

Jadumani Behera Vs. Jadumani Sahu

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Court : Orissa

Decided On : Dec-03-1951

Reported in : AIR1952Ori244

Judge : Jagannadhadas, C.J. and ;Narasimham, J.

Acts : [Orissa Municipal Act, 1950](#) - Sections 12(2), 12(3), 21, 22, 23, 24 and 37; [Constitution of India](#) - Articles 226, 227, 227(1) and 245(1); ;Code of Civil Procedure (CPC) ; Election Rules, 1950 - Rules 23(1), 53(1) and 60

Appeal No. : M.J.C. No. 98 of 1951

Appellant : Jadumani Behera

Respondent : Jadumani Sahu

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : H. Mohapatra, ;B. Mohapatra, ;R.N. Mishra and ;Srinivas Mishra, Advs.

Disposition : Petition allowed

Judgement :

Narasimham, J.

1. This is a petition under Articles 226 and 227 of the Constitution against an order passed by the District Judge of Cuttack as a Tribunal under the [Orissa Municipal Act, 1950](#), dismissing the petitioner's election petition for a declaration that he was validly elected as a Municipal Councillor in ward No. 1 of Cuttack Municipality.

2. The [Orissa Municipal Act, 1950](#) was brought into force in Cuttack Municipality on 16.4.51 and elections were held under that Act and the Municipal Election Rules 1950 framed thereunder. The Municipality was divided into several wards as required by Section 12 (2) and the present dispute is in respect of the election held in ward No. 1. That ward consists of two seats, one of which was set apart as a reserved seat for members of scheduled tribes and castes (see Section 11 read with Section 12 (2) (b)). The polling took place on the 20th of April, 1951. The petitioner, the opposite party Jadumani Sahoo, and one Naba Sethi were some of the candidates who offered themselves for election from ward No. 1. The petitioner and Naba Sethi are admittedly members of the scheduled castes and opposite party Jadumani Sahu is not a member of the scheduled castes or tribes. The District Magistrate of Cuttack as the Election Officer counted the votes on 23-4-51 and found that the aforesaid three candidates secured the following number of votes : --

Naba Sethi ... 664Jadumani Behera ... 592Jadumani Sahu ... 505

He then declared Naba Sethi to be validly elected to the reserved seat in ward No. 1. Thereafter, he felt some doubt as regards the declaration of results for the non-reserved seat and consulted the Government in his letter No, 578/Election, dated 24-4-51. The Government in their letter No. 3167 L. S. G., dated 26-4-51 gave him their own interpretation of Rule 53 which was binding on him under Rule 60. Then he declared that opposite party Jadumani Sahu was duly elected as a Councillor for the non-reserved seat of ward No. 1. He rejected the claim of the petitioner chiefly because though he got more valid votes than Jadumani Sahu, he, by his own declaration in the nomination paper and subsequent correspondence had declared his intention of standing for the reserved seat only in ward No. 1. The District Judge, as a Tribunal, also took the same view and further held that in any case the interpretation given by the Government under Rule 60 on a reference

made by the Election Officer was binding on the District Judge also.

3. The Orissa Municipal Act contains adequate provisions for the hearing of election petitions against elections held under the Act. Section 21 says that the District judge shall be the Tribunal and that he shall exercise his jurisdiction as *persona designata* and not as a Judge of a Civil Court. But Sections 22 and 23 require that he should follow the provisions of the Civil Procedure Code and that he should have the same powers and privileges as a Judge of a Civil Court while hearing election petitions, subject of course to the provisions of the Act and the rules that may be framed thereunder. He is not required to record the evidence in full and it is provided that there shall be no appeal or revision against the decisions of the Tribunal. The finding of the Tribunal is binding on all parties and it is further provided in Section 37 that no election of the Councillor shall be called in question in any court except under the procedure provided by this Act and the rules, if any, made thereunder, and no orders passed by the Tribunal shall be called in question in any Court. The whole scheme of the Act is thus to make the District Judge, in his capacity as the Tribunal, the final authority for decision of election disputes under the Act and to expressly bar the jurisdiction of any Court to interfere with his order.

