

GUJARAT HIGH COURT

Dr. Chhotalal Jivabhai Patel

Vs.

Vadilal Lallubhai Mehta

Letters Patent Appeal Nos. 1, 2 and 3 of 1967

(P.N. Bhagwati, C.J. and N.K. Vakil, J.)

26/27/28.09.1967. 29.09.1967

JUDGMENT

P.N. Bhagwati, C.J.

1. These appeals under Clause 15 of the Letters Patent are directed against two orders passed by N.G. Shelat, J. in Election Petition No. 18 of 1967. The facts giving rise to these appeals are common and for the most part undisputed and they may be briefly stated as follows.

2. On 13th January 1967 the Governor of Gujarat issued a Notification under Section 15(2) of the Representation of the People Act, 1951, (hereinafter referred to as the Act) calling upon all Assembly Constituencies in the State of Gujarat to elect members to the Legislative Assembly. The dates for various stages of the election were thereafter fixed by the election Commission by a Notification issued under Section 30 and a public notice was issued under Section 31 by the Retirement', Officer inviting nominations of candidates for the election. Nomination papers for the election from the Daskroi Legislative Assembly Constituency No. 68 were accordingly filed by nine candidates. But out of them seven withdrew their candidature within the prescribed time leaving a straight contest between the remaining two candidates, namely, respondents Nos. 1 and 2. The polling for the election took place on 15th February 1967 and on 22nd February 1967 the result of the polling was announced and the first respondent was declared elected as a Member of the Legislative Assembly from the Daskroi Legislative Assembly Constituency No. 68. The petitioner who was a person entitled to vote at the election and who was, therefore, an elector within the meaning of the Explanation to Section 81 thereupon presented an Election Petition being election Petition No. 18 of 1967 in this Court under Section 81 seeking a declaration that the election of the first respondent was void on the grounds set out in the Election Petition. Several grounds were alleged in the petition and of them, two were: (1) that corrupt practice had been committed by the first respondent; and (2) that appeal was made by the first respondent to vote or refrain from voting on the ground of religion.

3. On the petition being presented to this Court it was referred to Divan J. who was the Judge to whom the hearing of the Election Petitions was then assigned by the Chief Justice and summons was directed to be issued to the respondents. There were three respondents to the petition : one was the first respondent who was declared elected, the other was the second respondent who was a candidate at the election but who had lost and the third was a candidate who was impleaded since allegations of corrupt practice were made against him. The second respondent filed his written statement on 30th May 1967 supporting the petition. The written statement of the first respondent was filed on 2nd June 1967 and in this written statement he joined issue with the petitioner in regard to the various allegations made in the petition. On the same day a written statement was also filed on behalf of the third respondent. After the pleadings were closed, the petitioner took out a summons for directions and on the summons for directions various dates were fixed amongst which was the date 24th July 1967 which was fixed for the settlement of issues. It was at this stage that an impediment came in the smooth course of the petition and certain events took place which have a considerable bearing on the determination" of the controversy between the parties.

4. On 21st July 1967 which was a Friday, being the working day immediately preceding 24th July 1967 which was a Monday, in the evening, an application for allowing amendment of the particulars of the corrupt practice alleged in the petition was presented in the office of this Court on behalf of the petitioner. A copy of the application was served on the advocate appearing on behalf of the first respondent but no such copy was served either on the second respondent or on the advocate appearing on his behalf. The application was also not notified on the List of Causes to be heard on 24th July 1967 which was published by the office of this Court in the evening of 21st July 1967. The petition was undoubtedly notified on the List of Causes but it was specifically mentioned that it was for settlement of issues. On 24th July 1967 the petition was called on for settlement of issues but since there was the application for amendment made on behalf of the petitioner, it was necessary to first dispose it of before the issue could be sailed. N.G. Shelat J. who was at the relevant time the Judge who was assigned the work of hearing Election Petitions by the Chief Justice, therefore, took up for hearing the application for amendment. The first respondent did not object to the amendments being allowed Save in respect of certain Words in Paragraph 7 and the learned Judge, therefore, proceeded to dictate an order allowing the amendments after deleting the objected words in Paragraph 7. Not right from the enhancement light the tie when the Order was being dictated by the learned Judge, neither the Second respondent to his advocate was present and it was only during the dictation of the order that Mr. J.R. Nanavati who was the advocate appearing on behalf of the second respondent entered the Court room. The learned Judge, by his order, allowed the amendments sought for in the application barring the objected words Paragraph 7 and gave the following direction: "The respondent to file His written statement within ten days in respect of the amended petition". It does not appear clearly from this direction as to whether the written statement was directed to be filed only by the first respondent or also by the other respondents but presumably the direction

contemplated the filing of the written statements by all the respondents.

5. Now the amendments which were allowed by the learned Judge contained certain allegations of corrupt practice against one Chhotalal Naranbhai Patel who was the election agent of the first respondent. But Chhotalal Naranbhai Patel was himself one of the candidates who had withdrawn and if allegations of corrupt practice were to be made against him, he was a necessary party to the Election Petition. He was however not a party to the election petition and therefore the effect of allowing the amendments was to render the election petition liable to dismissal under Section 86 by reason of non-compliance with Section 82 of the Act. The first respondent, therefore, took out a summons for Directions on the same day praying that the Election Petition be dismissed under Section 86 of the Act. The first respondent also filed a supplemental written statement in answer to the amendments. It appears that at about the same time the petitioner also realized that the petition was imperiled by the allowing of the amendments and his advocate therefore, filed a Note before the learned Judge rose for the day. It was pointed out in the Note that the order granting amendments had not yet been signed by the learned Judge and since there was some formal defect in the amendments sought by the petitioner, it was requested that the application for amendment be allowed to be withdrawn. The Summons for Directions taken out by the first respondent as also the Note filed on behalf of the petitioner were placed before the learned Judge before the conclusion of the day's work and the learned Judge set them down for hearing on the next day.

6. On the next day, that is, 25th July 1967, when these matters were called out, the second respondent who had filed an affidavit-in-reply to the Summons for Directions put forward a contention that he was not served with a copy of the application for amendment and he did not know that it was fixed for hearing on 24th July 1967 and that the order allowing the amendments was passed by the learned Judge without hearing him and it was, therefore, null and void. The Note filed on behalf of the petitioner also sought to set at naught the order allowing the amendments. The learned Judge, therefore, decided to first dispose of the Note filed on behalf of the petitioner and the contention of the second respondent before hearing the Summons for Directions.

7. Two contentions were urged on behalf of the petitioner in support of the Note. The first contention was that so long as the learned Judge had not signed the order allowing the amendments, it was open to the petitioner to withdraw the application for amendment and in support of this contention the petitioner placed reliance on a Full Bench decision of the Allahabad High Court in *Sangam Lal v. Control & Eviction Officer*¹, This Full Bench decision of the Allahabad High Court was based principally on the decision of the Supreme Court in *Surendra Singh v. State of Uttar Pradesh*², The learned Judge, therefore, proceeded to examine the decision of the Supreme Court in Surendra Singh's case and he came to the conclusion that once a judgment is dictated by the judge, the core or the substance of it cannot be altered or changed by the Judge even if the judgment is not signed and the only remedy would be by way

of resort to the Court of Appeal or revision. The learned Judge in this view of the matter expressed his respectful dissent from the Full Bench decision of the Allahabad High Court and held that since the Judgment was already dictated by him in open Court, the petitioner was not entitled to withdraw the application for amendment. The second contention urged on behalf of the petitioner was that in any event the order allowing the amendments merely granted leave to the petitioner to amend the petition and it was, therefore, open to the petitioner whether to amend or not. This contention was also rejected by the learned Judge since in his view the order allowing the amendments had the effect of making the amendments in the petition and it was not for the petitioner to carry out or to refuse to carry out the amendments. The learned Judge accordingly rejected the Note of the petitioner claiming

¹ AIR 1966 All 221

² AIR 1954 SC 194

to withdraw the application for amendment.

8. The learned Judge then proceeded to dispose of the contention of the second respondent. There were in the main three grounds on which he rejected it and those grounds were: (1) Even according to the affidavit of the second respondent, his advocate Mr. J.R. Nanavati was present in Court when the order allowing the amendments was being dictated and if he did not then draw the attention of the Court that he was not aware of the application for amendment or make his submission on behalf of the second respondent in regard to the application for amendment, it was not open to the second respondent to say thereafter that he was not aware of the hearing of the application for amendment and that the application was heard and the order passed without hearing him. The second respondent supported the petitioner in the main petition and therefore, possibly he might have remained indifferent and not paid due attention to what happened in Court; (2) The second respondent was not a necessary party to the petition and there was no prejudice caused to him when the order allowing amendments came to be passed on the application of the petitioner; and (3) the second respondent and his advocate were admittedly aware that the petition was on board on 24th July 1967 for settlement of issues and if the second respondent did not choose to remain present on that date, he could make no grievance that the application for amendment moved by the petitioner was considered by the Court and an order allowing the amendments was made on such application. The learned Judge on these grounds negated the contention of the second respondent that the order allowing the amendments was a nullity.

9. The order rejecting the Note of the petitioner and negating the contention of the second respondent was pronounced by the learned Judge on 7th August 1967 and immediately thereafter the learned Judge proceeded to sign the order allowing the amendments. Against the order allowing the amendments an appeal was preferred by the second respondent and that is Letters Patent Appeal No. 2 of 1967. The petitioner and the second respondent also preferred appeals against the order rejecting the note of the petitioner and negating the contention of the second

respondent and they are Letters Patent Appeals Nos. 3 and 1 of 1967. These appeals have now reached hearing before us.

