent power to regulate and control evidence in proceeding before it. The duty to record reasons for refusing to admit any evidence is not an essential feature of a Court. Thus there is no material difference in the provisions of Sections 90 and 92 of the Representation of the People Act and those of Section 23 and Section 24 of the U. P. Municipalities Act.

13. Another submission of the learned counsel, appearing in support of the Magistrate's order, is that the term 'Court' in Section 195, Cr. P. C. means a Civil, Criminal or Revenue Court and does not refer to an Election Tribunal. An Election Tribunal cannot, therefore, be deemed to be a Court within the meaning of Section 195, Cr. P. C.

14. Sub-section (2) of Section 195, Cr. P. C. runs thus:

(2) In Clauses (b) and (c) of Sub-section (1), the term 'Court' Includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar

under the Indian Registration Act, 1877'.

The right to be elected to a particular office is a civil right and a Tribunal which deals with disputes relating to that right is essentially a Civil Court Even assuming that an Election Tribunal is not a Civil, Revenue or Criminal Court, it does not follow that the word 'Court' as used in Section 195 (1) (b) and (c) is confined to these three classes of Courts. In fact the use of the word 'includes' shows that the meaning of the 'Court' has been deliberately made wider than the three categories mentioned above.

15. Lastly it was submitted by the learned counsel appearing in support of the Magistrate's order taking cognizance of the offences, that the question arising in the instant case is directly covered by an earlier decision of this Court. He referred to Har Prasad v. Emperor, AIR 1947 AN' 139. In that case it was held that an Election Judge under Section 24 of the U. P. Municipalities Act is not a Civil, Revenue or Criminal Court within the meaning of Section .195, Cr. P. C. and hence has no power to make a complaint under Section 195 (1) in respect of an offence committed in election proceedings before him. The learned counsel argued that the decision in the instant case should follow the earlier decision of this Court, or in case it was considered that the earlier decision was not correct, the matter may be referred to a larger Bench.

16. No doubt in AIR 1947 All 139 (supra), it was held that an Election Judge under the provisions of the U. P. Municipalities Act was not a Court within the meaning of Sections 195 and 476, Cr. P. C. Yorke, J. who decided the case, observed thus:

'These two sections (476 and 195, Cr. P. C.), which are in a sense inter-connected, speak of a Civil, Revenue or Criminal Court and it certainly appears to me that an Election Judge cannot be brought within the ambit of the term 'Civil, Revenue or Criminal Court'.'

No reasons are mentioned in support of the view. That decision was given at a time when the decision of the Supreme Court laying down the essential features of a Court was not there. The law on the point has now been laid down by the Supreme Court. In view of the decision of the Supreme Court no doubt can any

longer be entertained as to the essential features and necessary attributes of a Court. The only questio'n that has to be determined in the present case is if an Election Tribunal constituted under the U. P. Municipalities Act fulfils the test of a Court as laid down by the Supreme Court. As discussed above, a tribunal under the U. P. Municipalities Act is charged with a duty to decide disputes in a 'judicial manner'. Parties to an election petition are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. The tribunal, after concluding the inquiry, declares the rights of parties in a definitive Judgment and the proceedings during the inquiry approximate in all essential matters to proceedings in a Civil Court. It is, therefore, a Court and cognizance of offences in connection with proceedings before the tribunal cannot be taken by the Magistrate except on complaint by the tribunal.

17. The decision in the case is being based on the ruling of the Supreme Court. It is, therefore, not necessary to refer the matter to a larger Bench, although a different, view was taken by this Court in AIR 1947 All 139. That case was decided when the decision of the Supreme Court was not there for guidance.

18. The reference is accepted and the proceedings before the Magistrate are quashed.

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