4. The learned Advocate General, therefore, raised a preliminary objection to the hearing of this petition on the ground that this Court had no jurisdiction under Articles 226 and 227 to interfere with the decision of the Tribunal. But the provisions of those two Articles of the Constitution must necessarily override the provision of any law made by a State giving finality to the decision of any Court or Tribunal. The power of a State to make laws is derived from Article 245(1) of the Constitution which says 'subject to the provision of this Constitution....the Legislature of a State may make laws for the whole or any part of the State'. The Orissa Municipal Act was made by the Orissa Legislature in exercise of this power and as the power itself is subject to the provisions of the Constitution, it necessarily follows that the provisions of the Orissa Municipal Act are subject to Articles 226 and 227 of the Constitution.

5. Clause (1) of Article 227 confers on a High Court power of superintendence over all Courts and Tribunals throughout the territories where that High Court exercises jurisdiction. A question arises as to whether the District Judge while exercising jurisdiction as *persona designata* is a 'Tribunal' so as to be under the superintendence of the High Court under Clause (1) of Article 227. In deciding this question I do not attach importance to the label of 'Tribunal' given to the District Judge in Sub-section (2) of Section 21 of the Orissa Municipal Act. The powers conferred on him and the procedure which he is required to follow in Sections 22, 23 and 24 leave no room for doubt that he has not only 'all the trappings of a Court' but his functions are wholly judicial. His jurisdiction to hear an election petition arises out of an application of a party; he is required to hear both sides; he has powers of taking evidence (though in a summary manner) enforcing the attendance of witness, compelling the production of documents, issuing commissions etc.; and his decision is final and binding on all concerned. Except for the fact that his decision is not subject to appeal or revision and that he need not record the evidence of witnesses in full but may merely make a memorandum of the evidence, in other respects there is hardly any difference between his powers as a Tribunal on the one hand and his powers as a Civil Court on the other. Apparently he was conferred jurisdiction as *persona designata* with a view to avoid the interference of the High Court either by way of appeal or revision under the provisions of the Civil Procedure Code. But there seems to be absolutely no doubt that he performs wholly judicial functions very much like a regular Court.

6. The expression 'Tribunal' has been defined in the Oxford Dictionary as 'A Court of justice; a judicial assembly; place of judgment or decision; judicial authority'. As early as 1892 Fry, L. J. in 'Royal Aquarium and Summer and Winter Garden Society v. Parkinson, (1892) 1 QB 431, pointed out that the expression 'tribunal' has not, like the word 'Court' an ascertainable meaning in English law.

In that case the main question for decision was whether defamatory statements made in the course of proceedings before a Court or a Tribunal were absolutely privileged. Lord Esher, M. R. while emphasising that the said privilege was based on public policy said

'It is applicable to all kinds of Courts of Justice; but the doctrine has been carried further; and it seems that this immunity applies wherever there is an authorised inquiry which, though not before a court of Justice, is before a tribunal which has similar attributes....In the case of DAWKINS v. LORD ROCKBY', (1876-45 LJ QB 8) the doctrine was extended to a Military Court of enquiry. It was so extended on the ground that the case was one of an authorised inquiry before a tribunal acting judicially, that is to say, in a manner as nearly as possible similar to that in which a Court of Justice acts in respect of an inquiry before it.'

This passage seems to indicate that an authority which conducts an inquiry in a manner or as nearly as possible similar to that in which a Court of Justice acts and which has attributes similar to those of Court of Justice is a 'tribunal'. In Clause (1) of Article 227 the words 'Courts' and 'Tribunals' occur in juxtaposition and the marginal heading says 'Powers of superintendence over all 'Courts' by the High Court'. Even if the well-known ejusdem generis interpretation is given, the expression 'tribunal' in Article 227(1) would undoubtedly include any authority acting judicially and having attributes similar to those of a Court though it may not, strictly speaking, be a Court. The recent decision of the Supreme Court in 'BHARAT BANK LTD. Delhi V. Employees Of BHARAT BANK LTD., 1950 SCR 459, dealing with the interpretation of the same expression occurring in Article 136 is a valuable guide. In that case the question for consideration was whether an Industrial Tribunal was a 'tribunal' within the meaning of Article 136. There was difference of opinion amongst their Lordships of the Supreme Court as to whether a tribunal would include not only a purely judicial tribunal but also a tribunal of a quasi-judicial or administrative nature. But there was no difference of opinion as regards the applicability of that expression to authority invested with purely judicial functions. I may quote the following passages from the judgment.

