Supreme Court of India
Shaik Mohammad Umar Saheb vs Kalaskar Hasham Karimsab & Ors on 11 March, 1969
Equivalent citations: 1970 AIR 61, 1969 SCR (3) 966
Author: G Mitter
Bench: Mitter, G.K.

PETITIONER:
SHAIK MOHAMMAD UMAR SAHEB

Vs.

RESPONDENT:
KALASKAR HASHAM KARIMSAB & ORS.

DATE OF JUDGMENT:
11/03/1969

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M. (CJ)

CITATION:
1970 AIR 61 1969 SCR (3) 966
1969 SCC (1) 741

ACT:
Election petition-Maharashtra Municipalities Act 1965, s. 21(7)--Trial Court rejecting application to summon petitioner's witnesses-Thereafter summoning them as court witnesses-Whether e powered to do so Court not training separate clear cut issue for each charge-Whether trial vitiated.
Constitution of India Arts. 226 and 227-Jurisdiction of High Court Whether can reappreciate evidence.

HEADNOTE:
The first respondent challenged the appellant's election to the Sangli City Municipality held in June 1967 under the Maharashtra Municipalities Act, 1965. It was alleged that the respondent had published and circulated pamphlets containing defamatory statements against the respondent and in particular instigating Muslim' voters to vote against him by arousing their religious sentiments. At the trial of the petition the respondents applied to have two witnesses examined but the Trial Judge rejected the application, Later, however, the same two witnesses were called by the trial judge as court witnesses. The Trial Court allowed the petition and disqualified the appellant from being a member

of a Municipality for five years.

A petition under Arts. 226 and 227 of the Constitution by the appellant was rejected in limine by the High Court.

In appeal to this Court it was contended inter alia by the appellant (i) that the trial court was wrong in calling as court witnesses the same two witnesses who had been cited as the respondent's witnesses and having earlier rejected the respondent's application to call them; (ii) on the evidence the trial court's finding was not justifiable; (iii) that the result of the election was published in the Gazette on the 8th June as well as 151th June but the limitation of 10 days ran from 8th June and the petition was therefore time-barred; (iv) the first issue which was decided against the appellant was confusing and misleading whereby the appellant had been denied a fair trial; (v) the order of the Judge disqualifying the appellant for a period of five years was unduly harsh.

HELD: Dismissing the appeal : (i) Although the trial court's earlier order refusing to issue summons to the two witnesses was not justifiable,' under s. 21(7) of the Maharashtra Municipalities Act, 1965, the Trial Judge is given powers wider than those given by the Code of Civil Procedure under Order 16, Rule 14, as the section does not prescribe any pre-requisite to the examination of a person as a court witness as envisaged by the Code of Civil Procedure. The trial Judge therefore had jurisdiction to call the two persons as witnesses under the provisions of the Act. [972 D]

R. M. Seshadri v. G. Vasanta Pai, [1969] 2 S.C.R. 1019, referred to.

(ii) On the evidence, no exception could be taken to the trial Judge deciding the issue against the appellant on the facts and circumstances of the case. It could not be said that there was no evidence on which the Judge could have come to that conclusion. When the trial Judge accepted

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the evidence with regard to the distribution of the pamphlets by the appellant, the High Court, which was not hearing an appeal, could not be expected to take a different view in exercising jurisdiction under Arts. 226 and 227 of the Constitution and there was no reason shown to this Court to interfere with the order of the High Court. [975 A]

(iii) The appellant could have set up the first Gazette publication as the one fixing the period of limitation in which case the trial. Judge would have been required to go into the matter. But the appellant had precluded himself from doing so by his unconditional acceptance of the statement in the petition that the result was published on 15th June. 1967.

There was no error apparent on the face of the record before the High Court and consequently he jurisdiction under Art. 226 of the Constitution could not have been exercised on the facts of the case by the issue of a writ of

certiorari. Neither could the High Court set aside the order of the trial court under Art. 227 of the Constitution under which the High Court's power of superintendence is confined to seeing that the trial court had not transgressed the limits imposed by the Act. On the facts of the case the High Court was not called upon to go into this question. [974 C-D]

(iv) It could not be concluded that because of the want of preciseness in the issues framed the whole trial was vitiated. The appellant knew the points he had to meet. Although the evidence about the disribution of the pamphlets was not beyond reproach, it was not for the High Court to take the view that the order ought to be quashed on the ground that there was no evidence. [974 F]

(v) The allegations of corrupt practices against the appellant were of a serious nature and if be was found guilty, the period of five years' disqualification could not be considered inappropriate.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2322 of 1968. Appeal by special leave from the order dated October 4, 1968 of the Bombay High Court in Special Civil Application, No. 2053 of 1968.

