BOMBAY HIGH COURT

Manjuli

Vs.

Civil Judge

Spl. Civil Appln. No. 759 of 1966

(Deshmukh and Nathwani, JJ.)

13.09.1968

JUDGMENT

Deshmukh, J.

1. By this petition under Article 227 of the Constitution, the petitioner wants this Court to quash the order passed by the Civil Judge, Senior Division, as Election Tribunal under the Bombay Village Panchayats Act, 1958, in Miscellaneous Judicial Case No. 33 of 1966, on 8-8-1966.

2. This petition arises out of the elections to the village Panchayat of Sonegaon (Bai), Tahsil and District Wardha, Ward no. 2 of that village is a multimember constituency with two seats in all. Out of them, one is a reserved seat for women and the other is a general seat. The election took place on 30-5-1966 and the votes were counted on 31-5-1966. In that Ward No. 2, there were only 5 candidates. Out of them, two were women, viz., the present petitioner Manjulabai and one Anjanabai opponent No. 5. The other three candidates were men who are opponents 4, 6 and 7. The counting disclosed that Anjanabai got 104 votes, Mahadeo got 90 votes, Manjulabai got 30, Govinda got 32 and Rambhau 1. The Returning Officer declared Anjanabai elected to the general seat as she polled the highest votes at the election and the only remaining women candidate Munjulabai who secured 30 votes was declared elected to the reserved seat for women. Against this declaration of result, Mahadeo, who secured 90 votes, filed an election petition before the Civil Judge on 15-6-1966. The only ground raised in the Election Petition was that after counting the votes correctly, the Returning Officer erroneously interpreted provisions of Rule 34 of the Bombay Village Panchayats Election Rules, 1959, and declared the results in a wrong manner. The learned Civil Judge accepted this submission and interpreting the provisions of R. 34 of the Bombay Village Panchayats Election Rules, 1959, he declared Anjanabai elected for a reserved seat and out of the remaining candidates, Mahadeo, who secured the next highest number of votes, was declared as elected for the general seat. Being aggrieved by this order, Manjulabai, who was originally declared elected but who lost her seat due to the result of the Election

Petition, has filed this petition.

3. Rule 34 of the Bombay Village Panchayats Election Rules, 1959, under which the results have been declared is attacked in this case as being unreasonable and unlawful. The substantive provisions relating to the reservation of seats for women in the Village Panchayat are to be found in sub-section (2) of Section 10 of the Bombay Village Panchayats Act, 1958. The only reference in that section is that in every Panchayat two seats shall be reserved for women. There is no further guidance as to how this intention should be carried out. The general rule making power also does not specifically point out how this intention shall be carried into effect. In order to implement the provisions of this Act, the State Government has framed rules, called, the Bombay Village Panchayats Election Rules, 1959, as also the Bombay Village Panchayats (Divisions of Village into Wards and Reservation of Seats for Women, Scheduled Castes and Scheduled Tribes) Rules, 1966. The rules of 1966 became operative from 12th April of 1966. The disputed election has taken place when both these sets of rules were in force.

4. The relevant part of rule 34 of the Bombay Village Panchayats Election Rules, 1959, for our purpose, is as follows:-

> '34. Returning Officer to declare result of election -
> (1) On completion of the statement showing the number of votes recorded, the Returning Officer shall from amongst the candidates qualified to be chosen to fill a reserved seat, if any, declare subject to the provisions of Rule 5 the candidate who has secured the largest number of votes to be elected to fill such reserved seat:
> Provided that if in the same Ward there is a reservation of seats for women and for the Scheduled Castes and/or Scheduled Tribes, the result of the seat or seats reserved for Scheduled Castes or Scheduled Tribes shall be declared first and then the result of the seat or seats reserved for women.
> (2) The Returning Officer shall then declare from among all other candidates, excluding those who have been declared elected to fill the reserved seats, if any, the candidate or candidates who have secured the largest number of votes to be elected to fill the unreserved seats.'