'Per Kania C. J. 'In my opinion, the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a Court.'

Per Fazl Ali J. 'I take it to be implied that before an appeal can lie to this Court from tribunal it must perform some kind of judicial function and partake to some

extent of the character of a Court.'

Per Mahajan J. 'The intention of the Constitution by the use of the word 'tribunal' in the Article seems to have been to include within scope of Article 136 tribunals adorned with similar trappings as a Court but strictly not coming within that definition.' '

7. As to what is a judicial decision as distinct from a purely administrative decision is indeed a difficult question for determination. But the following passage in 'COOPER v. WILSON', (1937) 2 K.B. 309 at p. 340, cited with approval in the aforesaid Supreme Court decision is worth quoting.

'A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.'

All the four requisites laid in the aforesaid passage are fully applicable to the decision of the District Judge, Moreover, his decision is made binding on all concerned and is not subject to approval of any other authority as was the case in respect of the decision of an Industrial Tribunal constituted under the Industrial Tribunals Act. Again his decision has nothing to do with considerations of policy and has thus not got the following common characteristic of so-called administrative tribunals, namely, 'the ultimate decision may be determined not merely by the application of legal principles to ascertained facts but by considerations of policy also. Per Lord Simons in 'LABOUR RELATIONS BOARD V. JOHN EAST IRON WORKS LTD.', (1949) AC 134 at p. 149 (PC).

8. There seems thus no doubt that a District Judge deciding an election dispute under the Orissa Municipal Act has all the trappings of a Court, discharges purely judicial functions and holds the enquiry in a manner as nearly as possible as that of a Court though by virtue of the express provision of that Act he may not be functioning as a Civil Court. He is clearly a 'tribunal' and as such comes under the powers of superintendence of this Court under Article 227(1) of the Constitution.

9. The next question is whether the power of superintendence under Article 227(1) includes judicial superintendence also or whether it is limited to administrative superintendence only. Clause (1) of Article 227 corresponds to Sub-section (1) of Section 224 of the Government of India Act, 1935 which contained the marginal heading 'administrative Functions of the High Court' whereas in the marginal heading of Article 227 (already quoted) there is no reference to 'administrative functions'. Moreover, Sub-section (2) of Section 224 of the Government of India Act was as follows.

'Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision.'

The necessity for inserting that sub-section arose because on a construction of a similar provision (section 105 of the Government of India Act, 1915) the various High Courts of India had assumed judicial superintendence also over the decisions of subordinate Courts. By inserting Sub-section (2) in Section 224 of the Government of India Act and by the express use of the words 'administrative functions' in the marginal heading, the Parliament made it clear that the power of superintendence under Section 224 would not include judicial superintendence. But the framers of the Constitution have deliberately omitted to insert a provision similar to Sub-section (2) of Section 224 in Article 227. The Marginal heading of that article has also been radically recast. The position, thus seems to have reverted to what it was prior to the passing of the Government of India Act, 1935 and the judicial superintendence exercised by the High Courts of India over all subordinate Courts prior to 1935 has been restored by the Constitution. Apart from such restoration, Clause (1) of article 227 has been widened so as to confer such

