UPADHYAYA HARGOVIND DEVSHANKER

v.

DHIRENDRASINH VIRBHADRASINHJI SOLANKI & OTHERS

FEBRUARY 17, 1988

[E.S. VENKATARAMIAH AND K.N. SINGH, JJ.]

Whether a Letters Patent Appeal lies to a Division Bench of Gujarat High Court from an inter-locutory Order of a Single Judge of that High Court in the course of trial of an election petition filed under the Representation of the People Act, 1951—Determination of question.

The question which arose for determination in this case was whether a Letters Patent Appeal would lie to a Division Bench of the High Court of Gujarat from an interlocutory order of a Single Judge of that High Court in the course of the trial of an election petition filed under the Representation of the People Act, 1951.

The appellant and respondents Nos. 1 to 6 were candidates at an election held to fill a seat in the Legislative Assembly of the Gujarat State. The appellant was declared elected. Thereupon, the 1st respondent filed an election petition in the High Court, challenging the validity of the election of the appellant on a number of allegations, and in order to establish his case, he filed an application before the Single Judge who was trying the election petition, to direct the Returning Officer to produce all the records of the election, mentioned in the application, and prayed for permission to inspect the same. The appellant opposed the prayers made by the 1st respondent.

The Single Judge declined to grant the application made by the 1st respondent. Against the order of the Single Judge, the 1st respondent preferred an appeal under clause 15 of the Letters Patent of the Gujarat High Court. The Division Bench of the High Court allowed the appeal to the extent indicated in its judgment, overruling the contention of the appellant that the appeal was not maintainable as there was no provision in the Act, permitting an appeal to the Division Bench of the High Court against an interlocutory order of a Single Judge hearing an election petition filed under the Act. Aggrieved by the decision of the Division Bench, the appellant moved this Court for relief by special leave.

Allowing the appeal, setting aside the judgment of the Division

A Bench of the High Court and dismissing the Letters Patent Appeal while expressing no opinion on the merits of the case, the Court,

HELD: The only point urged in this appeal by the appellant was that the appeal filed under clause 15 of the Letters Patent of the High Court against the interlocutory order passed by the Single Judge was B not maintainable and, therefore, the judgment of the Division Bench was liable to be set aside. [1048C-D]

Under the provisions of the Act as amended and the provisions of the Constitution of India, no Court exercising power under any ordinary law other than the Judge of a High Court who had been assigned the work of trying an election petition under sub-section (2) of section C 80 A of the Act and the Supreme Court which was empowered to hear an appeal against any order passed by the judge of the High Court under section 98 or section 99 of the Act, could decide any question arising out of an election petition. The power of the Supreme Court under the provisions of the Constitution was, however, unaffected by D any of the provisions of the Act. It meant that when an election petition was pending in the High Court, only the judge who was asked to try the election petition could deal with the questions arising in it and no other judge or judges of the High Court could deal with them. When an order was passed under section 98 or section 99 of the Act by a judge of the High Court in an election petition, it was subject to the appellate juris- E diction of the Supreme Court under section 116-A of the Act, Article 136 of the Constitution being excluded in view of the express provisions of section 116-A of the Act, and being resorted to by any party aggrieved by any order passed by the judge trying an election petition not falling under section 98 or section 99 of the Act. It followed that the Division Bench of the High Court, which was entitled to hear an appeal F against any order of a Single Judge under clause 15 of the Letters Patent of the High Court, which was an ordinary law, could not hear an appeal against any interlocutory order passed in the course of the trial of an election petition by the Judge trying the election petition, since the Division Bench was not specified in the Act as an appellate authority which could deal with questions arising out of an election petition filed G under the Act. [1053G-H; 1054A-D]