Sub-rule (3) of Rule 34 is not necessary for the purpose of this petition and hence it is not reproduced. The occasion to declare the election of a woman candidate or a Scheduled caste and Scheduled Tribes candidate arises only if the provision of Rule 5 does not apply. Where in a multi-member constituency like the present Ward No. 2 one seat is reserved for women out of two and there is only one woman candidate in the field, then under Rule 5, she is to be automatically declared as qualified to be chosen to fill in such seat. When there are more than one woman or more than one Scheduled Caste and Scheduled Tribe's candidate in the field, then the election has to be declared under the above rule. Under sub-rule (1) of Rule 34 after a statement showing the number of votes recorded, is prepared by the Returning Officer, he is to

consider the candidates who are entitled to be chosen to fill a reserved seat. Out of those candidates, the one who has secured the highest number of votes is to be declared as a successful candidate elected to fill such reserved seat. The proviso points out that where seats are reserved for women as well as for Scheduled Castes or Scheduled Tribes' candidates, the result of the Scheduled Castes or Scheduled Tribes' candidates is to be declared first and then that of reserved seats for women. There is no occasion for us to implement this provision in this case. Sub-rule (2) then points out that after declaration, the results for the reserved seats barring the candidate who is declared elected, the cases of all other candidates will again be considered and among them the one getting the highest number of votes shall be declared elected for the second seat which is the general seat. The learned counsel appearing for the petitioner has challenged this rule. According to him, this rule is unreasonable and does not implement the intention of the legislature expressed in sub-section (2) of Section 10 of the Bombay Village Panchayats Act, 1958. It is not disputed that the learned Civil Judge, as Election Tribunal, has properly understood the meaning of this rule and has declared the election of the reserved seat for women in the first instance from among the candidates qualified to be elected to that post and thereafter he has also properly declared the candidate getting highest votes among the rest as elected to the general seat. The quarrel is not with the interpretation of the rule. The quarrel is with the rule itself.

5. According to the learned counsel for the petitioner the provisions ought to have been quite reverse. After counting of votes is over and a table is prepared, the candidate getting highest votes ought to have been elected to the general seat in the first instance and out of the remaining candidates, the result of the reserved seats should have been declared. To take up the present case, Anjanabai who secured the highest number of votes viz. 104 should have been elected to the general seat. Out of the remaining candidate Manjulabai, being the only woman candidate in the field now available to fill the reserved seat, should have been declared elected. Such an approach would have given two seats to women in Ward No. 2 in the present case instead of only one which is the result of Rule 34.

6. It is, therefore, argued that the rule is unreasonable and does not implement the intention of the legislature expressed in sub-section (2) of Section 10 of the Bombay Village Panchayats Act.

7. The learned counsel draws considerable support for his argument from a Division Bench Judgment of this Court in the case of *Smt. Shashikalabai v. Returning Officer Gram Panchayat Election, Umri*[1], In paragraphs 9, 10 and 11, the learned Judges do observe that the provisions of Rule 34, sub-rule (1) seem to be rather peculiar. A faithful implementation of sub-rule (1) of Rule 34, it is observed, might require the Returning Officer to declare a woman candidate or a Scheduled Caste or a Scheduled Tribe candidate polling the highest vote in the election to be declared as elected for the reserved seat. In that case, it is further pointed out that it may be a necessary consequence of a woman who tops the list being declared as elected to the reserved seat, that no other woman can get the chance to be elected to the seat reserved for women

because the woman candidate topping the list is to be declared as elected to the reserved seat. It is then stated that in the opinion of the learned Judges, that was not the intention of the legislature in the case of multi-member constituency where a seat is reserved for a woman or Scheduled Caste or Scheduled Tribe's candidate, even though a candidate belonging to any of these categories topped the poll, he should be declared elected to the reserved seat for these categories. It is then observed that the intention of the legislature appears to be quite contrary, viz., to give additional opportunities to the candidates belonging to the weaker section of the society viz., women Scheduled Caste or Scheduled Tribe. That intention is likely to be defeated by the implementation of sub-rule (1) of Rule 34 of the Bombay Village Panchayats Election Rules as it now stands. In paragraph 10, it is then pointed out that the learned Judges examined in some details the provision of these rules as in their view, it required to be suitably amended. They have, therefore, expressed their

[1]1968 Mah LJ 391

opinion in paragraph 11 that the appropriate authorities might take up this question and re-examine the provision of sub-rule (1) of Rule 34 of the Bombay Village Panchayats Election Rules, 1959 for the purpose of proper amendment.