power not only over 'Courts' subordinate to the High Court but also over all 'tribunals' throughout the territories in relation to which the High Court exercises jurisdiction. I am, therefore, satisfied that this Court has the jurisdiction in exercise of its powers of judicial superintendence under Article 227(1), to examine the decision given by the District Judge and to pass appropriate orders thereon. This view of Article 227(1) has been taken by almost all the High Courts of India and my attention has not been drawn to any decision to the contrary. The Calcutta High Court reiterated this view in 'BIMLA PROSAD v. STATE OF WEST BENGAL', AIR 1951 Cal 258. In A.R. SARIN v. B.C. PATIL', AIR 1951 Bom 423, a similar view was taken. The Nagpur High Court in 'SHRIDHAR v. COLLECTOR OF NAGPUR', AIR 1951 Nag 90; the Assam High Court in 'UNION OF WORKMEN, R. S. N. ETC. v RIVER STEAM NAVIGATION CO., LTD.', AIR 1951 Assam 96, the Hyderabad High Court in 'MOHD. BAQAR v. HYDRABAD STATE', AIR 1951 Hyd 82 and the Punjab High Court in 'RASHID AHMED v INCOME TAX INVESTIGATION COMMISSION', AIR 1951 Punj 74, have also taken the same view. There seems to be thus complete unanimity amongst almost all the High Courts of India regarding the scope of the power of superintendence under Clause (1) of Article 227.

10. The applicant invoked the jurisdiction of this Court under Article 226 also. In view of my decision that the District Judge is a judicial tribunal there can be no doubt that this court has power under Article 226 to issue the writ of certiorari if the other conditions necessary for the issue of such a writ are found in the present case. But Mr. Mohapatra on behalf of the applicant relied mainly on the powers of the Court under Article 227(1) and I think, for the purpose of this case, that Article is more appropriate than Article 226.

11. The language used in Article 227(1) is undoubtedly very wide. But the decision under the similar provisions of the Government of India Act, 1951 and the previous Acts relating to the Govt. of India have made it clear that the power of superintendence does not include any unlimited prerogative to correct all species of hardship and that the said phrase has gathered a legal force and signification. In an old Full Bench decision of the Bombay High Court reported in 'SHIVA NATHJI v. (sic) KASINATH', 7 Bom 341, there is complete review of the previous

decisions regarding the general principles governing the exercise by the High Court of its visitorial or superintending power. In 'MAHADAJI GOVIND v. SONU', 9 Bom H. C. R. 249, Sargent C. J. pointed out:

'...the Court has, in its discretion consistently refused to exercise its extraordinary jurisdiction, except in cases which disclose some grave and patent error not otherwise to be remedied.'

The following passage from the aforesaid Full Bench decision is worth quoting inasmuch as it has special application to the decision of an inferior Court which the law expressly declares to be final.

'What it can exact is a real endeavour, in good faith, to apply the law. Such an endeavour is an actual application of the law, the application intended (as the possibility of error could not have been overlooked) except in cases of some such extraordinary misconception as cannot be deemed to fall within the purpose of the law at all. Such instances may be negative, as well as positive that is, there may be a refusal of relief, or of action, by the inferior Courts on grounds implying a total misconception and misapplication of the law in its limiting operation. There may also be instances in which both kinds of blunders have been combined. When these stand manifestly quite outside the positive or the negative sphere of the law, they are but in semblance an application of the law, and the High Court must annul what is obviously a mere pretext or a perversion.'

It was further pointed out that

'where there was an obviously perverse use of jurisdiction or authority which could not be justified even on the premises assumed or found by the Judge'

interference by the High Court was justified.

The Calcutta view as regards the limit of interference under the powers of judicial Superintendence was restated by Rankin C. J. in 'MANMATHA NATH v. EMPEROR', AIR 1933 Cal 132. In MT. MAHARUP KUER v. MAHABIR SINGH', AIR 1928 Pat 111, the learned Judge slightly widened the scope of the power by saying that where there is a denial of justice due to the order being bad on the

face of it, interference may be justified. In *ISRAIL KHAN v. THE STATE*, AIR 1951 Assam 106, it was pointed out that though the High Court will not constitute itself a Court of appeal and substitute its own view on findings of fact, it may interfere under Article 227 with a view to avoid or prevent obvious miscarriage of justice where the lower Court has acted in abuse of its jurisdiction.