10. At the opening of the hearing a preliminary objection was taken on behalf of the first respondent to the maintainability of these appeals and there were as many as six grounds on which the preliminary objection was based. These grounds were all directed against the applicability of Clause 15 of the Letters Patent under which the appeals were admittedly preferred and it would, therefore, be convenient at this stage to refer to Clause 15 of the Letters Patent which runs inter alia in the following terms:

"15. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act."

11. The argument of the first respondent was that Clause 15 of the Letters Patent had no application because:

(1) The Judge of the High Court who is assigned by the Chief Justice for exercise of the jurisdiction to try an Election Petition under Section 80A(2) is constituted a special tribunal for trial of the Election Petition and an order made by him in the Election Petition is, therefore, an order made by a special tribunal and cannot be regarded as a Judgment of a Judge of the High Court within the meaning of Clause 15 of the Letters Patent;

(2) Even if the Judge of the High Court exercising jurisdiction to try an Election Petition is acting as a Judge of the High Court and not as a special tribunal, an order made by him in the election Petition would still not be a judgment within the meaning of Clause 15 of the Letters Patent, since this clause is limited in its application to judgments given in exercise of such jurisdictions as are expressly mentioned in the Letters Patent themselves and does not extend to judgments given in exercise of other kinds of jurisdictions subsequently conferred on the High Court by legislation;

(3) This High Court has jurisdiction to hear an appeal under Clause 15 of the Letters Patent by reason of Section 30 of the Bombay Reorganisation Act, 1960, but under this section the jurisdiction that is inherited by this High Court is the jurisdiction existing in the Bombay High Court on the appointed day and, therefore, if any new jurisdiction is conferred on this High Court by subsequent legislation as in the present case, where jurisdiction to try an Election Petition is conferred for the first time by the Representation

of the People (Amendment) Act, 1966, an order made by a Single Judge in the exercise of such new jurisdiction would not be subject to the appellate jurisdiction possessed by this High Court under Clause 15 read with Section 30 of the Bombay Reorganisation Act, 1960.

(4) An order made by a Single Judge in an Election Petition is an order pursuant to Section 80A(2) and not a Judgment pursuant to Section 108 of the Government of India Act, 1956, so as to attract the applicability of Clause 15 of the Letters Patent;

(5) No appeal lies under Clause 15 of the Letters Patent against an order made in an Election Petition: such an appeal is excluded by necessary implication by the provisions of the Act read with Part XV of the Constitution.

(6) In any view of the case, neither order impugned in these appeals is a judgment within the meaning of Clause 15 of the Letters Patent and no appeal is, therefore, maintainable against it.

If any one of these grounds is well-founded, it would be sufficient to dispose of these appeals rendering it unnecessary to enter into the merits of the controversy between the parties and it would, therefore, be convenient to first examine the correctness of these grounds.

12. RE: GROUND (I): The question which arises for consideration under this ground is whether the Judge of the High Court trying an Election Petition is acting as a Court or as a special tribunal as distinguished from a Court. To our mind the language of the various sections in Part VI leaves no room for doubt on this point. Section 80A Sub-section (1) says that the Court having jurisdiction to try an election petition shall be the High Court. The jurisdiction to try an Election petition is conferred on the High Court by its statutory name and the prima facie and natural meaning is the language is that the jurisdiction is conferred on the High Court as a Court. Any one who would maintain that the true meaning is that the Election Petition is to be tried by a Judge of the High Court as a special tribunal and not as a Court has to face so strong a presumption in favour of the ordinary meaning of the language that, in order to succeed in his contention, he must show that other portions of the enactment relating thereto, establish beyond all reasonable doubt that his contention is correct. But if we turn to the other provisions of the Act, we find that far from displacing the presumption they, on the contrary, reinforce the conclusion arising from the presumption. Section 80A Sub-section (1) in terms refers to the High Court as the Court having jurisdiction to try an Election Petition. Section 80A Sub-section (2) provides that "Such jurisdiction", that is the jurisdiction of the High Court to try an Election Petition shall be exercised ordinarily by a single Judge of the High Court. Therefore, when the single Judge of the High Court tries an Election Petition he does so as the High Court. This position is made abundantly clear in the other provisions of the Act, for throughout the reference is made to the High Court as the Court trying the Election Petition. Vide Section 80A Sub-section (3). Section 81 Sub-section (1), Section 86 Sub-sections (1), (4), (5), and (6), Section 87, Section 95, Section 98, Section 99, Section 100, Section 101 and Section 116A. It is also significant to note that Section 92 of the pre-amendment Act which conferred on the Election Tribunal the powers

vested in a Court under the Code of Civil Procedure when trying a suit in respect of matters such as discovery and inspection, compelling the production of documents, examining witnesses on oath etc. is omitted in the Amended Act. The reason obviously is that whereas previously Section 92 was necessary since the Election Tribunal was not a Court, now such a provision is no longer necessary since the powers there mentioned would in any event be possessed by the High Court. Strong reliance was, however, placed on behalf of the first respondent on the following statement of the law by Viscount Haldane, L.C. in *National Telephone Company Ltd. v. Postmaster General*³

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach."

And it was contended that if the election petition was to be tried by the High Court as a Court, the Civil Procedure Code and the Evidence Act would apply to the trial of the Election Petition by the force of this principle and if that be so, Section 87 Sub-sections (1) and (2) making the provisions of the Code of Civil Procedure and the Evidence Act applicable would be unnecessary. We do not think this argument is well-founded. The conclusive answer to this argument is that Section 87 Sub-sections (1) and (2) are provided for the purpose of making it clear that if there is a conflict between the Act and the Rules on the one hand and the provisions of the Code of Civil Procedure and the Evidence Act on the other, the former shall prevail. The object of introducing these sub-sections is also to provide that in certain respects the ordinary procedure shall be departed from. As observed by Lord Moulton in *National Telephone Company's case* (supra):

³1913 A.C. 546

"There are two obvious methods of drafting a clause providing for this. In the one form you provide that the order of the proceedings shall be the same as usual with the exception of the specific points which are to be altered. In the other form you provide for the procedure on these specific points and add that in other respects the orders of proceeding shall not be altered. Which of the two shall be chosen is a matter of the fancy of the draftsman, and no legitimate conclusions as to the construction of the provision can be drawn from his choice."

It may be noticed that the proviso to Section 87 Sub-section (1) engrafts an exception on the procedure provided by the Code of Civil Procedure and so also Sections 93, 94 and 95 engraft exceptions on the provisions of the Evidence Act. It is quite possible that Section 87 Sub-sections (1) and (2) were put there by the Parliament in order to provide foundation for the proviso to Section 87 Sub-section (1) and Sections 93, 94 and 95. Furthermore it is not altogether impossible that these two sub-sections might have been introduced by the Parliament explanation cutely. They are not inconsistent with the High Court acting as a Court while trying an Election Petition and no inference can, therefore, be legitimately drawn from their enactment that the High Court was intended to act as a special tribunal. Section 80A Sub-section (1) merely extends

the existing jurisdiction of the High Court: it adds one more item to the several matters which the High Court has already jurisdiction as a Court of law to determine.

13. RE: GROUND (2): The argument under this ground was that Clause 15 only contemplated Judgment given in exercise of such jurisdictions as were expressly mentioned in the Letters Patent themselves and did not extend to judgments given in exercise of other jurisdictions subsequently conferred on the High Court by legislation. But this argument is plainly unsustainable. As long ago as in 1867 it was said by a Full Bench of seven Judges in the case of *Ranee Shurno Moyee v. Luchmeeput Doogur*⁴ that it would not be proper:

"To take away a right of appeal given by the words of Section 15, if read in their ordinary and natural sense, by giving them a narrow and restrictive construction."

The words of Clause 15 do not contain any limitation as to the nature or quality of the jurisdiction which must be exercised by a single Judge of the High Court before an order made by him can be regarded as a judgment and there is neither principle nor authority which justifies the introduction of any such limitation. There could be no particular purpose or object white conferring power under Clause 15 in limiting it qua the kinds of jurisdiction possessed by the High Court as set out in the Letters Patent when Clause 44 clearly contemplated that the existing jurisdiction was subject to the legislative power of the Governor General and the jurisdiction conferred on the High Court was liable to be enlarged, modified or curtailed by the Legislature from time to time. The only limitation which is to be found in the words of Clause 15 is that which is inherent in the word "judgment" and there is no reason why beyond that, any further limitation of the nature suggested on behalf of the first respondent should be allowed to curtail the scope and ambit of Clause 15. There is also inherent evidence in Clause 15 to show that it is not limited to judgments given in exercise of the jurisdictions expressly mentioned in the Letters Patent. The Letters Patent make no mention of revisional jurisdiction and yet the

⁴¹ W.R. 52

parenthetical portion in Clause 15 excludes an order made by single Judge in exercise of revisional jurisdiction on the footing that but for the exclusion, such an order would be within the ambit of Clause 15. There are also decided cases where appeals against judgments given in exercise of jurisdiction not specifically mentioned in the Letters Patent have been held admissible under Clause 15. The jurisdiction to commit for contempt is not expressly mentioned in the Letters Patent and yet it had been held by the Calcutta High Court *Mohendra Lull v. Anundo Coomar*⁵ and by the Bombay High Court in *Collector of Bombay v. Issac Penhas*⁶ that an order made by a single Judge committing a condemner-for contempt is appealable under Clause 15. We find that this view which we are taking has also commended itself to a Special Bench of the Calcutta High Court in *Budge Budge Municipality v. Mongnt Mia*⁷, This view is also considerably reinforced by the observations to the Supreme Court in *S.A. Industries v. Sarup Singh*⁸, We refer particularly to the following observations in paragraph 5 at page 1445:

"A plain reading of the said clause indicates that except in the 3 cases excluded an appeal lay against the judgment of a single Judge of the High Court to the High Court in exercise of any other jurisdiction. Looking at the first part of the amended clause excluding the exceptions, it is obvious that its wording is general. It is not permissible, by construction, to restrict the scope of the generality of the provisions of Clause 10 of the Letters Patent."