8. It is this reasoning which is adopted by the learned Counsel for the petitioner which requires some examination. We might at once point out with utmost respect to the learned Judges who decided Shashikalabai's case, 1968 Mah LJ 391 that the question regarding a reasonableness or validity of Rule 34 of the Bombay Village Panchayats Election Rules, 1959, did not directly arise before them. The facts of that case were that the nomination paper of the petitioner which was properly presented in Form A under Rule 8 of the Village Panchayats Election Rules was rejected by the Returning Officer. He insisted upon requiring the petitioner to indicate whether she was contesting the election to the reserved seat or to the general seat. The petitioner refused to comply with this direction because there was no provision in the nomination form to indicate whether the election was being fought for a general seat or for a reserved seat. The Returning Officer was told that there is nothing in the rules which requires the petitioner to so indicate her choice and that does not seem to be the intention of any rules framed by the Government. Since her petition came to be rejected on that short ground, she approached the High Court in the absence of any other remedy. The question that squarely fell for consideration before the learned Judges was whether the Returning Officer was right in rejecting the nomination paper of that petitioner which complied with the provisions of the Act and which was in accordance with the specimen form A under Rule 8. Since the nomination paper did not require any choice to be expressed whether the candidate offered herself for the reserved seat for women or for the general seat in the Ward, it was beyond the power of the Returning Officer to insist upon such a declaration in the form. That was the only ambit of the dispute that was taken up to the High Court. We may also point out that though several parties were added as party-respondents including the State, none of the respondents put in appearance except the rival candidates in that Ward. It appears to have been treated as a private dispute between rival candidates relating to the rejection of nomination paper. The learned Judges had not, therefore, the advantage of hearing

the point of view of the State in the matter of framing Rule 34. In fact, Rule 34 was not the subject matter of dispute in that petition. Under the circumstances, the observations seem to have been made in the absence of the point of view of the State being put before them.

9. We will presently point out that not only Rule 34 but almost all the provisions relating to the election to the Village Panchayats in the Election Rules framed by the State seem to be copied from the Representation of the People Act, 1951. Section 54 of that Act, which is not only in pari materia with Rule 34 but almost identical in words, was subject-matter of challenge before the Supreme Court. It is obvious from the discussion of the learned Judges that the Judgment of the Supreme Court in *V. V. Giri v. D. Suri Dora*[2], was not brought to their notice. We would, therefore, point out, with utmost respect to the learned Judges, that their discussion and observations relating to Rule 34 are obiter and they appear to have been made under the above mentioned circumstances.

10. However, since the petitioner has used that line of reasoning for challenging Rule 34, we must examine the validity of this argument. We have already indicated above that the Election Rules framed by the State Government are, more or less, borrowed from the