12. Though there may be some difference of opinion as to where the exact line is to be drawn between the power of a High Court under Article 227(1) and the power of a High Court in revision, there seems no doubt that where the tribunal has committed a grave and patent error which cannot be otherwise remedied and where its order is based on such extraordinary misconception and misapplication of the law as cannot be deemed to fall within the purpose of the law at all, interference by the High Court would be justified.

13. Before examining the judgment of the District Judge in the light of the aforesaid principles I would briefly describe the relevant provisions of the Orissa Municipal Act and the Municipal Election Rules dealing with the nomination of candidates for election and the declaration of results by the Election Officer. Section 11 read with Clause (b) of Sub-section (2) of Section 12 empowers the Government to reserve certain seats for members of the scheduled tribes and castes in some of the wards of the Municipality. Sub-section (3) of Section 12 runs as follows :

'The wards, referred to in Clause (b) of Sub-section (1) shall return, in addition to councillors for such reserved seats, one councillor for a non-reserved seat.'

In every ward there is only one non-reserved seat to which all classes of candidates -- whether members of the scheduled castes or tribes are eligible. There is no provision in the Municipal Act disentitling a member of the scheduled castes from standing for non-reserved seat unless he expressly declares his intention of so standing. The Act is intended to confer a special benefit on members of the scheduled castes by reserving a seat for them in some of the wards and was never meant to disentitle them from the privileges of an ordinary candidates to stand for a non-reserved seat. Similarly the Municipal Election Rules also do not say, either expressly or by implication, that a member of scheduled

castes must declare his intention of standing for a non-reserved seat. Rule 23 says that the nomination of every candidate shall be made in Form VIII. Para 1 of Form VIII (on the construction of which this case depends) may be quoted in full.

'FORM VIII

(See Rule 23 (1))

Nomination Paper.

1 Name or number of the ward for which the candidate is nominated (mention here whether the nomination is for a reserved seat, if any)'

Some misconception has arisen chiefly because of the words put in brackets in para. 1 of the form. The learned District Judge and the state Government appear to have been under the misconception that by virtue of the aforesaid words a member of the scheduled castes should state expressly whether he stands for the reserved seat only or else whether he stands both for the reserved seat and non-reserved seat, and that unless he makes it clear in the nomination form that he stands for both the seats, he cannot claim to be elected for the non-reserved seat even though he might have polled a larger number of votes than a person who is not a member of the scheduled castes. It is true that the words in parenthesis are somewhat ambiguous and might have been drafted in a better form. But the District Judge overlooked the fact that neither the Act nor the Rules contemplate nomination for a non-reserved seat as such. The nomination is only for a ward and under Sub-section (3) of Section 12 of the Act only one councillor can be returned for a non-reserved seat in a ward. Therefore, when a candidate files his nomination for a ward, it necessarily follows that he is standing for the non-reserved seat. No further declaration of his intention to stand for that seat is necessary. If he wishes to stand for the reserved seat also he is required to make the necessary entry against the words in parenthesis in Form VIII.

The entries made by the applicant (translated in English) are, 'Ward No. 1 of Cuttack Municipality (Scheduled caste reserved seat)'. The District Judge has construed those entries as expressing the applicant's intention of not standing for

the non-reserved and for ascertaining his intention, the Judge has taken into consideration the intimation given by the applicant to the Election Officer regarding the colour of the ballot box assigned to him. Such a construction is based on a complete misconception of the Act and the Rules and would result in imposing a disability on a member of the scheduled castes, whereas the scheme of the Act is to confer additional benefits on him. A candidate who is not a member of the scheduled castes is not required to state that he stands for a non-reserved seat in a ward. There is no reason why a member of the scheduled castes alone should be required to make such a statement. Apparently the sole object of the makers of the rules in inserting the words in parenthesis in para 1 of Form VIII was to apprise the Election officer of the fact that a particular candidate was a member of the scheduled castes or tribes and consequently entitled to stand for the reserved seat also. Those words could not be stretched to such an extent as to compel a member of the scheduled castes to say expressly that he also stands for a non-reserved seat and to disentitle him on his failure to give his choice in clear terms. Any such instruction in Form VIII will obviously be ultra vires the Act and the Rule. This will be clear if Sub-rule (1) of Rule 53 which deals with the declaration of results of an election be examined. That rule is as follows :

