

# RAJASTHAN HIGH COURT

Santosh Kanwar

Vs.

Surgyan Kanwar

C. Rev. No. 660 of 2001

(D.N. Joshi, J.)

06.11.2001

## ORDER

**D.N. Joshi, J.**

1. This revision has been directed under Section 115, Civil Procedure Code against the order dated 29-5-2000 passed by the learned District Judge, Merta in Election Petition No. 16/2000, whereby the application filed by the petitioner under Order 16, Rule 6, Civil Procedure Code was rejected. Another application filed by the revisionist-petitioner under Order 7, Rule 11, Civil Procedure Code was also rejected by the same order. However, the order rejecting the application under Order 16, Rule 6, Civil Procedure Code has been challenged before this Court.

2. Notices were issued to the non-petitioners. The notices were served on the non-petitioner Nos. 1, 2, 4 and 5. Mr. J. R. Patel appeared on behalf of non-petitioner Nos. 1 and 2. Non-petitioner No. 3 was not served, but a preliminary objection was raised by Mr. J. R. Patel about the maintainability of the revision petition, therefore, no notice was issued to the non-petitioner No. 3.

3. Heard learned counsel for the parties and perused the record. It was argued by Mr. J. R. Patel, learned counsel for the non-petitioner Nos. 1 and 2 that the order has been passed by the Election Tribunal and no revision lies against the said order under Section 115, Civil Procedure Code as the Tribunal is not subordinate to the High Court and its order cannot be revised under revisional jurisdiction of this Court. In support of his argument, he relied upon the following decisions of this Court :-

(1) *Smt. Manju Sharma v. Suji Sharma*, <sup>1</sup>

(2) *Smt. Indira v. Smt. Prabha*, <sup>2</sup>

4. Per contra, it was argued by the learned counsel for the petitioner that the revision petition may be treated as writ under Articles 226/227 of the Constitution. In support of his argument, he has relied on the Full Bench decision of this Court given in *United India Insurance Co. Ltd. v. Brij Mohan Das*, <sup>3</sup>

5. Controverting the argument of the learned counsel for the petitioner, the counsel for the non-petitioner Nos. 1 and 2 relying on the judgment of the Apex Court in *Vishesh Kumar v. Shanti Prasad*, reported in <sup>4</sup> argued that no revision can be treated as a writ and, therefore, the revision petition is not maintainable and liable to be dismissed.

6. Under Section 115, Civil Procedure Code, this Court may call for the record of any case, which has been decided by any Court subordinate to this Court. Section 3 of Civil Procedure Code defines the subordination of the Court, which is as under :-

"3. Subordination of Courts.- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

7. It has been held in *G. N. Verma v. Hargovind Dayal*, reported in <sup>5</sup> that a persona designata is a person selected to act in his capacity, as a Judge. He is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character.

8. It has been held in *Ram Milan v. Bansilal Tejsingh*, reported in <sup>6</sup> that a persona designata is a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

9. A persona designata" has been defined in Legal Glossary published by Law and Justice Department of the Central Government to be a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

10. It has been held in *Union of India v. Girdhari Lal*, reported in <sup>7</sup> that the District

Judge appointed by Chief Justice to discharge judicial function under sub-section (6) of Section 11 of the Arbitration Act is a persona designata and it does not come under the definition of Court and the orders passed by him are not revisable by High Court under its revisional jurisdiction. The learned single Judge in this respect considered the definition of Court" in Section 2 (1) (c) of the new Arbitration Act and also considered the other relevant provisions of the Act. 10A. It has been held in *United India Insurance Company Ltd. v. Brij Mohan Das*, (1998 WLC UC (Raj) 1) (supra) that both Motor Vehicles Claims Tribunal or Workmen's Compensation Commissioner have trapping of Court but are not Civil Courts and the Presiding Officers in them need not be judicial officers subordinate to High Court. It was further held by the Full Bench that even if judicial officers, they preside not as persona designata but act as Tribunal which is not civil Court under Section 3 of the Civil Procedure Code. As per judgment of the Full Bench Court and Tribunal are distinct. Reliance on the judgment of the Apex Court, reported in *Associated Cement Companies Ltd. v. P. N. Sharma*,<sup>8</sup> reliance was placed on the decision reported in for the purposes of distinction of the Court and Tribunal in Para No. 25, it was observed :-