[2] AIR 1959 SC 1318

provisions of the Representation of the People Act 1951. It is true that in the substantive provisions of the Act beyond a declaration in sub-section (2) of Section 10 that in every Panchayat, two seats shall be reserved for women, there is nothing else by way of guidance for implementing this intention. For the purpose of finding out the scheme of reservation, we may first look to the provisions of the Bombay Village Panchayats (Divisions of Village into Wards and Reservation of Seats for Women, Scheduled Castes and Scheduled Tribes) Rules, 1966. Rule 4 of these rules vests the authority to allot the seats reserved for women to different Wards by the Collector. This authority is to be exercised by him subject to the provisions of sub-section (2) of Section 10 and as far as practicable he has to so allot the reserved seats for women, Scheduled Caste or Scheduled Tribe candidates and that at least one more seat, from that Ward, will be a general seat open for competition, by anybody. Going to the provisions of the Bombay Village Panchayats Election Rules, 1959, there are several rules which are parallel or in pari materia with the provisions of the Representation of the People Act, 1951. Rule 10 deals with the amount of deposit to be paid at the Panchayat Election where the nomination form is filled by a woman candidate or a candidate of Scheduled Castes or Scheduled Tribes. If a seat is so reserved, such candidate has to pay the deposit of Re. 1/- as against Rs. 5/- by other candidates. This provision is similar to the provision contained in section 34 of the Representation of the People Act, 1951. We may point out that in one respect the nomination form under Rule 8 required to be filled in by the candidates is an improvement over the nomination form under Section 33 of the said Act. In the nomination form, under the said Act, a declaration is to be made by the candidate whether he is contesting the reserved seat or not. There is no such provision in Form A framed under Rule 8. This Form A merely provides for the name of the Ward for which the election is being fought, the full name of the candidate, sex, age and address. The next column requires the candidate to

mention the name of the Ward in which he is entitled to vote and in which his name appears to be in the voters' list. There is one more important column in which certain information is to be supplied by the candidate concerned. If the nomination paper relates to a Ward where there is a reserved seat for the Scheduled Castes or Scheduled Tribes, the candidate has to state whether or not he belongs to such castes or tribes for which seat or seats are reserved. If he is such a candidate he must further state the name of the caste or tribe to which he belongs. This is all that is required to be done while filling Form A under Rule 8. Rule 14 then requires the Returning Officer to prepare a list of validly nominated candidates and post it up at the Village Panchayat Office for the purposes of the information of the voters. This list is wardwise and there is no provision that the list is to be prepared seatwise as if there is a separate reserved seat and a separate election for a woman's seat or for the reserved seat of the candidate of the Scheduled Castes and Scheduled Tribes. Rule 17 provides for the preparation of a ballot paper. Only one ballot paper per Ward is to be prepared and the names of the candidates are to be arranged in alphabetical order. Rule 14 of the Election Rules 1959 is parallel to the provisions of Section 36 of the said Act. The method of voting may then be noted which is provided in Rule 23 which is similar to Section 63 of the said Act. A voter has as many votes as there are seats in his ward. He is required to give only one vote per candidate but there is no restriction on him for casting the vote seatwise, in the sense, that one vote for a reserved seat and one for a general seat. He is entitled to cast his two votes in favor of any two candidates of his choice. After voting takes place in this manner, the counting and declaration of results are then provided in Rule 34 which is parallel to Section 54 of the said Act. We have already pointed out how result is to be declared under Rule 34. The result in respect of a reserved seat is to be declared first and then the result to the general seat is to be declared from among all the remaining candidates in order of the votes polled.

11. We may point out that the reservation of seats for women and of the Scheduled Castes and Scheduled Tribes is in the nature of a facility given to them or a concession made to a weaker section of the society in order to offer them reasonable opportunity of being represented in the administration as such. The idea, therefore, is to see that minimum number of seats as contemplated by the legislature are filled in. There is no objection if more members from these weaker sections are elected to the Village Panchayat or other elected bodies. This result of guaranteeing minimum seats as required by the statute is properly carried out by the provisions of Rule 34. We might take up the instance of the present disputed Ward No. 2 and examine how Rule 34 is, in fact, beneficial and not obstructive of affording proper representation to women. This rule, according to us, fulfils two requirements. It ensures one seat from that ward being allotted to the woman candidate for which class a seat has been declared reserved in this Ward. At the same time, it fulfils another important requirement of the democratic set up of the institution viz., those candidates who are favored by the electorate and in whose favor highest number of votes are cast must represent the constituency.