The Supreme Court was concerned in that case with Clause 10 of the Letters Patent of the Punjab High Court, but that Clause is in identical terms as Clause 15 with which we are concerned and the observations made by the Supreme Court are, therefore, of considerable assistance. This ground for rejecting the applicability of Clause 15 cannot, therefore, be sustained.

14. Re: GROUND (3): On the appointed day, that is, 1st May 1960 the quondam State of Bombay was bifurcated into two States, namely, the State of Maharashtra and the State of Gujarat by the Bombay Reorganization Act, 1960. Section 28 of that Act constituted this High Court as a separate High Court for the State of Gujarat and Section 30 laid down its jurisdiction in the following terms:

"30 Jurisdiction of Gujarat High Court /The High Court of Gujarat shall have, in respect of any part of the territories included in the State of Gujarat, all such Jurisdiction powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of that part of the said territories by the High Court of Bombay."

This High Court was thus conferred the same jurisdiction which under 'the law immediately in force before the appointed day was exercisable by the Bombay High Court in respect of the territories included in the State of Gujarat. Now under Clause 15 of the Letters Patent the Bombay High Court had jurisdiction to hear an appeal against any judgment of a single Judge of that High Court and this jurisdiction was, by virtue of Section 30, inherited by this High Court. This High Court can, therefore, in the exercise of such jurisdiction hear an appeal against any judgment of a single Judge of this High

⁵25 Cal 236

⁷ AIR 1953 Cal. 433 12 P. 436

⁶49 Bom.L.R. 709

⁸ AIR 1965 SC 1442

Court just as the Bombay High Court could immediately prior to the appointed day hear an appeal against any judgment of a single Judge of that High Court in respect of the Gujarat territories. No limitation as to the nature of the jurisdiction exercised by a single Judge, save that imported by the use of the word "judgment", restricted the 'appellate jurisdiction of the Bombay High Court under Clause 15 and no such limitation can, therefore, be projected in the appellate jurisdiction inherited by this High Court under Section 30. The only condition for the exercise of the appellate jurisdiction of the Bombay High Court under Clause 15 was that there should be a judgment of a single Judge and the appellate jurisdiction inherited by this High Court under Section 30 is, therefore, subject only to the fulfillment of this condition and an appeal can be entertained by this High Court in the exercise of such appellate jurisdiction against any judgment of a single Judge so long as it is a judgment within the meaning of Clause 15, irrespective

whether it is given in exercise of a jurisdiction vested in the Bombay High Court immediately prior to the appointed day or it is given in exercise of a jurisdiction subsequently conferred on this High Court. The purpose of Section 30 is to vest in this High Court the appellate jurisdiction of the Bombay High Court under Clause 15 and not to make it moribund at that stage and make it rigid and inflexible. We are, therefore, of the view that the appellate jurisdiction inherited by this High Court under Section 30 read with Clause 15 cannot be held to be excluded merely on the ground that the impugned orders were made in exercise of a jurisdiction not possessed by the Bombay High Court immediately prior to the appointed day but conferred subsequently on this High Court by the amended Section 80A.

15. Re: GROUND (4) :- The argument against the maintainability of the appeal under this ground was that in order to be appealable under Clause 15, a judgment must be a judgment pursuant to Section 108 of the Government of India Act, 1915, but a judgment given by a single Judge of the High Court hearing an Election Petition under Section 80A Sub-section (2) is not a judgment pursuant to Section 108 but is a judgment pursuant to Section 80A Sub-section (2). Now it might seem strange that whether an appeal lies or not should depend not on the nature of the jurisdiction exercised but on the rule under which the exercise of a particular jurisdiction is assigned to the Judge, but there is no right of appeal unless given by statute and it is therefore, necessary to see whether the conditions of the statute giving the right of appeal are fulfilled. Section 108 of the Government of India Act, 1915, is, in the following terms:

"108. (1) Each High Court may by its own rules provide, as it thinks fit, for the exercise, by one or more Judges, or by division Courts constituted by two or more Judges, of the High Court, of the original and appellate jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several division Courts."

Now the Government of India Act, 1915, was repealed by the Government of India Act, 1935 and the Government of India Act, 1935, in its turn came to an end on the commencement of the Constitution. The power conferred on the High Court and the Chief Justice under Section 108, however, still subsists and it has not been affected in any manner whatsoever either by the Government of India Act, 1935 or by the Constitution. Section 223 of the Government of India Act, 1935 provided that subject inter alia to the provisions of any Act of the appropriate Legislature, the respective powers of the Judges of any existing High Court in relation to the administration of justice in the Court, including any power, to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division Courts, shall be the same as immediately before the commencement of Part III of the Act. Similar provision was also enacted by Article 225 of the Constitution and it continued, subject again, inter alia, to the provisions of any law of the appropriate Legislature, the respective powers of the Judges of an existing High Court in relation to the administration of justice in the Court, including any

power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, possessed immediately before the commencement of the Constitution. The power conferred under Section 108 is thus kept alive and reaffirmed with great vigor by the Government of India Act, 1935 and the Constitution. The High Court and the Chief Justice still enjoy the same unfettered power as they did under Section 108 of the Government of India Act, 1915. The question is whether the impugned orders were made by N.G. Shelat J. pursuant to Section 108 for it is only if they were so made that they would be appealable under Clause 15.

16. Section 108 is in terms wide enough to cover the exercise of the jurisdiction to try an Election Petition conferred under Section 80A Sub-section (1). But the argument of the first respondent was that Section 108 had no applicability in the present case and this argument was rested on two grounds. One was that Section 80A Sub-Section (2) dealt with the subject matter of Section 108 and Section 108 was, therefore, excluded by necessary implication and the other was that in any event even if Section 108 was still applicable despite Section 80A Sub-section (2), there were no rules made by the High Court under Section 108 Sub-section (1) for the exercise of the jurisdiction to try an Election Petition and an Election Petition was triable by a single Judge by virtue of Section 80A Sub-section (2) and, therefore, a judgment given by a single Judge could not be said to have been given pursuant to Section 108. Neither of these two grounds can in our view be sustained.

17. Section 84A Sub-section (2) first part provides that the jurisdiction to try an Election Petition shall be exercised ordinarily by a single Judge of "the High Court and it is this provision which is said to exclude the applicability of Section 108 Sub-section (1). But this argument overlooks the crucial word "ordinarily" occurring in Section 80A Sub-section (2). The use of the word "ordinarily" indicates that the rule enacted in Section 80A Sub-section (2) first part is not a rule of compulsive force. It is merely a rule to be ordinarily followed in the large majority of cases but not invariably; it may be departed from in appropriate cases and what are appropriate cases can be determined by the High Court only under Section 108 Sub-section (1). See the decision of the Supreme Court in *Purshotam Lal v. Diwan Chaman Lal*⁹, interpreting the word "ordinarily" in Rule 31(5) of the Rules made under Section 56 of the Administration of Evacuee Property Act, 1950. Section 80A Sub-section (2) first part, therefore, posits the power of the High Court to make rules under Section 108 Sub-section (1) providing for the exercise of the jurisdiction of the High Court under Section 80A Sub-section (1) By a Division Bench of two or more Judges in appropriate cases. Section 108 Sub-section (1) is, consequently, not excluded by necessary implication arising from Section 80A Sub-section (2) first part

⁹ AIR 1961 SC 1371

and it continues to have efficacy and operation. The Only purpose of Section 80A sub-Section (2) first part is to point out to the High Court in the exercise of its power under Section 108 Sub-section (1) that an Election Petition shall ordinarily be tried by a single Judge and this rule of guidance must be borne in mind by the High Court while making rules under Section 108 Sub-

section (1). The High Court may however in the exercise of its power under Section 108 Sub-section (1), provide that in particular kinds of cases, Election Petitions may be tried by a Division Bench of two or more Judges and it may also provide, as this High Court has done by Rule 5, that a single Judge may refer any matter before him-which would also include an Election Petition Or any question arising in such matter-to a Division Bench of two Judges and a Division Bench of two Judges may also in its turn refer any matter before it or any question arising in such matter or any question referred to it by a single Judge, to a larger Bench. Section 108 Sub-section (1) cannot, therefore, be held to be excluded by necessary implication.

18. Section 108 Sub-section (2) was sought to be excluded on the ground that the subject matter of that sub-section was dealt with by section 80A Sub-section (2) second part and since Section 80A Sub-section (2) second part was sufficiently comprehensive in regard to the subject of assignment of work of hearing an Election Petition, it excluded by necessary implication the operation of Section 108 Sub-section (2). This argument is also unsustainable: it is based on a misapprehension of the true object and meaning of Section 80A Sub-section (2) second part. All that Section 80A Sub-section (2) second part provides is that the Chief Justice shall, from time to time, assign one or more Judges for the purpose of exercising the jurisdiction to try an Election Petition. There is a legislative injunction to the Chief Justice that he must assign, that is, make available one or more Judges, according as the exigencies of work may require, for the trial of Election Petitions. Which Judges shall be so assigned or made available by the Chief Justice is to be determined by him in exercise of the power conferred upon him by Section 108 Sub-section (2). When the Chief Justice determines in the exercise of his power under Section 108 Sub-section (2) that a particular Judge shall take up the work of Election Petitions, he assigns such Judge for the purpose of exercise of the jurisdiction to try an Election Petition as required by Section 80A Sub-section (2) second part. The provision in Section 80A Sub-section (2) second part seems to have been enacted not for the purpose of supplanting Section 108 Sub-section (2) but for the purpose of securing expeditious disposal of Election Petitions. This view is considerably reinforced if we contemplate a case where the Chief Justice may have assigned two or more Judges for the purpose of trying Election Petitions. Who is to decide in such a case as to which Election Petition shall be heard by which Judge? That manifestly can be done only by the Chief Justice in exercise of his power under Section 108 Sub-section (2). Take another case where an Election Petition is required to be heard by a Division Bench pursuant to Rules made under Section 108 Sub-section (1) or a single Judge has referred an Election Petition before him to a Division Bench. Who would in such a case constitute the Division Bench and decide which Judges shall sit on the Division Bench? The answer again obviously is: the Chief Justice in the exercise of his power under Section 108 Sub-section (2). The conclusion is, therefore, inescapable that Section 80A Sub-section (2) Second part does not exclude by necessary implication the exercise of the power by the Chief Justice under Section 108 Sub-section (2).