'After the Election Officer has completed the scrutiny and counting of votes, he shall prepare a return of the result of the polling in Form XVII and shall, subject to the provisions of Rule 57, declare that the candidate or candidates to whom most valid votes have been given has or have been duly elected : Provided that if one or more seats are reserved for Scheduled Tribes or scheduled Castes the Election officer shall first declare the candidate or candidates belonging to that community to whom the largest number of votes has been given to be elected to such reserved seat or seats.'

The proviso to that sub-rule says that if in a particular ward some seats are reserved for scheduled tribes or scheduled castes the Election officer shall first declare the candidates belonging to that community to whom the largest number of votes has been given to be elected to such reserved seats. Thus after applying the proviso the Election Officer should follow the provisions of the main sub-rule and declare that candidate to be elected to whom most valid votes have been

given. That main sub-rule does not say that a member of the scheduled castes to whom most valid votes have been given cannot be elected unless he says in express terms that he stands for the non-reserved seat also. It is of a general nature applicable to all candidates (whether members of the scheduled castes or not) and the Election Officer is bound to follow it and he is not required to enter into an investigation about the intention of the candidate.

14. A question arises as to what the Election Officer should do if a member of a scheduled caste expressly says in the nomination paper that he is standing only for the reserved seat and not for the non-reserved seat also. Such a choice is not recognised either in the Act or the Rules and if pressed by the candidate, cannot be recognised by the Election Officer who under Sub-rule (1) of Rule 53 is bound to declare him elected for the non-reserved seat also if he obtains most of the valid votes after the declaration of results for the reserved seats has been made in pursuance of the proviso to that sub-rule. It is, doubtless, open to that candidate after the results are announced, to resign his seat by way of implementing his own choice. But that is his own lookout and the Election Officer has nothing to do with it. To cite an apt illustration : a member of the scheduled castes may say that he would not be a councillor unless he secures, say, minimum of one thousand votes in a ward. This choice of his may be expressed either in the nomination paper itself or in subsequent letters addressed to the Election Officer before the holding of the Elections. Suppose when the votes are counted it is found that after the declaration of results for the reserved seat, the said member of the scheduled castes obtains the largest number of votes in the ward, but the total number of votes that cast for him is, say, only 800. The Election Officer is bound to declare him to be duly elected and he cannot pin him down to his choice on the ground that the minimum number of votes which that candidate declared to be necessary for his election has not been obtained. Any choice given by the candidate other than that recognised either by the Act or by the Rules is extra-statutory and cannot, be taken to account by the Election Officer who is bound to comply strictly with the provisions of Rule 53. This question is however academic because the applicant's declaration in the nomination form (Form VIII) cannot by any stretch of imagination be construed as expressing his positive intention of not standing for the non-reserved seat. The finding of the District Judge is of a negative type,

namely that the applicant did not mention that he was a candidate for the non-reserved seat, and that his nomination form should be construed to mean that he was a candidate for the reserved seat only.

15. The learned District Judge started with the fundamental misconception that such candidate is required to file a nomination paper for the non-reserved seat in a ward. I have already shown that the nomination is for a ward and not for a seat in a ward. Having thus misconceived the true scope of Rule 23 (1) read with Form VIII of the Election Rules the learned Judge thought that the applicant was not entitled to stand for the non-reserved seat even though he polled a large number of votes than any candidate not belonging to the scheduled castes or tribes. He also attached much importance to the reply sent by the Government in their letter No. 3167-L-S-G. dated the 28th April, 1951 to a query made by the Election Officer in his letter No. 578 -- Elections, dated the 24th, April 1951. The Election Officer felt some doubt about the declaration of results in the present case and sought the assistance of the Government under Rule 60. The Government in their letter mentioned above instructed that the applicant should not be declared elected for the non-reserved seat in that ward. The Election Officer was undoubtedly bound to follow the Government's instructions. But I am indeed surprised to find how the District Judge, sitting as an Election Tribunal, thought that he was also bound by the said instructions. Sub-rule (1) of Rule 60 says :