N. N. Keswani, for the appellant.

R. B. Datar and S. N. Prasad, for respondent No. 1. S. P. Nayar, for respondents Nos. 2 to 4.

The Judgment of the Court was delivered by Mitter, J. This is an appeal by special leave from an order of the Bombay High Court dismissing in limine an application under Arts. 226 and 227 of the Constitution and refusing to quash the judgment and order of the Assistant Judge at Sangli rendered in Election Petition No. 10 of 1967. The facts are as follows.

On June 3, 1967 election of councillors to the Sangli City Municipality was held under the Maharashtra Municipalities Act, 1965 (hereinafter referred to as the Act. The counting of votes took place with regard to Ward No. 25 on June 4, 1967. According to the election petition, the results were published in the Official Gazette on June 15, 1967 and the petition was filed on June 24, 1967. The petitioner who was himself a candidate for election from the said ward challenged the election of the appellant before us on several grounds set forth in paragraph 3 of the petition. The first of these was to the effect that the appellant bad, with the help of his supporters, published an undated pamphlet and circulated the same on a large scale among the voters in Ward No. 25 and that the said pamphlet contained untrue, false and defamatory statements about the petitioner thereby prejudicing the voters generally against him and in particular instigating the Muslim voters to vote against him by arousing their religious sentiments. Another similar ground based on a defamatory pamphlet dated 30th May 1967 was urged in the petition. Charges of terrorising voters and securing

votes by false personation were also levelled therein. Statements were made in the petition that the appellant's name as councillor had been declared in the Official Gazette on June 15, 1967 and the petitioner's cause of action bad arisen on that date. The first of these was expressly accepted as correct in the written statement of the appellant and the second remained unchallenged. The appellant however repelled the charges mentioned above and denied that he was responsible for the publication of any of the impugned pamphlets.

Of the four issues framed at the hearing of the petition, the first was :

> "whether the petitioner proved that opponent No. 1 who was elected as Municipal Councillor for Ward No. 25 had used malpractices at the time at the election by arousing religious sentiments of the voters and making defamatory statements against the petitioner by publishing pamphlets?"

The petitioner gave evidence himself about the allegations in the petition to substantiate the charges raised by him. The appellant examined himself to contradict the said evidence. It appears that the petitioner had in the list of witnesses filed by him, mentioned the name of two persons, Hakim Abdul Rahiman Shaikh and Gopal Chintaman Ghugare and that these two persons had attended the court on certain days when they were not examined. On August 21, 1968 the petitioner made an application before the Judge for issuing summons on these two persons as his witnesses, but the learned Judge rejected that application. The appellant's case was closed on the same day and the arguments started on August 22, 1968. On that date the court adjourned the hearing of the case to August 24, 1968 for recording the evidence of these two witnesses in respect of whom an application had been made by the election petitioner on the previous day. The order Ex. 36 dated August 22, 1968 tends to show that the learned Judge was persuaded to do so by the mere fact that they were Government servants. He however recorded that the ends of justice required that these witnesses should be examined. He fixed August 24, 1968 for further hearing of the matter and directed the issue of summonses to these two persons. These two persons were examined on the 24th August as court witnesses and thereafter the argument of counsel was resumed and concluded. By judgment delivered on August 30, 1968 the learned Judge allowed the election petition holding in favour of the petitioner on the first issue. The appellant before us presented an application to the High Court under Arts. 226 and 227 of the Constitution for quashing the order of the Judge; but the High Court dismissed the writ petition in limine on October 4, 1968 and the appellant has now come up before this Court by special leave.