19. Faced with this difficulty the first respondent contended in his final reply that even if Section 108 Sub-sections (1) and (2) were not displaced by Section 80A Sub-section (2), there were no

rules made by the High Court in exercise of its power under Section 108 Sub-section (1) and the jurisdiction to try the Election Petition was, therefore, exercised by N.G. Shelat J. pursuant to Section 80A Sub-section (2) and not pursuant to Section 108. But this argument is futile and there are two very good answers to it. The first and most conclusive answer is provided by Rules made by the High Court. This rule in terms says that save as otherwise expressly provided by any law in force or by the rules, a single Judge may dispose of: "Application under any Local or Special Acts not otherwise specifically provided for". Therefore, according to this Rule an Election Petition would be triable by a single Judge and this Rule indeed gives effect to the provision enacted in the first part of Section 80A Sub-section (2). It is, therefore, not possible to say that when the work of hearing Election Petitions was assigned to Mr. Justice N.G. Shelat, it was done under Section 80A Sub-section (1). Moreover it may be pointed out that even if the Election Petition was referred to N.G. Shelat J. as a single Judge by reason of Section 80A Sub-section (2) first part and not by reason of any rules made under Section 108 Sub-section (1), the jurisdiction exercised by him would still be pursuant to Section 108 if he exercised the jurisdiction pursuant to the assignment of work made to him by the Chief Justice under Section 108 Sub-section (2). As observed by the Special Bench of the Calcutta High Court in Budge Budge Municipality's 'case (supra): "Even if a case goes to a single Judge Court or a Division Bench under rules framed not under Section 108 but under some particular Act, still the particular Judge or Judges sitting in that Court or on that Bench will do so under a determination made under Section 108(2) and to that extent at least, the Judgment must always be pursuant to Section 108". We cannot, therefore, countenance the argument that the impugned orders were not made by N.G. Shelat J. pursuant to Section 108 as required by Clause 15.

20. Re: GROUND (5): Now we turn to the ground which formed the real subject matter of controversy between the parties. The first respondent urged that Part VI of the Act constituted a self-contained comprehensive Code dealing with the trial of Election Petitions and the only appeal provided in the Code being an appeal to the Supreme Court from a final order under Section 98 or 99, any other appeal was excluded by necessary implication and there was accordingly no right of appeal under Clause 15 of the Letters Patent against any intermediate orders. It was not permissible to the petitioner and the second respondent, argued the first respondent, to travel outside the Code for the purpose of finding a right of appeal against intermediate orders and since no right of appeal against intermediate orders was conferred by any provision of the Code, none could be presumed. The petitioner and the second respondent on the other hand contended that since the jurisdiction to try an election petition Was conferred on the High Court as a Court all the ordinary incidents of the procedure of the High Court attached including the right of appeal under Clause 15 against a judgment of a single Judge and there was nothing in any provision of the Act which expressly or by necessary implication excluded such right of appeal in so far as judgments other than final orders under Section 98 or 99 were concerned. Section 116A undoubtedly by providing for a direct appeal to the Supreme Court against final orders made by a single Judge under Section 98 or 99, excluded by necessary implication the right of appeal against such orders under Clause 15 but, argued the petitioner and

the second respondent, it had no consequence on the right of appeal against other orders under Clause 15. The right of appeal against judgments other than final orders under Section 98 or 99 under Clause 15 was not inconsistent either with the express provision enacted in Section 116A or with the necessary implication arising there from and its incorporation as an ordinary incident of procedure attaching to the trial of an Election Petition was, therefore, not excluded and the present appeals directed as they were against intermediate orders were maintainable under Clause 15. These rival contentions raised a rather important question of construction and we must frankly admit that it caused considerable anxiety to us, for its decision can by no means be said to be free from difficulty. We are deciding this question in favor of the petitioner and the second respondent because on an overall consideration of the various aspects, the view canvassed on behalf of the petitioner and the second respondent appears to be the better of the two views.

21. The first and indisputable starting point of any discussion of this question must be the oft-repeated rule stated by Viscount Haldane L.C. in *National Telephone Company's Case* (supra) to which we have already referred a little earlier. We will now quote it in full:

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

This rule was quoted with approval by the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick & Bros¹⁰*. The question which arose in that case was whether an appeal lay under Clause 15 against a judgment of a single Judge of the High Court disposing of an appeal under section 76 of the Trade Marks Act and Mahajan J. speaking on behalf of the Supreme Court held, applying this rule, that an appeal did lie under Clause 15. The learned Judge observed at page 360 of the Report:

"Section 76, Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal, under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

This rule was also referred to by the Supreme Court in the subsequent case of *S.A. Industries (P) Ltd. v. Sarup Singh* (supra) where Subba Rao, Actg. C.J. as he then was, summarized the legal position in the following words:

"A statute may give a right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Any judgment made by the Single

Judge in the said appeal will, under Clause 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by a single Judge is a judgment and if the appropriate Legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an

¹⁰ AIR 1953 SC 357

appeal shall lie from the judgment of a single Judge under Clause 10 of the Letters Patent to the High Court."

The application of this rule in the present case would show that if an order is made by a single Judge which constitutes a judgment, it would be appealable to the High Court under Clause 15 unless the Legislature has expressly or by necessary implication taken away the right of appeal against such order, which would be the case if there is anything in the Act inconsistent with the existence of such right of appeal. We must, therefore, turn to inquire whether there is anything in the Act which expressly or by necessary implication conflicts with the right of appeal under Clause 15 : or, in other words, whether such right of appeal is inconsistent with any express provision of the Act or with necessary implication arising from such express provision.

22. Now it was not the case of the first respondent that there is any express provision in the Act which in so many terms conflicts with the existence of the right of appeal against intermediate orders under Clause 15. The argument on behalf of the first respondent was a more limited one, namely, that the right of appeal against intermediate orders under Clause 15 was excluded by necessary implication arising from the fact that the scheme of trial of election petitions envisaged in Part V was, a self-contained comprehensive Code and the only right of appeal provided in the Code was that set out in Section 116A against final orders under Section 98 or 99. It is this limited argument which we shall now proceed to consider.

23. Now inconsistency of one provision with necessary implication arising from another may arise in two ways. One is where the two provisions cannot stand together without creating a disharmony not contemplated by the Legislature. Such was the case in *Mallappa Basappa v. Basavraj Ayyappa*¹¹, The question which was debated before the Supreme Court in that case was whether it was open to a petitioner to withdraw a part of the claim made in an election petition. The petitioner could not dispute that if he wanted to withdraw the entire election petition, he could not do so without leave of the Court as provided in Sections 109 to 111 but his argument was that there was no impediment in his way if he wanted to withdraw only a part of the claim made in the election petition and that he was entitled to do so in view of Order 23 Rule 1 of the Code of Civil Procedure which was incorporated by reason of the then Section 90 Sub-section (1) of the Act. The Supreme Court rejected this argument in the following words:

"The effect of all these provisions really is to constitute a self contained Code governing the trial of election petitions and it would appear that in spite of Section 90(1) of the Act, the provisions of Order 23, Rule 1 of the Code of Civil Procedure would not be applicable

to the trial of election petitions by the tribunals. If the withdrawal of a petition cannot be permitted and any person who might have been a petitioner is entitled to continue the proceedings, on a parity of reasoning, the withdrawal of a part of the claim also could not be permitted without allowing another person who might have been a petitioner an opportunity of proceeding with that part of the claim by substituting himself in place and stead of the petitioner who withdraws or abandons the same. If the constituency as a whole is interested in the petition presented before the Election Tribunal no such

¹¹ AIR 1958 SC 698

withdrawal or abandonment of a part of the claim could ever be permitted without giving an opportunity to any person who might have been a petitioner to continue the proceedings and pursue the petition to its logical conclusion."

These observations, contended the first respondent, clearly showed that, according to the Supreme Court, the provisions in Part VI constituted a self-contained code and since the subject of withdrawal was dealt with in Sections 109 to 111, applicability of Order 23, Rule 1 was excluded by necessary implication. But we do not agree that such is the ratio of the decision. The decision does not proceed upon the ground that since the subject of withdrawal is dealt with in Sections 109 to 111 Order 23, Rule 1 is excluded by necessary implication. The decision is based on an application of the test of inconsistency. The Supreme Court found that Order 23, Rule 1 was inconsistent with the necessary implication arising from Sections 109 to 111, and, therefore, it held, despite Section 90, Sub-section (1), that the provisions of Order 23, Rule 1 were not applicable. This was a case where a provision which would otherwise be applicable was held excluded by reason of inconsistency with the necessary implication arising from an express provision contained in the Act. In the present case it is difficult to find any inconsistency or disharmony between the existence of a right of appeal against intermediate orders under Clause 15 and Section 116A or for the matter of that, any other provision of the Act. Section 116A provide for a direct appeal to the Supreme Court against a final order under Section 98 or 99 and we do not think this section of itself, yields any necessary implication that there should be no appeal against intermediate orders.