12. We might explain how this result is brought about by framing Rule 34. As it is, if in the case

of the petitioner Manjulabai and respondent no. 5 Anjanabai, they were to get 90 and 104 votes respectively and all other candidates were to get less number of votes, how would Rule 34 operate? The Returning Officer after preparing the chart of votes would first consider the election to the reserved seats. He would find that Anjanabai has polled 104 as against 90 of Manjulabai and must be declared elected to fill the reserved seat for women. Anjanabai is, therefore, taken out of the contest as an elected candidate for the reserved seat. Considering the cases of all the other remaining candidates, the Returning Officer would have found that Manjulabai secured 90 votes, which is more than the number of votes of any other candidates. Manjulabai would then be elected to the general seat. Here a woman has certainly been returned in the reserved seat but another candidate, who has secured the next highest number of votes, is properly elected in consonance with the wishes of the electorate. It is of no consequence that the second candidate happens to be a woman. There is no prohibition to elect all women or all members of the Scheduled Castes or Scheduled Tribes to a given elected body. If we now consider that the three men candidates had secured high number of votes and in order of number of votes, Anjanabai was no. 4 and Manjulabai was no. 5 and if the votes of these two women were paltry votes say 25 and 20, which we may assume are the smallest number of votes polled by candidates, how would Rule 34 operate ?. The Returning Officer would first take up the reserved seat and finding that out of the two eligible candidates one has secured 25 and the other only 20 votes, he would declare the candidate getting 25 votes as elected to the reserved seat for women. Thereafter when the votes polled by all the remaining candidates in the field are taken into account, it may be that Mahadeo as in the present case, having secured 90 votes would automatically be declared as the successful candidate filling the general seat. Here Anjanabai has been declared elected even though she had very few votes in her favor. This result is achieved by implementing Rule 34 which assures on the one hand a seat to the weaker section of the society for whom reservation is made and on the other hand it assures the return of a really popular candidate to fill in the general seat.

13. As we have already pointed out, present Rule 34 is almost word to word similar to the provisions of Section 54 sub-section (4) of the Representation of the People Act, 1951. In the case of AIR 1959 Supreme Court 1318 a dispute relating to the election from the Andhra Pradesh State in respect of a Parliamentary Constituency was taken up to the Supreme Court. The facts in that case show that there were four rival candidates A, B, C and D in a multi-member Parliamentary Constituency of Parvatipuram. There were two seats in that constituency: one seat being reserved for Scheduled Tribes. When polling took place what was disclosed was that C polled the highest number of votes; next in order was candidate B, thereafter was the number of candidate A and the last candidate was D. Under the provisions of Section 54(4), the Returning Officer first took up the cases of the Scheduled Tribes' candidates who were eligible to fill the reserved seats. B and C were both candidates belonging to the Scheduled Tribes. Among them, C was the highest, as otherwise also he had polled the highest number of votes, C was, therefore, declared elected to the reserved seat. The cases of A, B and C were examined and it was found that among them, B got the highest number of votes. B was, therefore, elected to the

general seat in the constituency. Therefore, both the candidates returned were Scheduled Tribes' candidates. So, under that section, a real representative of the people was also chosen to represent the second seat.

14. A who was third in order of polling of votes challenged the election of B to the general seat. An argument which is similar to the one which is made before us was made before the Supreme Court. It was pointed out that B and C were the contestants for the reserved seats and out of them, C, who had secured highest number of votes, is properly elected to the reserved seat. The election to the general seat should have been confined to A and D. B a candidate of the Scheduled Tribes should not have been allowed to enter the contest for the general seat. One additional ground was placed before the Supreme Court in view of the provisions of Section 33 under which nomination form was required to be filled in. Under the said Act, the candidate had to declare whether he was contesting the election for the reserved seat. Both the candidates B and C had so made the declaration. In view of that declaration, it was urged that both of them are the candidates only for the reserved seats and neither of them had the right to participate in the election to the general seat after having failed in the contest for the reserved seat. The Supreme Court rejected the petition of the petitioner and pointed out that the fact that a seat has been reserved for a weaker section of the society in some of the multi-member constituencies does not change the nature of the election. The election is one from the double-member constituency. By reserving a seat for a multi-member constituency in order to afford representation to a certain class of society the constituency from which the election is being held is not rendered a separate electorate. Provisions of Section 63 are then referred to and it is emphasized that so far as the voter is concerned, he is free to cast his vote in favor of any candidate irrespective of the fact whether the candidate is contesting the election for the reserved seat or for the general seat. The nomination form does not deprive his right to participate in the election to the general seat. The intention is to afford a certain facility to a class of society and to assure them minimum number of seats in the House of People. Section 54 which is a wholesome section implements the intention of the legislature.