'If any question arises as to the interpretation of these rules otherwise than in connection with an inquiry held under the rules for the decision of disputes as to the validity of an election the question shall be referred to the State Government whose decision shall be final.'

The finality of the Government's decision under that rule is expressly declared to be inapplicable where there is an inquiry held under the rules for the decision of disputes as to the validity of an election. The dispute about the validity of an election is required to be taken up before the Tribunal and the Act requires the Tribunal to follow the provisions of the Act and the Rules framed thereunder. The rules made by the Government under Sections 22 and 23 regulating the procedure to be followed by the Tribunal have not been shown to us. But in any case the

phrase 'enquiry under the rules' in Rule 69 (1) must in the context mean the enquiry held by the Tribunal under Sections 22, 23 and 24 of the Act and the rules (if any) made under the Act. The District Judge has observed:

'The interpretation referred to above was given by the Government before there was any enquiry under the rules for the decision of any dispute, and as such I am of opinion that the interpretation as given by the Government is final and cannot now be questioned.'

This construction of Sub-rule (1) of Rule 60 is not only wrong but quite perverse. In considering the finality of the Government's decision the question is not whether that decision was given before or after the commencement of an enquiry or before any other officer. The phrase 'in connection with an enquiry' occurring in that sub-rule refers to the form to which the bar of finality would apply and has no concern with the time factor. If therefore, the District Judge under the erroneous view that he is bound by the decision given by the Government in their letter No. 3167-L.S.G. dated the 28th April 1951 refuses to give relief to the petitioner, it is obvious that he has failed to exercise his jurisdiction under the Act on a misconception of his powers. There is no doubt that the decision of the Government has influenced him very much and he has failed to examine independently the provisions of Sub-sections (2) and (3) of Section 12 of the Act and Rule 53 (1) of the rules with a view to decide whether the Election Officer is required to ascertain whether a candidate has expressly declared his intention of standing for a non-reserved seat.

16. The reservation of seats for members of the scheduled castes in plural constituencies has been a well-recognised feature of the elections since the passing of the Government of India Act of 1935 and it will be useful to compare the following analogous provisions in Rule 81 of the Orissa Legislative Assembly Electoral Rules (Part II), 1936 (page 249 of the Orissa Election Manual).

81. 'Declaration of result : ' When the counting of votes has been completed, the Returning Officer shall forthwith declare to be elected the candidate or candidates, as the case may be, to whom the largest number of votes has been given

Provided that -

(1) if a seat is reserved for a member of the scheduled castes or for a representative of the backward tribes, the Returning Officer shall first declare that one of the qualified candidates for such reserved seat to whom the largest number of votes has been given to be elected to fill it; and

(2) thereafter the candidates, other than the candidate declared to be elected under Clause (1) who has secured the largest number of votes whether such a candidate is a member of the scheduled castes or backward tribes or not.'