Under clause 15 of the Letters Patent, an appeal no doubt lay from an order of a Single Judge of the High Court exercising Original Jurisdiction to the High Court itself irrespective of the fact that the judgment was preliminary or final or that it was one passed at an H interlocutory stage, provided it satisfied certain conditions, but the said

provision could not be extended to an election petition filed under the Act. Conferment of the power to try an election petition under the Act did not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable by the Single Judge under the Act was a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. In view of the limited nature of the appeal expressly provided in section 116-A of the Act, it should be held that any other right of appeal (excluding that under the Constitution) was taken away by necessary implication. Therefore, it was difficult to subscribe to the view that when once the jurisdiction to try an election petition was conferred on the High Court, all other powers incidental to the ordinary original jurisdiction exercised by a single Judge of a High Court would become applicable to an election petition under the Act. If the Parliament had intended that the Division Bench of the High Court should exercise its appellate jurisdiction under clause 15 of the Letters Patent of the High Court, probably, it would not have enacted sub-section (7) of section 86 of the Act, having regard to the well-known tendency of one or the other party to an election petition preferring appeals against the interlocutory orders to the Division Bench. If such appeals against the interlocutory orders to the High Court, were permitted, perhaps, no election dispute would be finally settled till the next election became due. As regards the jurisdiction to try an election petition and the right of appeal of the parties to an election petition, the provisions of the Act (apart from the provisions in the Constitution) constituted a complete code and no Judge or Judges other than the Single Judge of the High Court, who was asked to try an election petition, and the Supreme Court, exercising the appellate powers under section 116-A of the Act in respect of orders passed under section 98 or section 99 of the Act or under Article 136 of the Constitution in respect of other orders, could have any jurisdiction to deal with any matter arising out of an election petition filed under the Act. The Court disagreed with the view expressed on this question by the Gujarat High Court in *Dr. Chotalal Jivabhai Patel* v. *Vadilal Lallubhai Mehta & Ors.*, (12 Gujarat Law Reporter 850), and overruled that decision of the High Court. The Court also overruled the decision of the Madras High Court in *Kadiravan alias Shamsudeen* v. *B. Thirumalaikumar*, ILR (1970) 2 Mad. 183 and the decision of the Madhya Pradesh High Court in *Laxmi Narayan Nayak* v. *Ramratan Chaturvedi & Ors*, AIR 1986 Madhya Pradesh 165 which had taken the same view as in *Dr. Chotalal Jivabhai Patel's* Case (supra). The Court agreed with the view expressed by the Allahabad High Court in *Siaram* v. *Nathuram & Ors.*, [1968] ALL. L.J. 576 and by the Rajasthan High Court in *Ramdhar* v. *Shanwar Lal*, AIR 1985 Rajasthan 185 which held that by necessary

A **implication an appeal to the High Court from an interlocutory order of the Single Judge of the High Court in the course of trial of an election petition filed under the Act, was excluded. [1054G-H; 1055A-H; 1056A-H]**

The Division Bench of the High Court of Gujarat had no jurisdiction to hear the appeal filed by the Ist respondent against the interlocutory order passed by the Single Judge who was trying the election petition. Judgment of the Division Bench of the High Court set aside, Letters Patent Appeal dismissed. [1057B]

Dr. Chotalal Jivabhai Patel **v.** *Vadilal Lallubhai Mehta & Ors.*, **12 Gujarat Law Reporter 850;** *Kadiravan alias Shamsudeen* **v.** *B. Thirumalai Kumar*, **ILR (1970) 2 Mad. 183; and** *Laxmi Narayan Nayak* **v.** *Ramratan Chaturvedi and Ors.*, **A.I.R. 1986 Madhya Pradesh 165, overruled.**

Siaram **v.** *Nathuram and Ors.*, **[1968] All. L.J. 576 and** *Ramdhan* **v.** *Bhanwarlal*, **A.I.R. 1985 Rajasthan 185 approved.**

N.P. Ponnuswami **v.** *Returning Officer, Namekkal Constitutency and others*, **[1952] S.C.R. 218;** *Shah Babulal Khimji* **v.** *Jayaban D. Kania & Anr.*, **[1982] 1 S.C.R. 187 and** *National Telephone Company Ltd.* **v.** *Post Master General*, **[1913] A.C. 546, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 660 of 1988.