15. Several other arguments made before the Supreme Court challenging Section 54 as discriminatory and as such violative of Articles 14 and 33 of the Constitution were negatived by referring to Article 15 sub-articles (3) and (4). These provisions are in the nature of temporary concessions to be availed of by a certain section of the society for some time and for that purpose the provisions are considered to be not only lawful but necessary for implementing that intention. A similar point arose for decision before a Division Bench of this Court in the case of *Digambar Rao Bindu v. Dev Rao Kamble*[3], In that case also in the double-member constituency of Nanded, there were four candidates in the field. The highest number of votes was polled by Kamble, a member of the Scheduled Caste, the next highest by Harihar Sonule who also happened to be a member of Scheduled Caste, the third in order of polling of votes was the petitioner Digambar Rao Bindu and the last was a candidate named Vajendra Kabre. A seat was reserved for the Scheduled Caste candidate in that constituency. After the votes were counted and the chart was

prepared, the Returning Officer took up the case of Scheduled Caste candidates who were eligible to fill the reserved seat. He found among them that Kamble had the highest number of votes and as such declared him elected to fill the reserved seat. The next highest number of votes were obtained by Harihar Sonule and, therefore, he was declared elected to the general seat in the constituency. Digambar Rao Bindu then filed an election petition where the grievances were almost identical with the grievances of petitioner V. V. Giri before the Supreme Court in the above referred case. The learned Judges of the Division Bench pointed out that the electoral-roll of voters is one. The election is one and the reservation of seat in a multi-member constituency does not render the constituency into a separate electorate. The pertinent observations on page 191 of the report are as follows:

> 'It is not as if the Constitution while setting its face against separate electorates and separate rolls permits a sort of compartmental election in a multi-member constituency where a reservation is made for a member of the Scheduled Caste. The election is not compartmental. The election is general, and it is only when the results are declared that the question arises whether the reservation clause has come into play or not.'

It is again emphasized in the further part of the judgment that the election is undoubtedly one and the principle of reservation comes into play in order to confer a privilege upon a member of the Scheduled Caste. The operation of that section or the rule in our case comes into play only at the time of the declaration of the result. Right from the process of preparation of voters list upto the final stage of casting votes in favour of candidates, there is only one election and the label to be attached to the candidate plays no part in that process. In order to secure minimum representation of a certain class, this question of labels comes in only when results are to be declared.

16. We may also point out that as the interpretation of Rule 34 did not squarely arise before the learned Judges of the Division Bench whose judgment has been referred to earlier, their attention was not drawn to a Division Bench judgment of this Court in Special Civil Appln. No. 121 of 1963 D/- 14-9-1964 (MP). The judgment is not reported as such but a note appears in *Dayaram Sadashiv Bante v. Zibal Jago*[4],

[3](1958) 15 Ele. LR 187 (Bom) [4]1965 Mah LJ Notes No. 33

The facts of that case are rather interesting. The election related to a double-member constituency of a Village Panchayat. There were three candidates in all, two of them being women. One seat in that constituency was reserved for woman. Out of the two women candidates, one made an endorsement on her nomination paper that she was a candidate for the general seat. The other woman did not make any such endorsement. The Returning Officer, therefore, declared the other woman candidate elected to the reserved seat for women on the basis that she was the only candidate in the field for filling the vacancy of the reserved seat for women. After the election was over one of the candidates challenged the final result of the election by way of an election petition. The entire election of that Ward was set aside by the election Tribunal and when the defeated party approached this Court by way of a Special Civil Application, the order of the