24. The necessary implication from an express provision of the Act may also arise by reason of the application of the maxim expression units, exclusion alter us. The Legislature may, by inclusion units exhibit an intention to effect exclusion alterius and the necessary implication arising from expression units would be that things not specifically mentioned are excluded, that is, exclusio alterius. On this maxim rests principle, that where there is a self-contained comprehensive Code dealing with a particular subject matter, no provision can be incorporated which is not specifically mentioned in the Code, for to incorporate such provision would be to contradict the manifest purpose of the enactment which is to exclude such provision. The question which, therefore, arises is whether the express provision for a direct appeal to the Supreme Court against a final order under Section 98 or 99 contained in Section 116A excludes the right of appeal against intermediate orders under Clause 15 by necessary implication by

reason of the application of the maxim *expressio unius, exclusio alterius*.

25. But in considering the applicability of this maxim it is necessary to bear in mind the warning uttered by Willis J. in *Colquhoun v. Brooks*¹²

"I may observe that the method of construction summarized in the maxim 'expression unius exclusion alterius' is one that certainly requires to be watched. Perhaps few so called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the 'expression' complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of

¹²(1888) 21 Q.B.D. 52

construction varies so much under differing circumstances, and is open to so many qualifications and exceptions, that it is rarely that such rules help one to arrive at what is meant."

Lopes, L.J. in the same case when it went to the Court of Appeal, described the maxim as often being "a valuable servant but a dangerous master" to follow in the construction of a statute. It must also be noted that the applicability of the maxim must be confined to the subject matter on which there is expression unius: it cannot be applied so as to exclude by necessary implication a provision relating to a different subject matter. This was pointed out by Morris L.J. in *Dean v. Wiesengrund*¹³ There, under one of the Rent Restriction Acts, a right was conferred on the tenant to recover excess rent from the landlord or his legal representative and the question arose whether on the death of the tenant, his legal representative was entitled to recover excess rent which had been paid by the tenant to the landlord. The argument was that whereas the words "or his personal legal representative" were used in relation to the landlord, they were not so used in relation to the tenant and, therefore, it was contended, on the application of the maxim *expressio unius exclusion alterius*, that the personal representative of the tenant was not entitled to recover the excess rent. Morris L.J. rejected the applicability of the maxim and observed: "Furthermore, if the maxim is being considered, I should have thought that it ought to be considered separately in regard to the landlord's position and in regard to the tenant's position. A provision that a sum shall be recoverable by a tenant. by whom it was paid' does not in relation to the tenant set out any express words which by their mention must exclude other words not mentioned." The Supreme Court also emphasized this limitation on the application of the maxim in *Harish Chandra v. Triloki Singh*¹⁴, It was contended in this case that Order 6 Rule 17 could not be held to apply to proceedings before Election Tribunal though the then Section 90 Sub-section (2) made the procedure under the Civil Procedure Code applicable, inter alia because Section 90 Sub-section (2) was subject to the provisions of the Act and the Rules made there under and the power of enactment under the then Section 83 Sub-section (3) corresponding to the present Section 86 Sub-section (5) being limited to particulars, the general power of amendment under

Order 6 Rule 17 must be held to have been excluded. The Supreme Court negated this argument observing:

"It is argued that Section 83(3) is a special provision relating to amendments, and that it must be construed as excluding Order 6, Rule" 17. The result, according to the appellants, is that if an amendment could not be ordered under Section 83(3), it could not be ordered under Order 6 Rule 17. This contention appears to us to be wholly untenable. The true scope of the limitation enacted in Section 90(2) on the application of the procedure under the Civil Procedure Code is that when the same subject-matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter. This limitation cannot operate when the subject-matter of the two provisions is not the same. Section 83(3) relates only to amendment of particulars, and when the amendment sought is one of particulars, that section will apply to the exclusion of any rule of the Civil Procedure Code which might conflict with it, though it does not appear that there is any such rule. But where the

¹³(1955) 2 Q.B.D. 120

¹⁴ AIR 1957 SC 444

amendment relates not to particulars but to other matters, that is a field not occupied by Section 83(3), and Order 6 Rule 17, will apply. The fallacy in the argument of the appellants lies in the assumption that Section 83(3) is a comprehensive enactment in the whole subject of amendment, which it clearly is not. In this view, there is no scope for the application of the maxim, expression unions exclusive alterius on which the appellants rely.

It would, therefore, appear that if Section 116A is a comprehensive enactment on the whole subject of appeals, it would by necessary implication exclude the right of appeal against intermediate orders under Clause 15.

26. But when we turn to Section 116A we find that section does not cover the whole subject matter of appeals against orders made in an election petition. It makes provision only in regard to appeals against final orders under Sections 98 and 99, leaving the subject matter of appeals against intermediate orders untouched. There is, therefore, no scope for the application of the maxim expression unions exclusive alterius, which is the foundation of the principle relied upon on behalf of the first respondent. The analogy of the decision of the Supreme Court in Harish Chandra's Case (supra) is complete [and it considerably reinforces this conclusion. Just as in the Supreme Court case Section 83 Sub-section (3) equivalent to present Section 86 Sub-section (5) dealt only with the subject matter of amendment of particulars and, therefore, did not exclude by necessary implication the applicability of Order 6 Rule 17, so also in the present case, Section 116A deals only with the subject matter of appeals against final orders under Sections 98 and 99

and does not deal with the subject matter of appeals against intermediate orders and, therefore, the right of appeal against intermediate orders under Clause 15 which otherwise attaches as an ordinary incident is not excluded by necessary implication. The Legislature has spoken only on the subject matter of appeals against final orders under sections 98 and 90 and there its voice has stopped and we do not think we would be justified in carrying it further by a process of judicial construction. It is no doubt true that the heading of Chapter IV which comprises Section 116A is "Appeal". But the heading is merely a description of the subject matter of the provisions contained in the Chapter and it cannot be elevated to the position of a statutory enactment so as to raise a necessary implication that a right of appeal not covered by the provisions of the Chapter must be held to be excluded.

27. The non-obstante clause at the commencement of Section 116A also supports this construction which we are inclined to adopt. It is usual to use a non-obstante clause when one section of the Act takes away what another confers, for otherwise there would be a head-on clash between the two sections, *Bai Krushna Bose v. Binod Kanungo and Ors*¹⁵. The iron-obstante clause in Section 116A postulates that there is A law in force relating to appeals which, but for the enactment in Section 116A, would apply, to Orders made in art election petition and provides that even if there is anything inconsistent in such law, an appeal shall lie directly to the Supreme Court against the filial order under Section 98 or 99. The reference in the non-obstante cause must necessarily be to Clause 15 for that is the only provision which could conflict with the provision enacted in Section 16 A. There

¹⁵1945 S.C.R. 913 at p. 916

is, therefore, a legislative assumption that Clause 15 is incorporated as a part of the Scheme and would apply and the Legislature has hastened to make it clear that despite that clause, so far as a final order under Section 98 or 99 is concerned, an appeal shall lie directly to the Supreme Court. The Legislature has, however, not added that no appeal shall lie against other orders made in an election petition Under Clause 15 or that Clause 15 shall not apply in relation to other orders. The question might well be asked: why did the Legislature not choose to specifically refer to Clause 15 if it contemplated that there should be a right of appeal against intermediate Orders under that clause, when it provided almost for everything right from the commencement of the presentation of the petition upto its final determination by the Supreme Court and also for costs, security for costs and execution of the order as to costs? This question though undoubtedly a relevant question is in our opinion not decisive having regard to the considerations which we have pointed out above and we cannot merely on this ground hold that the right of appeal against intermediate orders under Clause 15 which otherwise attaches is taken away by necessary implication. We may repeat what Willis J. said, namely, that the failure to make the expressio complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind.

28. This construction which we are adopting does not lead to any harm or mischief nor does it operate to frustrate the object and purpose of the enactment of the new Scheme for trial of

election disputes introduced by the Parliament. It was pressed upon us that if we hold that there is a right of appeal against intermediate orders under Clause 15, that would act as an impediment in the expeditious disposal of election petitions and it would be difficult, if not dispose of election petitions Within six months. We do not think this apprehension is well founded. Apart from the exceptional case which we have before us, we cannot favorably foresee any intermediate orders in the course of an election petition which would amount to judgments within the meaning of Clause 15. Whatever intermediate orders may be passed in an election petition would be ordinary orders regulating the procedure and would not amount to judgments within the meaning of Clause 15. The smooth and even course of an election petition is, therefore, not likely to be regarded or impeded by the view which we are inclined to take. Furthermore, it must be remembered that even if an appeal is entertained by the High Court against an intermediate order under Clause 15, the High Court would see to it that the time limit of six months which the Legislature has set for the disposal of the election petition is not, as far as practicable, transgressed. It may also be noted that the view we are taking will make it possible for an aggrieved party to obtain redress from the High Court without approaching the Supreme Court in the exercise of its extraordinary jurisdiction under Article 136, in cases where orders may have been made under Section 95 Sub-section (1) proviso (a), Section 110 Sub-section (2), Section 110 Sub-section (3) Clause (c), Section 112 Sub-section (3) and Section 116. Where an order is passed refusing the application of a witness for a certificate of indemnity under proviso (a) to Section 95 Sub-section (1) or where the Court erroneously grants an application for withdrawal of an election petition under Section 110 Sub-section (2) or where an order is passed rejecting an abdication of a person to be substituted as a petitioner or respondent under Section 110 Sub-section (3) Clause (c), Section 112 Sub-section (3) or Section 116 or imposing terms upon his right to be so substituted which are not acceptable to him, such an order would be a "judgment" within the meaning of Clause 15 and the aggrieved party would be able to carry the matter further in the High Court in appeal and obtain redress without having to approach the Supreme Court in the exercise of its extraordinary jurisdiction under Article 136. The view contended for on behalf of the petitioner and the second respondent, therefore, commends itself to us and we accept it in preference to the view contended for on behalf of the first respondent. We, therefore, hold that the right of appeal against intermediate orders under Clause 15 is not excluded by necessary implication and if an intermediate order made by a single Judge in an election petition amounts to "judgment" within the meaning of Clause 15, it would be appealable.