There is distinction between Court and Tribunal. In the case of *Associated Cement Companies Ltd. v. P. N. Sharma*,<sup>9</sup> The Hon'ble Supreme Court held that the Tribunals occupy a special position of their own under the scheme of our Constitution. The special matters and questions are entrusted to them for the decision. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary Courts. The Constitution recognised a hierarchy of Courts and to their adjudication are normally entrusted all disputes between the citizens and citizens as well as between the citizens and the State. These Courts are ordinary Courts of Civil Judicature. The Hon'ble Supreme Court has further observed that under our Constitution, there is no rigid separation of powers as under the Australian Constitution; and so, it would not be constitutionally inappropriate or improper to say that judicial power of the State can be conferred on the hierarchy of Courts established under the Constitution as well as on Tribunals which are not Courts strictly so called. According to the Hon'ble Supreme Court, a Tribunal is an authority other than a regular Court of justice. A Tribunal is an adjudicating authority other than a Court vested with the judicial powers under the statutes. It is significant to note the following observations of the Hon'ble Supreme Court :

The expression "Court" in the context denotes a Tribunal constituted by the State as a part of the ordinary hierarchy of Courts which are invested legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary Courts which have recognised a hierarchy of Courts and to their adjudication are normally citizens and the State. These Courts can be described as ordinary Courts of civil Judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process which is described as judicial process. The powers discharge are judicial functions and the decisions they reach and pronounce are judicial decisions ..... Tribunals which fall within the purview of Article 136 (1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the Courts one common characteristic; both the judicial as distinguished from purely administrative or executive functions." (vide *Durga Shanker Mehta v. Raghuraj Singh*, <sup>10</sup> They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Court have to conform to that procedure. The procedure which the Tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the Courts and the Tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of Tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial power and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a

sovereign State."

11. By a Court" means Courts of Civil Judicature and by Tribunals those bodies of men, who are acquainted to decide controversies arising under certain special laws. Among powers of the State is included the power to decide such controversies.

12. The judgment reported in *Associated Cement Companies Ltd. v. P. N. Sharma*, reported in AIR 1965 Supreme Court 1595 (supra) was relied/referred in the following cases :-

(1) *Lal Shri Bhagwan v. Ram Chand*,<sup>11</sup>

(2) *Calcutta Dock Labour Board v. Jaffar Imam*,<sup>12</sup>

(3) *Collector, Varanasi v. Gauri Shanker Misra*,<sup>13</sup>

(4) *All Party Hill Leaders' Conference, Shillong v. Captain W.A. Sangma*,<sup>14</sup>

(5) *Smt. Maneka Gandhi v. Union of India*<sup>15</sup>

(6) *Commissioner of Income-tax, Calcutta v. B. N. Bhattacharjee*,<sup>16</sup>

(7) *Mrs. Sarojini Ramaswami v. Union of India*,<sup>17</sup>

13. In *Smt. Indira v. Smt. Prabha*, reported in<sup>18</sup> it was held by this Court that Judge acting under Rule 80 of the Rajasthan Panchayat Raj (Election), Rules, 1994 is persona designate and his action in dealing with election petition cannot be revised by the High Court under Section 115, Civil Procedure Code. In *Smt. Indira's* case (supra) this Court considered the relevant Rules of 1994, particularly Rules 80, 85, 86, 87 and quoted these rules in extenso.

14. In view of the above judgments, the Court is of the opinion that the District Judge having jurisdiction to hear the election petition under Rule 80 of the Rajasthan Panchayat Raj (Election) Rules, 1994, is an authority according to Section 117 of the Act of 1994. The decision of this authority" cannot be called in question by way of appeal. The term 'Court' used in various headings of the Rules of 1994 is meant only to show that while hearing the election petition the Judge functions as a judicial tribunal" and that it is only in that sense that the word seems to have been used. The Judge is not made identical with the civil Court. It is, therefore, apparent that intention of the Legislature in enacting the relevant provisions was to create 'Election Tribunal' and not the 'civil Court'. Thus, the Judge acting under Rule 80 of the Rajasthan Panchayati Raj Election Rules, 1994 is a persona designate and his action in dealing

with the election petition cannot be revised by the High Court under Section 115, Civil Procedure Code. Therefore, the objection regarding maintainability, is sustained.

15. The next question arises for consideration is whether the revision petition can be treated as a writ under Articles 226/227 of the Constitution by this Court or not?