Learned counsel for the appellant raised five points before us. The first point was that the procedure adopted by the trial court was wrong in that the two witnesses who were examined as court witnesses had been cited by the election petitioner earlier and the learned Judge had in the exercise of jurisdiction vested in him refused to issue summonses to them when he was asked to do so on August 21, 1968. It was urged that having rejected this application, it was not open to the Judge to examine these two persons as court witnesses and this was a serious irregularity which the High Court should have set right by quasbing the order of the Judge based on the evidence of these witnesses. The second point was that the election petition was filed beyond the period prescribed by the Act and as such it was not maintainable. The third point was that the first issue which was

decided against the appellant was so confusing and misleading that there was no fair trial of the petition to the prejudice of the appellant. The fourth point was that in any event there was no evidence of corrupt practice of which the appellant could be found guilty. The fifth point was that the order of the Judge disqualifying the appellant for a period of five years was unduly harsh and ought to be set aside. With regard to the first point it is to be noted that the case of the election petitioner was that the appellant was guilty of publication of two pamphlets which cast serious aspersions on his character and conduct and prejudiced him materially in the eyes of the voters as a result whereof he lost the election and that the first of these also aroused the religious sentiments of the Muslim voters to his detriment. The appellant was found guilty of publication of the first pamphlet only. This was. signed by six persons. There was no evidence as to where it was printed or who got it printed. The evidence adduced by the election petitioner was that the appellant had published all the phmphlets mentioned in the petition and distributed the same amongst the voters and the petitioner had come across the first pamphlet during the process of distribution. There can be no two opinions about the contents of the pamphlet being defamatory of the election petitioner's character. The pamphlet read :

> "H. K. Kadlaskar, who contests the election from Ward No. 25 is an independent candidate, has been ostracized from the Muslim community and he has no support of the Muslim community and therefore nobody should vote for him."

While Kadlaskar was in charge of the management of the Kabarasthan, he was extracting Rs. 12 for allowing the members of Muslim community to bury their dead and had prohibited the burial of the dead bodies of dancing girls and had extracted hundreds of rupees from the persons whose dead were buried there. He turned the Kabarasthan into a brothel and was trading in illicit liquor for which he was convicted. Recently he got published a pamphlet in the name of his mistress Noorjahan Bapulal Kavathekar to defame Mohamad Umar Shaikh and he is making some imputations against the private character of Mohmad Umar and Moulana Innan and nobody should vote for this mean-minded and anti- social person.

In a meeting of the Muslim workers held on 29-4-1967 in the Madina Masjid Hall under the presidentship of M. G. Shaikh it was resolved unanimously that in the place of Shaikh Usman Abdul Bidiwale the Congress ticket should be given to Umar Shaikh, who had the backing of Muslim community and that he did great public service in the past. So all the voters should cast vote in favour of Mohammad Umar Shaikh whose symbol is a pair of bullocks.

(1) Ramjan Mohiddin Jamadar (Hundekari), Chairman Idgah Committee. (2) Shaik Abdul Sattar Rahimanbhai Bidiwale, Treasurer, Idgah Fund Committee. (3) Moulana Hannan, manager of Madrasa-e-Hidayatul Islam, and member of Madina Masjid (4) Kamalsaheb Babasaheb Shiledar, Chairman of Madina Masjid and member of Idgah Committee (5) Sayyed Amin, member of Madrasa-e-Hidayatul Islam and Idgah Committee. (6) Jalaloddin Allabus Sayyad, B.A.LLB., member of Madrasa-e- Hidayatul Islam."

The appellant who led evidence on his own behalf denied the publication of the pamphlet and the distribution of it by him as alleged by the petitioner. Nothing came out in cross-examination of the

appellant to substantiate the election petitioner's averment that he was responsible for its distribution. Of the two witnesses who were examined as court witnesses by the Judge, the witness Gopal Chintaman Ghugare did not say anything material on the point of distribution by the appellant. He merely said that he had seen people reading the pamphlet but he did not know who had distributed it. The other witness Hakim Abdul Rahiman Shaikh stated categorically that he had received a copy of the pamphlet on the day previous to the municipal election, that is to say, on June 2, 1967 and he gave full particulars as to how he came to receive it. He stated that he had attended a prayer meeting at a mosque on the 2nd June and after the Namaj was over the appellant had read over the pamphlet and one Moulana Hannanlent support to the appellant. In cross-examination it was elicited from him that although he had occasion to see the distribution of other pamphlets, he could give no details thereof i.e. either about the person who distributed them or the dates when that was done. In cross-examination of this witness serious accusations were made against his character and probably no exception could have been taken if the Judge hearing the matter had refused to believe him. However that may be, the learned Judge accepted his testimony and came to the conclusion that the appellant had been personally responsible for the distribution of the first pamphlet and as such found him guilty of a corrupt practice and made an order disqualifying him under the Act from taking part in municipal elections for the next.five years.