29. Re: GROUP (6): That takes us to the last ground of the preliminary objection, namely, that the impugned orders did not constitute "Judgment". Now the scope of the expression "judgment" has come under the judicial scrutiny of the various High Courts and there is a cleavage of opinion on that question. But so far as the Bombay High Court is concerned-and the decisions of that High Court delivered prior to 1st May 1960 are binding upon us-the meaning of the word "judgment" given by Sir Richard Couch, C.J. in *Justices of the Peace for Calcutta v. Oriental Gas Co*¹⁶. has always been accepted as the correct meaning. He defines the word "judgment" in the following terms:

"We think judgment in Clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

Though this meaning has always been accepted by the Bombay High Court and we must also, therefore, accept it, it must be remembered, as observed by Chagla J. in *Collector of Bombay v. Issac Penhas*¹⁷ that "It is not a statutory definition and cannot be regarded as giving an inflexible or exhaustive meaning.

30. Numerous decisions were cited before us where this meaning has been applied to the facts of the different cases which came up before the Courts, and if we look at these decisions, we find ourselves faced with what Lord Goddard C.J. described in *Young husband v. Luftig*¹⁸ as "complete fog of authorities" or what Upjohn J. said in *Smeaton v. Ilford Corporation*¹⁹ a rough sea of contradictory authorities." But fortunately for the decision of these appeals, it is not necessary for us to examine these decisions, for we find that there are two principles which are indisputable and which clearly emerge from a consideration of these decisions. The first principle is that "a mere formal" order or an order merely regulating the procedure" or "an order on an application which is nothing more than a step towards obtaining a final adjudication" is not a "judgment" within the meaning of Clause 15. It is on this principle that an order allowing an amendment has been held not to amount to a judgment in *Shashgiridas v. Sunderrao*¹⁹ and *Gaganmal v. Hongkong & Shanghai Banking Corporation*²⁰The rationale of this principle is quite dear for an order which merely regulates the procedure or facilitates the progress towards obtaining a final adjudication does not determine "some right or liability "of the parties and satisfy the meaning of "judgment" given by Sir Richard Couch C.J.

¹⁶8 Beng. L.R. 433 at page 452 : 17 Suth WR 364

¹⁸(1949) 2 K.B. 371

¹⁹ A.I.R 1946 Bom 361

¹⁷49 Bom.L.R. 709

¹⁹(1954) 1 Ch. 450 at 478

²⁰(1954) 1 CH. 450

But there may be cases where even an order granting an amendment which is ordinarily procedural in character determines some right or liability between the parties and in such an event it would amount to "judgment" within the meaning of Clause 15. Such a case arose before the Calcutta High Court in *M.B. Sirkar v. Poswell and Co*²¹., The plaintiff sought an amendment substituting for the original defendant a Company of the same name. The amendment was allowed on the ground that there was a mis-description of the defendant in the plaint and the real defendant sued was the Company. The Company which was thus substituted as a defendant thereupon preferred an appeal and the question arose whether the appeal was competent under Clause 15. The Calcutta High Court held that the order allowing the amendment had the effect of determining the right of the newly substituted defendant to plead the defense of limitation and it was, therefore, a "judgment" appealable under Clause 15. This decision clearly shows that where the order of amendment determines some right or liability of the parties; it would amount to a

"judgment" within the meaning of Clause 15. There is, therefore and charm in saying that the first of the impugned orders is an order allowing an amendment. That by itself is no answer to the contention that it amounts to a "judgment". We must see whether it determines some right and liabilities between the parties and if it does, it would be a "judgment".

31. The second principle which also appears to be indisputable is that even if an order made by a Court does not in so many terms decide some right or liability between the parties, if the effect of the order is to determine, as a direct and inevitable consequence, same right or liability between the parties, it would be a "judgment" within the meaning of Clause 15. This principle is based on the doctrine which has found favor with the Courts in all branches of jurisprudence that regard must always be had to the substance rather than to the form. Authorities abound where this principle has been recognised and acted upon by the Courts not only in other branches of jurisprudence but also in the determination of the question whether an order is a "Judgment" within the meaning of Clause 15. We shall mention only a few of the decisions having a direct bearing on the question before us.

32. In *Soonabai v. Tribhovandas N. Malvi*²² an order passed by a single Judge of the High Court requiring security for costs from a woman under Section 380 of the old Code of Civil Procedure was held to be a "judgment" within the meaning of Clause 15. The order did not in so many terms direct that the plaintiff shall not be entitled to proceed with the suit but the direct and inevitable consequence of the order was that the plaintiff could not proceed with the suit so long as the security for costs was not given and the right to proceed with the suit was thus affected. So also in *Ramchandra v. Mahadev*²³ and *Nagindas v. Nilaji*²⁴ an order passed by a single Judge refusing to excuse the delay in presenting the appeal was held to be a "judgment" as contemplated by Clause 15. The order merely rejected the application for excusing the delay and did not in so many terms direct that the appeal shall be dismissed. But, as observed by Heaton J. in the first mentioned case, "the order had the very drastic effect of dismissing or rejecting the appeal" and the right to proceed with the appeal was, therefore, determined. This principle was also recognised by the Bombay High Court in a post-bifurcation case, namely, *J.K. Chemicals v. Kreba and Co*²⁵. where referring to the earlier decision in

²¹ AIR 1956 Cal. 630

²³20 Bom. L.R. 172

²⁵(1961) 68 Bom. L.R. 209

²²10 Bom. L.R. 337

²⁴26 Bom. L.R. 401

*Vanichand v. Lakhmichand*²⁶ V.S. Desai J. observed:

"it was pointed out that was not the direct consequence of the order and the mere possibility of such a consequence resulting at a future time did not make the order one which determined some right or liability involved in the suit."

This, Court also applied the same principle in the decision of a similar question in *Prabhudas v. Bhogilal*²⁷ The question of that case was whether an order holding a document inadmissible in

evidence was a "case decided" within the meaning of Section 115 of the Code of Civil Procedure. Delivering the judgment of the Division Bench, I pointed out that where the question of admissibility arises it regard to document which constitutes the foundation of some right or obligation in controversy between the parties in the suit or proceeding the decision of the question of admissibility would by its direct and immediate consequence of its own force, determine such right and obligation, a decision of such question would be a decision of a part of the suit or proceeding by determining the right or obligation in controversy between the parties and it would be a "case decided" with the reverting of Section 115. This principle required us to examine the direct' effete of the order and if it has a direct and inevitable impact on some right of liability between the parties, it would satisfy the meaning of the word' "judgment" given by Shri Richard Couch C.J. and would be appear the Clause 15.

33. On behalf of the first respondent an interesting question was raised whether an order made by a single Judge in order to be a "judgment" within the meaning of Clause 15 must determine some right or liability in the main proceeding or it is enough it determines some right of liability in the proceeding in which the order is made. It is not necessary for us to go into this interesting question but we may point out, without expressing any final opinion on the question, that the decisions seem to" have drawn a line between proceedings which are purely ancillary proceedings and proceedings which in themselves involve the determination of some right or liability. If a proceeding is purely an ancillary proceeding for the purpose of facilitating the progress of the cause or suit, an order made in such proceeding cannot be said to amount to a judgment unless it determines some right or liability in the main cause or suit, But if a proceeding is instituted which in itself involves the determination of some right or liability and such right or liability is determined by an order made in such proceeding, it would amount to a "judgment". In the first category would fall cases of orders granting amendment and other orders of a procedural character whereas in the latter category would fall case of orders appointing Receiver, granting an injunction restraining the defendant from proceeding with a suit filed by him in another Court, rejecting' an application for review or refusing leave to sue as a pauper. But as we" said above, it is not necessary to express any definite opinion on this question and we, therefore, say no more about it.