16. Counsel for the petitioner placed reliance on the decisions of this Court in *Shree Kishan Gautam v. The Agent, State Bank of Bikaner and Jaipur, Dungargarh, reported in* <sup>19</sup> and *Vishesh Kumar v. Shanti Prasad, reported in* <sup>20</sup> wherein it has been held that no revision petition under Section 115 Civil Procedure Code can be treated as a writ under Articles 226/227. According to the decision in Vishesh Kumar's case (supra), a revision under Section 115, Civil Procedure Code is a separate and distinct proceeding from a petition under Article 226 of the Constitution and one cannot be identified with the other. It was held in Shree Kishan Gautam's case (supra) as under :-

"I have carefully considered these contentions. I have not been referred to any law whereby a revision petition under Section 115, Civil Procedure Code may be treated as a writ petition under Article 226 of the Constitution, though a revision petition can be treated to be a petition under Article 227 of the Constitution, but the scope of Articles 226 and 227 is different."

17. But, in view of the decision given by the Full Bench in *United Insurance Company Ltd. v. Brij Mohan's case, (1998 WLC UC (Raj) 1)* (supra), the revision petition may be treated as writ under Articles 226 and 227 of the Constitution without there being any application moved by the petitioner. The Full Bench followed the decisions given in *United India Fire and General Insurance Co. Ltd. v. Mst. Sayer Kanwar, reported in* <sup>21</sup> and *Bashir Khan v. Ranger, Social Vaniki, reported in* <sup>22</sup>

18. In view of the decision of the Full Bench in *United Insurance Co. Ltd. v. Brij Mohan, (1998 WLC UC (Raj) 1)* (supra), the objection of the non-petitioner's counsel is not tenable as far as Shree Kishan Gautam's case (supra) is concerned. As far as the precedent Vishesh Kumar's case, ( AIR 1980 Supreme Court 892) (supra) is concerned, that has been considered by the Apex Court in its latest decision given in *Municipal Corporation of Delhi v. R. P. Khaitan, reported in* <sup>23</sup> In this case, the Apex Court considered the view expressed by the Delhi High Court, whereby petitioner's

application under Article 226 of the Constitution was held to be not maintainable in the presence of the regular remedy available under Section 115, Civil Procedure Code towards challenging the orders of the District Judge, Delhi passed in Section 169 (1) of the Delhi Municipal Corporation Act. The Apex Court held as follows :-

The High Court's dependence on *Vishesh Kumar v. Shanti Prasad*<sup>24</sup> in refusing to convert a petition under Section 115, Civil Procedure Code to be one under Article 227 of the Constitution may have been justified on the facts of that case, but the same cannot be treated as a precedent to oust jurisdiction of the High Court vested in it under the law. The High Court certainly is entitled to convert any proceeding instituted before it in one manner to be that of another provided a proper cause has been made out and in the interest of justice."

19. In the present case, according to averments made in the revision petition, the non-petitioner No. 1 Surgyan Kanwar was discharging duties as Aanganwari Karyakarta" and, therefore, was not qualified to contest the election as a Panch or a Member under Section 19 of the Panchayat Act. The petitioner wanted to summon a circular in this regard. Order 16, Rule 6, Civil Procedure Code reads as under :-

"6. Summons to produce document.- Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same."

20. The document to be summoned is a circular letter. Therefore, the learned Election Tribunal rejected the application of the petitioner. Though, the revision petition can be treated as a writ petition under Articles 226 and 227 of the Constitution without an application on behalf of the petitioner, but there must be a proper cause for the purpose. The Court is of the opinion that no proper cause has been shown and it is not in the interest of justice that this revision petition be treated as writ under Article 226 or 227 of the Constitution.

21. Therefore, in view of the above, the revision petition is not maintainable and no proper cause has been shown to treat it as a writ under Article 226 or 227 of the Constitution. Accordingly, the revision petition is liable to be dismissed and is hereby dismissed.

22. As the revision petition has been dismissed, the stay application also stands disposed of.

Revision dismissed.

Cases Referred.

1. 1996 (3) WLC (Raj) 161
2. 1998 (1) WLC (Raj) 81
3. 1998 WLC UC (Raj) 1
4. AIR 1980 SC 892
5. AIR 1975 All 52
6. AIR 1958 Mad Pra 203 (FB)
7. AIR 1998 Raj 240
8. AIR 1965 SC 1595
9. AIR 1965 SC 1595
10. 1955-I SCR 267 at p. 272: AIR 1954 SC 520 at p. 522
11. AIR 1965 SC 1767
12. AIR 1966 SC 282
13. AIR 1968 SC 384
14. AIR 1977 SC 2155
15. AIR 1978 SC 597
16. AIR 1979 SC 1725
17. AIR 1992 Supreme Court 2219.
18. 1998 WLC (Raj) 81,
19. WLN (UC) p. 1979 (sic)
20. AIR 1980 SC 892
21. 1976 WLN 187
22. 1994 (2) WLC 573.
23. (1999) 79 Del LT 555
24. AIR 1980 SC 892