Tribunal was upheld. It was pointed out that the fact that an endorsement was made by one of the women candidates on her nomination paper that she was a candidate for the general seat did not disqualify her from being chosen for the reserved seat. The principle on which that election was set aside was that there was more than one candidate eligible to fill the reserved seat. All the three candidates should have, therefore, gone to polls and after the voters exercise their free choice of casting votes in favor of any of the three and when the occasion of counting the votes arose and the result of the election was to be declared, the labeling under Rule 34 would come into play.

17. In our view, therefore, Rule 34 is not unreasonable. It is not a rule which does not implement the intention of the legislature as expressed in sub-section (2) of Section 10. On the contrary, it appears a wholesome rule adopted from similar provisions of Representation of the People Act, 1951 which have otherwise under the terms of a contract and is refundable after the completion of the contract Article 62 is not applicable to the suit for refund as the money was not received by the defendant for the plaintiff's use. The right to refund did not arise immediately on receipt by the defendant. The suit not being a suit against a depository or pawnee to recover movable property deposited or pawned, Article 145, also would not be applicable. Such suit would be governed by the residuary Article 120. Case law discussed.
[Paras 7, 8, 9]

--> Cases Referred :

A. Venkata Subba Rao v. State of Anon Act, 1908, which prescribed a period of thirty years applied and the suit was not time barred. The trial Court accordingly decreed the plaintiff's suit for a sum of Rs. 1,039-78 and costs and interest.

4. Against the said decision, the defendants filed an appeal in the District Court at Kolhapur. The learned Assistant Judge who heard the appeal held that Article 145 of the Limitation Act was not applicable, but in the opinion of the learned Assistant Judge, Article 62 was applicable which prescribed a period of three years. He held that the suit of the plaintiff was time barred. He allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit. Against the said decision, the present appeal has been filed.
5. The only point argued in this appeal before us is as to which of the Articles 62, 120 and 145 of the Indian Limitation Act, 1908 was applicable to the suit. The contention of the plaintiff is that Article 145 or in the alternative Article 120 is applicable while the defendants contend that Article 62 is applicable.

6. Article 62 of the Indian Limitation Act 1908, prescribes a period of three years for a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. The time from which the period begins to run is when the money is received. Article 145 prescribes a period of thirty years for a suit against a depositary or pawnee to recover

movable property deposited or pawned. The time from which the period begins to run is the date of the deposit or pawn. Article 120 is the residuary article and prescribes a period of six years for suits for which no period of limitation is provided elsewhere in the first schedule to the Indian Limitation Act, 1908. The time from which the period begins to run is when the right to sue accrues.

7. In our opinion, Article 145 has no application to the facts of this case. The suit is for recovery of an amount deposited under a contract which became payable when the contract was completed. It is not a suit against a depositary or pawnee to recover movable property deposited or pawned. The amount was deposited with the State of Kolhapur as and by way of security for the performance of a contract to supply materials or in any case under the terms of the contract and became due on completion of the contract.

8. In our opinion, Article 62 will also have no application. Article 62 will have no application if the money when received by the defendant is not either in fact or in point of law received for plaintiff's use and the circumstance that by reason of subsequent events the money has become money received to plaintiff's use will not render Article 62 applicable. The plaintiff must have a right of action at the date of the receipt of money. If when the defendant receives the money, plaintiff is not entitled to it, Article 62 will have no application. This point is directly covered by a judgment of the Supreme Court in the case of *A. Venkata Subba Rao v. State of Andhra Pradesh*[5], The observations in the judgment of Ayyangar J. at p. 620 (of SCR) read as under :-

> 'Where the defendant occupies a fiduciary relationship towards the plaintiff, it is clear that Article 62 is inapplicable. Next even if the claim could have been comprehended under the omnibus caption of the English 'action for money had and received', still if there are other more specific Articles in the Limitation Act, e. g. Article 96 (mistake), Article 97 (consideration which fails) Article 62 would be inapplicable. Lastly, if the right to refund does not arise immediately on receipt by the defendant but arises by reason of facts transpiring subsequently, Article 62 cannot apply, for it proceeds on the basis that the plaintiff has a cause of action for instituting the suit at the very moment of the receipt.'