34. We shall now proceed to apply the above principles to the facts" of the present appeals for the purpose of determining whether the it put of orders are "judgments" within the meaning of Clause 15. The first impugned order, as interpreted by the learned Judge

²⁶(1919) 21 Bom. L.R. 955

²⁷(1967) VIII G.L.R. 649

in the subsequent impugned' order, directly effects the amendments sought for by the petitioner in the Election Petition and if that be so, the direct and inevitable consequence of the

order is to put an end to the Election Petition by introducing a fatal infirmity. The amendments contained allegations of corrupt practice against Chhotalal Naranbhai Patel who was a candidate within the meaning of Section 79(b) and Chhotalal Naranbhai Patel not being a party to the Election Petition, the amended Election Petition would not be in compliance with the provisions of Section 82 and would, therefore, straightway be liable to be dismissed in limine under Section 86. This consequence seems to be inevitable in view of the decisions of the Supreme Court in *Amin Lal v. Huppa Lal and Har Swarup v. Brij Bhushan*²⁸ It was, however, contended on behalf of the first respondent that the order allowing the amendments did not have the effect of putting an end to the Election Petition since the question whether the election was liable to be dismissed under Section 86 by reason of non-compliance with Section 82 was yet to be determined on the summons for directions taken out by the first respondent. The petitioner could, urged the first respondent, apply for leave to amend the Election Petition by adding Chhotalal Naranbhai Patel as a respondent to the Election Petition and the petitioner and the second respondent could also contend that Chhotalal Naranbhai Patel was not duly nominated as a candidate at the election and was, therefore, not a necessary party under Section 82 and it would ultimately depend upon the judicial determination of the questions arising on the summons for directions whether the election petition should be dismissed under Section 86. This contention, plausible though it may seem, is in our view not well-founded. The question whether the order allowing the amendments has the effect of determining the Election Petition must be decided on the Election Petition as it stands and if the direct and inevitable consequence of the order on the Election Petition as it stands is that it would have to be dismissed under Section 86, a mere possibility that the petitioner may apply for joining Chhotalal Naranbhai Patel as a respondent to the petition and such application may be granted by the Court would not alter the true nature and character of the order. So far as the second respondent is concerned, he can tell the Court that by reason of the order allowing the amendments the Election Petition is straightway liable to be dismissed under Section 86 and, therefore, his right to see that the election petition is pursued to its logical conclusion is determined. On the point whether Chhotalal Naranbhai Patel was duly nominated as a candidate it was the case of the first respondent in the summons for directions that Chhotalal Naranbhai Patel was duly nominated as a candidate and was, therefore, a candidate within the meaning of Section 79(b) and this case was accepted by the learned advocates appearing on behalf of the petitioner and the second respondent. The order dismissing the Election Petition under Section 86 was therefore, for all practical purposes, a mere formal order which remained to be passed on the summons for directions. The right of the petitioner to proceed with the Election Petition was, in substance and effect, determined by the order allowing the amendment. Having regard to the peculiar nature of an Election Petition, the second respondent also had a right to see that the petition was pursued to its logical conclusion and this right of the second respondent also, in effect and substance, came to an end on the making of the order allowing the amendments. Vide the observations of the Supreme Court in paragraph 11 in *Mallappa Basappa v. Basavaraj Ayyappa* (supra). The order granting the amendments,

²⁸ A.I.R. 1967 S.C. 836

therefore, satisfied the requirements of a judgment within the meaning of Clause 15.

35. Once this conclusion is reached in regard to the order allowing the amendments, it is apparent that the order negating the contention of the second respondent that the order allowing the amendments was a nullity must also be held to be a "judgment". This order also amounts to a "judgment" since it lays down that the order allowing the amendments has the effect of making the amendments in the Election Petition and the amendments are not required to be carried out by the petitioner and this has the effect *proprio vigore* to put an end to the Election Petition.

36. Since for the reasons aforesaid there is no substance in any of the grounds urged in support of the preliminary objection, the preliminary objection fails and the appeals must be held to be maintainable under Clause 15. We must, therefore, now proceed to examine the merits of the appeals.

37. Turning to the merits of the appeals, the first question which arises for consideration is whether the order allowing the amendments was properly made. This order was challenged on three grounds which may be stated as follows:

(A) The amendments in so far as they contained allegations of corrupt practice against Chhotalal Naranbhai Patel were not necessary for ensuring a fair and effective trial of the petition and were, therefore, contrary to the plain terms of Section 86 Sub-section (5).

(B) The order, as interpreted by the learned Judge, did not grant leave to the petitioner to amend the petition but directly effected amendments in the petition not requiring them to be carried out by the petitioner and was, therefore, not warranted by the terms of Section 86 Sub-section (5).

(C) The order was null and void as it was passed without giving to the second respondent an opportunity of being heard against the amendments.

Each one of these grounds is well founded and our reasons for saying so are as follows.

38. Re: ground (A): Section 86 Sub-section (5) provides that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition. The criterion which the High Court is required to apply is whether the amendment and here we are using the word amendment in a wider sense so as to include also amplification of the particulars-is necessary for ensuring a fair and effective trial of the petition and only if it is so necessary, the High Court can allow the amendment. Applying this criterion we find that the amendments allowed by the learned Judge were, with the greatest respect to him, clearly unjustified in so far as they alleged corrupt practice against Chhotalal Naranbhai Patel. These amendments, as already stated above, had the effect of rendering the petition liable to be dismissed under Section 86 Sub-section (1) and they could not, therefore, by any stretch of imagination be regarded as necessary for ensuring a fair and effective trial of the petition. Far

from ensuring a fair and effective trial of the petition, they defeated the fair and effective trial by introducing a fatal infirmity in the petition. The first respondent, however, pleaded that this was not a valid consideration to take into account for the question whether an amendment is necessary for ensuring a fair and effective trial of the petition is required to be judged only from the point of view of deficiency in the particulars given in the petition and the Court is not entitled to take into account the other consequences of the amendments. But this argument is unsustainable. It is difficult to see how without taking into account the effect of the amendment on the trial of the petition, it can be determined whether the amendment is necessary for ensuring a fair and effective trial of the petition. If an amendment introduces a fatal infirmity precluding further trial of the petition, it would be a contradiction in terms to say that the amendment was necessary to ensure a fair and effective trial of the petition. The learned Judge was, therefore, clearly in error in allowing the amendments in so far as they contained allegations of corrupt practice against Chhotalal Naranbhai Patel.

39. Re: GROUND (B): The learned Judge by the impugned order allowed the amendments sought in the application barring some words in paragraph 7 and proceeding on the view that the amendments were straightway effected in the petition by force of the order itself and it was not necessary for the petitioner to carry out the amendments in the petition, the learned Judge directed "the respondent to file his written statement within ten days in respect of the amended petition." This view was reiterated by the learned Judge in the subsequent order made by him rejecting the Note of the petitioner. The question is whether on a true interpretation of Section 86 Sub-section (5) this view taken by the learned Judge is correct. Does Section 86 Sub-section (5) authorize the making of an order directly effecting an amendment in the petition or does it contemplate only an order granting leave to the petitioner to amend the petition pursuant to which the petitioner would amend the petition by complying with the formalities of law? To our mind the answer does not admit of any doubt. The view taken by the learned Judge is, with the greatest respect to him, not correct.

40. Let us first examine the language of Section 86 Sub-section (a). It says that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended. The order contemplated by Section 86 Sub-section (5) is an order allowing the particulars of the corrupt practice to be amended. The word "allow", according to its plain natural meaning, signifies granting leave. When you allow some act to be done by a person, the act is to be done by the person allowed and you merely give permission to him to do the act. Therefore, when the High Court makes an order allowing the particulars of the corrupt practice to be amended, the amendment is to be made by the party who is allowed and the High Court merely grants leave to the party to make the amendment. To hold that the High Court may under Section 86 Sub-section (5) directly effect amendment in the petition would be to refuse to give effect to the word "allow" and to introduce in its place some such word as "make" or "direct". This plain grammatical construction of Section 86 Sub-section (5) receives considerable support from a comparison of its language with that of Order 6 Rule 17. The language used in the two provisions is practically

identical with only this minor difference which is of no consequence that whereas Order 6 Rule 17 employ the active voice, Section 86 Sub-section (5) makes use of the passive voice. The meaning and effect of the two provisions are, however, the same so far as the present point is concerned. Now Order 6 Rule 17 has always been interpreted as authorizing making of an order granting leave to a party to amend the pleading and so also Section 86 sub-sec; (5) must be held on a the interpretation to permit only the making of an order granting leave to amend the petition. We may in this connection notice the difference in the language between Order 6 Rule 16 and Order 6 Rule 17. The language employed in Section 86 Sub-section (5) is the language of Order 6 Rule 17 and not that of Order 6 Rule 16. It may also be pointed out that there is no basic difference between Section 86 Sub-section (5) and order 6 Rule 17 which would require its to interpret the two provisions differently. As observed by Venkatarama Ayyar J. in Harish Chandra's Case (supra), Section 86 Sub-Section (5) does not exclude the operation of Order 6 Rule 17 in regard to amendment of matters other than particulars and it is quite possible that Section 86 Sub-section (5), might have been enacted by the Legislature *ex abundanti cautela*. If that be so, is it possible that the Legislature, while enacting Section 86 Sub-section (5), intended to effect a radical departure from the practice and procedure relating to amendment prevailing under Order 6 Rule 17?

41. There is also one other circumstance which is decisive of the question. Section 83 Sub-section (1) Clause (c) provides that an Election Petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for tile verification of tradings and where in petitioner alleges any corrupt practice, the proviso says, that the petition shall be accompanied by an affidavit in support of the allegation of such corrupt practice and its particulars. Now when the particulars of any corrupt practice are allowed to be amended under Section 86 Sub-section (5), they would naturally form part?, of the petition and the amendment made in the petition would have to be verified by the petitioner and an affidavit in support of the particulars introduced by way of amendment would also have to be filed by the petitioner as required by Section 83 Sub-section (1) Clause (c). If the amendment made in the petition is not verified by the petitioner, there would be non-compliance with the requirements of Section 83 Sub-section (1) Clause (c) for in such a case it would not be possible to say that the petition is verified by the petitioner. When Section 83 Sub-section (1) Clause (c) says that the petition shall be verified by the petitioner, the verification must extend to the whole of the petition and if any part of the petition is not verified by the petitioner, the petition cannot be said to be verified in accordance with the requirements of Section 83 Sub-section (1) Clause (c). The amendment made in the petition must, therefore, be verified by the petitioner. The petitioner must also file an affidavit in support of the particulars introduced by way of amendment or else there will be non-compliance with the provisions of Section 83 Sub-section (1) Clause (c). It would seem to be clear from this discussion that in order that there should be an effective amendment in the petition it must be carried out by the petitioner after complying with the requirements of Section 83 Sub-section (I) Clause (c) and its proviso and this postulates that the Court making the order under Section 86 Sub-section (5) merely grants leave to the petitioner to amend the petition and

does not directly effect amendment in the petition, We are, therefore, of the view that the only order which the learned Judge could make was an order granting leave to the petitioner to amend the petition and not an order directly proprio vigore effecting amendments in the petition.