It was strenuously argued by learned counsel for the appellant that the recepition of evidence of the two witnesses called as court witnesses vitiated the whole trial and therefore the High Court was not right in refusing to quash the order. Our attention was drawn to the provisions of O. XVI r. 14 of the Code of Civil Procedure and particularly to the conditions under which the court may examine any person other than a party to the suit and not called as a witness by a party to the suit but of its own motion to give evidence therein. It was argued that after having turned down the application of the election petitioner on the 21st August for issue of summons to these two persons, the learned Judge clearly went wrong in allowing them to be called as court witnesses. In this connection we. may note the provisions of s. 21 sub-s. 7 of the Maharashtra Municipalities Act, 1965. It provides as follows (7) For the trial of such petition, the Judge shallhave all the powers of a civil court including power in respect of the following matters :-

(a) discovery and inspection;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence on affidavit; and

(g) issuing commissions for the examination of witnesses;

and the Judge may summon suo motu any person whose evidence appears to him to be material. The Judge shall be deemed to be a Civil Court, within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898."

It appears that under this section, the Judge is given powers wider than those given by the Code of Civil Procedure under 0. 16 r. 14 inasmuch as the section does not prescribe any prerequisite to the examination of a person as court witness as envisaged by the Code of Civil Procedure. In our view, the learned Judge had jurisdiction to call these two persons as witnesses under the provisions of the Act. We may note that even under the Representation of the People Act, 1951 which does not contain a similar provision it has been held by this Court that "although…….. the trial court should be at arms length and the court should not really enter into the dispute as a third party, but it is not to be understood that the Court never has the power to summon a witness or to call for a document which would throw light upon the matter, particularly of corrupt practice which is alleged and is being sought to be proved. If the Court was satisfied that a corrupt practice has in fact been perpetrated, may be by one side or the other, it was absolutely necessary to find out who was the author of that corrupt practice." (see R. M. Seshadri v. G. Vasanta Pai(1).

In that case, the corrupt practice with which the appellant was charged was having used a large number of motor vehicles for the free conveyance of voters at an election. The trial Judge examined two witnesses as court witnesses and it is quite clear that but for the evidence of these two persons, it would have been very difficult. if not impossible, for the Judge to have come to the conclusion he did and find the appellant guilty of corrupt practice. Although one of the two witnesses so examined had been cited earlier as a witness by one of the parties, he was not (1) [1969] 2 S.C.R. 1019.

examined but during the course of the evidence led before the rial court, it became quite clear that the two persons who were called as court witnesses were fully conversant with the engagement of the motor vehicles and the court therefore examined them as court witnesses and on the basis of their evidence, found the appellant guilty of a corrupt practice. There, this Court had to deal with the provisions of 0. 16 r. 14 and the quotation from that judgment shows that the powers of the court in this respect are of wide amplitude, specially when investigation is being made into allegations about the commission of a corrupt practice. It may be that in the instant case, if the two persons had not been examined, the Judge might well have decided the issue the other way. But the Act certainly gave him the power to do so and no exception can be taken to the course adopted by the Judge although it must be recorded that his earlier order refusing to issue summonses to them in the-first instance when asked to do so on the 21st August was hardly justifiable. Probably the learned Judge realised that his order of the 21st August needed recalling. The appellant would have had a real cause for grievance if he had asked for an opportunity to rebut the evidence of these two witnesses and had been denied the same but this has nowhere been alleged. On the evidence no exception can be taken to the course adopted by the Judge in deciding the issue against the appellant on the facts and circumstances of this case. It may be that the evidence which was adduced was not so immaculate that another learned Judge deciding the petition might not have taken a different view. But it cannot be said that there was no evidence on which the Judge could have come to the conclusion he did, The first point therefore fails.