In the present case, according to the terms of the contract, the amount was to become due on completion of the contract. It was to become due by reason of subsequent events. The right to refund did not arise immediately on receipt by the defendant. Accordingly, Article 62 will have no application to the facts of the present case. We have also stated hereinabove that Article 145 would not be applicable. The only article that would appear to us to be applicable is Article 120, which is the residuary article.

9. Where money is deposited by way of security for the due performance of a contract or

[5](1965) 2 SCR 577

otherwise under the terms of a contract and is refundable after the completion of the contract in our opinion, Article 62 is not applicable to the suit for refund as the money was not received by

the defendant for the plaintiff's use. Such suit would be governed by the residuary Article 120 of the Indian Limitation Act, 1908.

10. This point arose for decision in the case of *Harij Gram Panchayat v. Thakkar Lakhiram Ramji*[6], and Mr. Justice Bhagwati held that the cause of action envisaged by Article 62 was not the same as that for money had and received under English law and that Article 60 or Article 97 was not applicable and in the absence of any specific article, Article 120 would apply. In that case, money was received by way of security for due performance of a contract and a suit was filed for recovery of the same on completion of the contract.

11. Our attention was invited to the judgment of a Division Bench of this Court in the case of *Dhanraj Mills Ltd. v. Laxmi Cotton Traders*[7], In that case it was merely held that Article 145 was not applicable to the facts which were similar to the facts of this case, but it was not decided as to which of the articles in the first schedule of the Indian Limitation Act was applicable. In an earlier Bombay case, namely, *Lingangouda v. Lingangouda*[8], Chagla C. J. had taken the view that Article 120 was applicable in a similar matter. The reason given in the judgment was that Article 62 should not apply to a case where the terms of the article were not literally complied with. It was observed that such a construction would result in plaintiffs losing a large number of cases on the ground of limitation whereas if Article 120 was held to be applicable, the plaintiffs would be safe. The reasoning of this decision was not approved of by the Supreme Court in (1965) 2 SCR 577 referred to hereinabove. We are however concluded by the judgment of the Supreme Court on the point that Article 62 was not applicable. The only article with which we are left is Article 120. In our opinion, Article 120 is applicable being the residuary article.

12. In this case the contractors were informed by the letter Exh. 27 written on behalf of the defendants on 27th May 1949 that the sum of Rs. 2,079-9-1 was due to them and that the amount could be withdrawn against joint receipt of Dhavate and Rote. In our opinion, this will be the date when the right to sue accrued. The contract had already been completed in 1946. This suit was filed in 1958 and but for the acknowledgments of the defendants, it would have been time-barred even under Article 120. But in letters Ex. 28 dated 17th December 1951, Exh. 29 dated 11th June 1955 and Exh. 30 dated 3rd February 1956, the claim in the suit has been acknowledged and Dhavate and Rote have been informed that the amount could be received against joint receipt of Dhavate and Rote. In the last two letters, the amount has been described as 'Anamat' amount held on behalf of Dhavate and Rote. By virtue of these acknowledgments, the limitation is saved and, in our opinion, the suit of the plaintiff is within time.

13. Accordingly, we allow this appeal, set aside the judgment and decree of the District Court, Kolhapur, and restore the judgment and decree of the trial Court. The defendants will pay the costs throughout.

Appeal allowed.

[6] AIR 1962 Guj 14

[7] Bom 60 Bom LR 1295

[8] ILR (1953) Bom 214