From the Judgment and Order dated 20.8.1987 of the Gujarat High Court in Election Petn. No. 6 of 1985.

Shanti Bhushan, P.M. Raval, M.V. Goswami and Ambrish Kumar for the Appellant.

Vithalbhai B. Patel and R.P. Kapoor for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The question which arises for consideration in this appeal is whether a Letters Patent appeal lies to a Division Bench of the High Court of Gujarat from an interlocutory order passed by a Single Judge of that High Court in the course of the trial of an election petition filed under the provisions of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') or not.

At the election held on March 5, 1985 to fill a seat in the Legislative Assembly of the State of Gujarat from the Lunavada Legislative Assembly Constituency the appellant and respondent Nos. 1 to 6 were the candidates. At that election the appellant having secured the largest number of votes was declared as elected to the Legislative Assembly. Thereupon the 1st respondent filed an election petition in Election Petition No. 6 of 1985 on the file of the High Court of Gujarat under section 81 of the Act questioning the validity of the election of the appellant on various grounds. The appellant contested the election petition. On the basis of the pleadings a number of issues were framed. In the course of the election petition, the first respondent had made *inter alia* the following allegations:

(i) that bogus votes had been cast in favour of the appellant in the names of dead persons;

(ii) that votes had been cast in the names of voters who were physically far away from the constituency and had not come for voting on the date of polling; and

(iii) that votes had been cast in the names of voters who were out of the country on the day of polling.

In order to establish his case, th Ist respondent applied to the learned Single Judge who was trying the election petition to direct the Returning Officer to produce all the records of election and particularly the used ballot papers and counterfoils of used ballot papers, the unused ballot papers, the marked copies of electoral rolls and the authorisations of the polling agents of different candidates in respect of 13 villages and 14 polling booths mentioned in the application. The Ist respondent prayed for permission to inspect the ballot papers, the marked copies of voters' lists and certain other materials referred to above. The appellant objected to the grant of the prayers made by the Ist respondent.

After taking into consideration the evidence that had been adduced before him and hearing the arguments of the learned counsel for the parties, the learned Single Judge declined to grant the application made by the Ist respondent by his Order dated July 18/21, 1986. Aggrieved by the order passed by the learned Single Judge the Ist respondent preferred an appeal under clause 15 of the Letters Patent of the High Court of Gujarat in Letters Patent Appeal No. 3 of 1987 which was heard by a Division Bench of the High Court. Before the

A Division Bench the appellant contended that the appeal was not maintainable on the ground that there was no provision in the Act which permitted an appeal to the Division Bench of the High Court against an interlocutory order of a Judge hearing the election petition filed under the Act and that clause 15 of the Letters Patent was not applicable to the case. The Division Bench after overruling the objection B regarding the maintainability of the appeal in view of the decision of the High Court of Gujarat in *Dr. Chotalal Jivabhai Patel* v. *Vadilal Lallubhai Mehta & Ors.*, 12 Gujarat Law Reporter 850 allowed the appeal to the extent indicated in the course of its judgment. Aggrieved by the decision of the Division Bench, the appellant has filed this appeal by special leave under Article 136 of the Constitution of India.

C The only point urged on behalf of the appellant in the course of this appeal is that the appeal filed under clause 15 of the Letters Patent of the High Court against the interlocutory order passed by the learned Single Judge was not maintainable and, therefore, the judgment of the Division Bench was liable to be set aside. In order to D appreciate the submissions made by the learned counsel for the parties before us, it is necessary to refer to the relevant provisions of the Constitution, the Act and the Letters Patent.

Article 329(b) of the Constitution of India reads thus:

E "329. Bar to interfere by courts in electoral matters—Notwithstanding anything in this Constitution.