With regard to the second point, the learned counsel argued by reference to two publications in the Maharashtra Gazette, the one of June 8, 1967 and the other of June 15, 1967 that the first publication having- taken place on the 8th June the time-limit of ten days fixed under s. 21 sub-s. (1) of the Act began to run from that date and the petition which was filed on the 24th June was beyond time and should not have been entertained. It is difficult for us to see why two' Gazette notifications had become necessary. One seems to be the verbatim reprint of the other. The first publication dated 8th June is headed "Maharashtra Government Gazette-Extraordinary-Official Publication" while the other is headed "Maharashtra Government Gazette--Official Publication". The first bears the date 8th June and the second bears the date 15th June and both start with the sentence "in accordance with s. 19(1) of the Maharashtra Municipalities Act, 1965 it is declared that in respect of the Sangh Municipal Council General Elections held on 3rd June 1967, the below mentioned candidates are elected from. the below mentioned wards for the seats mentioned as against their names". As a matter of fact, it does not appear that there is any difference between the two Gazettes with regard to the names of the successful councillors. The appellant might have, if so minded, set up the first Gazette publication as the one fixing the period of limitation in which case the trial Judge would have been required to go into the matter. But the appellant precluded himself from doing so by his unconditional acceptance of the statements in paragrapbs 1 and 2 of the petition. If the point had been canvassed before the learned trial Judge, he would certainly have gone into the matter and found out why there were two Gazette Publications and which was the publication to be taken into account for computation of the period of limitation prescribed by s. 21 (1) of the Act. There was no error apparent on the face of the record before the High Court and consequently the jurisdiction under Art. 226 of the Constitution could not have been exercised on the facts of the case by the issue of a writ of certiorari. Neither could the High Court have set aside the order of the trial court under Art. 227 of the Constitution under which the High Court's power of superintendence is confined to seeing that the trial court had not transgressed the limits imposed by the Act. On the facts of the case the High Court was not called upon to go into this question.

There is certainly-some substance in the grievance raised on behalf of the appellant that the first issue was rather confusing and misleading. Instead of framing a separate issue with regard to each charge of corrupt practice raised in the petition, the learned Judge, framed the issue in a manner which leaves much to be desired. For instance he should have framed separate issue with regard to each of the pamphlets. The issues should further have specified the different heads of corrupt practice committed in respect of each of the pamphlets. We cannot, however, come to the conclusion that because of the unsatisfactory nature of the issues framed, the whole trial is vitiated. The appellant knew exactly what points he had to meet. Evidence was adduced about the publication and distribution of the-- pamphlets by the election petitioner and contradicted by the appellant. As we have already stated, although the evidence about the distribution of the pamphlet was meagre and not beyond reproach it was not for the High Court to take the view that the order ought to be quashed on the ground that there was no evidence. It was urged by learned counsel for the appellant that there was enough material for the court to come to the conclusion that Hakim Abdul Rahiman Shaik was not a person whose veracity could not be depended upon. There is much that can be said against him but this does not mean that everything deposed to by him should be rejected and when the trial Judge accepted the evidence with regard to the distribution of the pamphlet by the appellant the High Court which was not hearing an appeal could not be expected to take a different

view in exercising jurisdiction under Arts. 226 and 227 of the Constitution and for- ourselves, we see no reason to interfere with the order of the High Court. The fourth point too is not one of substance. If the distribution of the pamphlet be accepted, there can be no doubt that the appellant was guilty of trying to arouse religious sentiments of the voters of the particular ward a majority of whom were Muslims. The pamphlet starts off by describing the election petitioner as a person ostracised from the Muslim community. If this statement was true, naturally any right-thinking Muslim would think twice before casting his vote in favour of such a person. There was also a charge in that pamphlet that he had turned the Kabarasthan into a brothel and was trading in illicit liquor for which was alleged to have been convicted. In our view, there is no merit in this point raised by the learned counsel. As regards the last point, it was for the learned Judge to have come to his own conclusion as to the period of disqualification. The maximum penalty which the Act allowed him to impose was disqualification for six years and we see no reason to take any exception to the disqualification actually imposed. As noted above, the allegations of corrupt practice were of a serious nature and if the appellant was found guilty of the commission thereof, the period of five years' disqualification would certainly not be inappropriate.

In the result, therefore, the appeal fails; but in the circumstances of this case, we make no order as to costs.

R.K.P.S. Appeal dismissed.