42. Re: GROUND (C). In order to appreciate this ground it is necessary to notice some relevant facts. The application for amendment was filed by the petitioner in the office of the Court in the evening on 21st July 1967 and though it was not registered, it was circulated to the learned Judge. The petitioner's advocate, handed over a copy of the application to the advocate of the first respondent, but no copy of the application was served either on the second respondent or his advocate. Of course at the hearing before us, the first respondent did not admit that the second respondent or his advocate was not served with a copy of the application but the second respondent stated categorically in his affidavit which formed part of the record that he had not been served with a copy of the application and it does not appear from the judgment of the learned Judge that any dispute was raised on behalf of the first respondent regarding non-service of the copy of the application on the second respondent. Besides, there is no endorsement on the original application evidencing service of the copy on the second respondent or his advocate which would undoubtedly have been there if a copy had been served upon either of them. We, therefore, proceed on the basis that a copy of the application was not served on the second respondent or his advocate. The petition was notified on the List of Causes for 24th July 1967 but the remarks column in the List of Causes made it abundantly clear that the petition was on Board only for settlement of issues. The application for amendment which was circulated to the learned Judge was not notified on the List of Causes for hearing.

43. On 24th July 1967 when the Election Petition was called on for settlement of issues, the application for amendment was taken up for hearing. At that time Mr. J.R. Nanavati who was the advocate appearing on behalf of the second respondent was not present and he came in Court only when the order allowing the amendment was being dictated. A statement to this effect was made in the affidavit of the second respondent but since the second respondent was admittedly not present in Court at the time when the application for amendment was heard or even when the order was dictated and the second respondent had not stated in the affidavit as to what was the source of his information in regard to this statement, the learned Judge chose not to rely upon it. But a statement to the same effect was made before us by Mr. J.R. Nanavati at the Bar and this statement was not sought to be controverted by the junior advocate of the first respondent who was then present in Court. On these facts the question is whether the order allowing the amendments could be said to be null and void on the ground that it was made without giving an opportunity of hearing to the second respondent.

44. We do not think that when the petition was notified on the List of Causes only for settlement of issues and the application for amendment was not notified on the List of Causes for hearing, it was open to the learned Judge to take up the application for amendment for hearing except in the presence and with the consent of all the parties. If all the parties to the petition were present and

none of them had objection to the hearing of the application for amendment, it could certainly be taken up for hearing but when the second respondent was not present either personally or through his advocate, and there was no consent on his part to the hearing of the application for amendment on that day despite its not being notified, we fail to see, with the greatest respect to the learned Judge, how he could take up the application for amendment for hearing. It was not as if the petition was called on for hearing and in the course of the hearing an application was made by the petitioner for leave to amend the petition. It might be possible in such a case to argue that even if the application for amendment could be considered and an order granting the amendments made by learned Judge, though in our view such an argument also may not be justified, for the second respondent could always urge that he did not remain present because he did not wish to contest the petition as it stood but if any amendment was going to be made in the petition, he would contest the making of such amendment. Here in the present case the petition being fixed only for settlement of issues, no other business in relation to the petition could be taken up by the learned Judge unless all the parties were present and consented to the taking up of such business.

45. It is undoubtedly true, as pointed out by the learned Judge, that the second respondent supported the petition and was, therefore, very probably indifferent and did not take any active interest in what was going on in the Court, but that does not dispense with the requirement of the rules of fundamental procedure that no order should be made which would prejudicially affect a party to a litigation unless he has had an opportunity of being heard against the making of such order. It is also true that Mr. J.R. Nanavati, advocate of the second respondent, came into the Court when the order allowing the amendments was being dictated and did not point out to the learned Judge that the second respondent had not been served with a copy of the application and that the learned Judge should not, therefore, proceed with the dictation of the order without giving opportunity of hearing to him. But that again cannot make any difference for the simple reason that the application for amendment was not notified on the List of Causes for hearing and it could not be taken up for hearing and no order could be passed upon it without the consent of the second respondent or Mr. J.R. Nanavati. The first respondent argued before us that he would like to have an opportunity of showing that the second respondent was not only aware of the contents of the application for amendment but he also knew that the application for amendment was going to be moved on 24th July 1967 but it is not necessary to remand the case for this purpose, for even if this be the true position, the infirmity in the order still remains, since the application for amendment was not notified for hearing and Mr. J.R. Nanavati was therefore, entitled to assume that the application for amendment would not be taken up for hearing unless he was present and consented to it. It is true that Mr. J.R. Nanavati did not point out to the learned Judge that he had not been heard and that no order should be made allowing the amendments without hearing him but it is quite possible-and there is nothing to show to the contrary-that Mr. J.R. Nanavati was not aware of the amendments sought in the application and he might have thought to himself that he would consider the position of the second respondent after he acquainted himself with the nature of the amendments allowed. In any event this inaction

on the part of Mr. J.R. Nanavati cannot cure the initial defect in taking up the application for amendment for hearing and making the order allowing the amendments. We are, therefore, of the view that the order passed by the learned Judge allowing the amendments was null and void and must be set aside by us. On that view the second order passed by the learned Judge must also be held to be wrong in so far as it rejected the contention of the second respondent.

46. That takes us to a consideration of the second order passed by the learned Judge in so far as it rejected the Note of the petitioner dismissing to withdraw the application for amendment. On this point we find ourselves in agreement with the final conclusion reached by the learned Judge but we cannot assent to the reasons which prevailed with the learned Judge. There can be no doubt that once a judgment is dictated by the Judge to the stenographer in open Court, it is the final decision of the Court intimated to the parties and to the world at large by formal pronouncement or delivery in open Court and it effectively disposes of the case but that does not mean that the Judge cannot alter or amend it or even change it completely before he has signed it. Of course if the change involves an alteration of the decision and not merely an addition or subtraction of a part of the reasoning, the Judge would have to give notice to the parties and re-hear them on the point of change, but he can certainly change the judgment so long as he has not signed it. But once he has signed the judgment, he cannot change it except by way of review which is permitted only on very limited grounds. This position has always been regarded as well-settled and there is high authority in support of it. We refer to the decision of Supreme Court in *Surendra Singh v. State of Uttar Pradesh*²⁹, The Supreme Court pointed out in that case that a "judgment" is the final decision of the Court intimated to the parties and to the world at large by formal pronouncement or delivery in open Court and once that is given, it becomes the operative pronouncement of the Court. The rules regarding the manner in which it is to be recorded,, the way in which it is to be authenticated, the signing and the sealing are all rules designed to secure certainty about its content and matter and do not form the essence of the matter and failure to comply with any of these rules cannot affect the validity of the judgment. The Supreme Court laid down these propositions in paragraphs 10 to 14 of the judgment and these were the paragraphs relied on by the learned Judge in taking the view that once a judgment is delivered in open Court, the Judge cannot alter it even though he has not signed it. But it appears that the attention of the learned Judge was not drawn to paragraph 15 of the judgment of the Supreme Court where the Supreme Court has specifically dealt with the power of the Judge to alter or amend or change the judgment so long as he has not signed it. This is what the Supreme Court says in paragraph 15:-

"After the judgment has been delivered provision is made for review. One provision is that it can be freely altered or amended or even changed completely without further formality, except notice to the parties and a re-hearing on the point of change should that be necessary, provided it has not been signed. Another is that after signature a review, properly so-called would lie in civil cases but none in criminal; but the review, when it lies is only permitted on very narrow grounds."

It was on the basis of this statement of the law by the Supreme Court that the Full Bench of the Allahabad High Court observed in Sangam Lal's case (supra) that in a case where judgment has been delivered but not signed.

"the power to alter or amend or even to change completely is unlimited provided notice is given to the parties and they are heard before the proposed change is made."

We are, therefore, of the opinion that though the learned Judge was right in taking the view that the order dictated by him in open Court was a final and effective decision disposing of the application for amendment and the petitioner was thereafter not entitled to claim as of right to withdraw the same, he was, with very great respect to him, in error in disagreeing with the Full Bench decision of the Allahabad High Court in Sangam Lal's case, and holding that once a judgment is dictated by the Judge to the stenographer in open Court, he is not entitled to alter or amend or change it even if he has not signed it. The correct position, we apprehend, is that so long as the Judge has not signed the judgment, he can freely alter or amend it or even change it completely after giving notice to the parties and a re-hearing on the point of change, should that be necessary.

47. In the result we allow these appeals, set aside the two impugned orders made by the

²⁹ AIR 1954 SC 194

learned Judge and remand the application for amendment to the learned Judge for disposal according to law. Mr. I.M. Nanavati on behalf of the first respondent applies for a certificate for leave to appeal to the Supreme Court under Article 133(1)(c) of the Constitution. The application is rejected as the order made by us in these appeals is not a judgment, decree or final order within the meaning of Article 133(1)(c) On the application of the first respondent we direct that for a period of 15 days from the date of receipt of certified copy of this judgment by the first respondent, the application for amendment shall not be taken up for hearing on remand, in order to enable the first respondent to approach the Supreme Court for Special leave under Article 136, if he so chooses. The first respondent will pay to the petitioner and the second respondent costs of these appeals fixed at Rs. 500/- for the petitioner and Rs. 500/- for the second respondent. Liberty to the petitioner and the second respondent to withdraw the respective amounts deposited by them in Court in these appeals.

Appeals allowed.