Under this rule it is made clear that after declaring the result in respect of the reserved seat, the Election Officer should declare as elected that candidate who has secured the largest number of votes whether such a candidate is a member of the scheduled castes or not. Sub-rule (1) of Rule 53, Municipal Election Rules is not expressed in such clear terms but if the two rules are carefully compared it will be noticed that, in substance, they are identical. The proviso to Sub-rule (1) of Rule 53 of the Election Rules corresponds to para 1 of the proviso to Rule 81 of the Orissa Electoral Rules and the main part of Sub-rule (1) of Rule 53 of the Municipal Election Rules corresponds to para 2 of the Proviso read with the main part of Rule 81. The words 'whether such a candidate is a member of the scheduled castes or backward tribes or not' have been put in the latter rule by way of abundant caution and though those words are not found in Sub-rule (1) of Rule 53 of the Municipal Election Rules, the expression 'candidate' in the absence of any other qualifying words, must necessarily mean a candidate whether a member of the scheduled castes or not. The same principle has been followed in Section 54 of the Representation of the People Act, 1951 passed by the Parliament for the coming election to the State Legislature and the Parliament. The illustration given to Sub-section (4) of Section 54 of that Act is instructive. I am not for a moment suggesting that the District Judge in hearing the election petition was required to construe Rule 53 of the Municipal Election Rules in the light of the provisions contained in Rule 84 of the Orissa Legislative Assembly Electoral Rules (Part II), 1936. I am only emphasising that reservation of seats for members of the scheduled castes is a well-recognised feature in the elections since the passing of the Government of India Act, 1935 and there can be no question of disentitling a member of a scheduled caste from getting elected for a non-reserved seat unless

he expressly declares in the nomination paper that he stands for that seat also. I have already shown that the relevant provisions of the Orissa Municipal Act when construed with Rule 53 of the election Rules lead to the same result as that envisaged in Rule 81 of the Orissa Legislative Assembly Electoral Rules (Part II) 1936.

17. To sum up, the District Judge's decision in this case is based on a fundamental misconception regarding the right of a scheduled caste candidate to stand for a non-reserved seat in a ward. He was under the erroneous impression that a member of the Scheduled castes was not eligible to stand for a non-reserved seat unless he expressly declared his intention to so stand in the nomination paper. He also completely misconceived the effect of the decision given by the Government to the Election Officer under Rule 60(1) of the Municipal Election Rules and thought that it was binding on him also. His approach to the whole question was thus warped by a feeling that he could not exercise his independent judgment in deciding the various questions of law involved in the case. His decision is declared final by Section 37 of the Orissa Municipal Act and the petitioner has no other remedy. Under these circumstances the strict tests laid down in para 12 of this judgment for interference under Article 227(1) of the Constitution have been satisfied and this is a fit case for setting aside the order of the District Judge.

18. The learned Advocate General submitted that this Court should not pass final orders and that the case may be remanded to the District Judge for disposal in the light of the decision given by this Court. I would have accepted this suggestion if there was any further question to be decided by the District Judge. But, as already pointed out, the facts are all admitted. After the declaration of Naba Sethi as having been duly elected for the reserved seat in ward No. 1 of Cuttack Municipality, the petitioner though a member of the Scheduled Castes, was entitled to be declared elected for the non-reserved seat in that ward because he polled the largest number of valid votes. There can be no question of holding a fresh election because the finding of the District Judge (which was not challenged before this court) is that there was no material irregularity in the conduct of the elections. Nothing more remains to be done except to declare that the petitioner is validly elected and for this purpose it seems wholly unnecessary to remand the

case to the District Judge. Moreover the petitioner has been deprived of his rights as a Municipal councillor for nearly seven months and it is not fair that further delay should be caused in the exercise of his rights.

19. I would therefore in exercise of the powers under Clause (1) of Article 227 of the Constitution set aside the decision of the District Judge of Cuttack; declare the petitioner Jadumani Behera to be validly elected for the non-reserved seat in ward No. 1 of Cuttack Municipality and set aside the declaration by the Election Officer of the opposite party Jadumoni Sahu as validly elected for that non-reserved seat. The petitioner is entitled to costs of this Court. Hearing fee in this Court is assessed at two gold mohurs. No costs for either party in the Lower Court.

20. Jagannadhadas, C.J. : I am in complete agreement with the lucid judgment of my learned brother that I cannot usefully add anything thereto. It has appeared to me from the very outset that the view taken by the Government in their letter No. 3167 LSG dated the 28th April, 1951 and upheld by the learned District Judge is wholly untenable and unarguable. I must confess to a sense of surprise that a view of the law and of the rules which were meant to provide for an advantage to the scheduled castes and tribes as amounting to a disqualification has at all appealed to the authorities concerned.