(a) .....

(b) no election to either House of Parliament or to F the House or either House of the Legislature of a State shall be called in question except by an election petition presented to *such authority* and in such manner as may be provided for by or under any law made by the appropriate Legislature."

(underlining by us)

G Article 327 of the Constitution gives power to Parliament to make provisions with respect to elections to Legislatures. It reads thus:

"327. Power of Parliament to make provision with respect to elections to Legislatures—Subject to the provisions of H this Constitution, Parliament may from time to time by law

make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

In exercise of its powers under Article 329(b) read with Article 327 of the Constitution Parliament enacted the Act in the year 1951. In the Act, provision was made for constituting an authority to decide election disputes as required by clause (b) of Article 329 of the Constitution of India. The scheme of the Act, as it originally stood, insofar as the presentation of the election petitions and their trial was concerned was as follows:

Under section 81 of the Act an election petition calling in question any election had to be presented to the Election Commission by any candiate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or the candidates at such election. The election petition so presented to the Election Commission was liable to be dismissed by the Election Commission itself under section 85 of the Act if it was not presented in accordance with the provisions of section 81 of the Act, if the petition did not conform to the provisions of section 83 of the Act or if the petitioner had not enclosed with the petition a Government treasury receipt showing that a deposit of Rs.1,000 had been made by him either in a Government treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. If the petition was not dismissed under section 85 of the Act, the Election Commission was required to appoint an Election Tribunal for the trial of the petition. Under section 86 of the Act every election tribunal appointed under this section was to consist of a Chairman who was either or had been a Judge of the High Court or a person selected by the Election Commission from the list maintained by it under clause (a) of sub-section (2) of section 86 of the Act and two other members of whom one was a person who had been a District Judge in the State and was in the opinion of the High Court fit to be appointed as a member of the Election Tribunal and the other was an advocate of that High Court who had been in practice for a period of not less than 10 years and who was in the opinion of the High Court fit to be appointed as

such member. The Election Tribunal had under section 98 of the Act the power to dismiss an election petition, to declare the election of the returned candidate or the returned candidates as void and to declare the election of all or any of the returned candidates to be void and the petitioner or any other candidate was duly elected or to declare the election to be wholly void. It had also the power to pass certain other orders mentioned in section 99 of the Act. The powers of the Tribunal, the procedure to be followed by it and the other details regarding the trial of an election petition had been set out in Chapter III of Part VI of the Act. Section 105 of the Act, as it then stood, declared that every order of the Tribunal made under the Act was final and conclusive. No appeal was provided against the order of the Tribunal interlocutory or final. Any person aggrieved by the decision of the Tribunal could only move either the High Court having jurisdiction over the matter under Article 226 or the Supreme Court of India under Article 136 of the Constitution.

In *N.P. Ponnuswami* v. *Returning Officer, Namakkal Constituency and Others,* [1952] S.C.R. 218 a Constitution Bench of this Court observed that the right to vote or to stand as a candidate for an election was not a civil right but was a creature of statute or special law and must be subject to the limitations imposed by it. It further observed that it was the sole right of the Legislature to examine and determine all materials retained to the election of its own members and if the Legislature took it out of its own hands and vested in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which created it. After considering the relevant provisions of the Act, the Court observed at page 230 thus:

> "Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder."

It proceeded further to observe at Page 231 thus:

> "It is well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

It is thus seen that when the Act was originally enacted the authority constituted by law under Article 329(b) of the Constitution of India to try an election petition was a single-tier authority, i.e., the Election Tribunal constituted under section 86 of the Act against whose orders, interlocutory or final, there was no appeal provided by the Act. Apart from the remedies available under the constitutional provisions against the orders of the Election Tribunal no other court in India had jurisdiction to interfere with the orders of the Election Tribunal either in appeal or otherwise.

In 1957 Parliament perhaps felt that the scheme of the provisions relating to settlement of disputes regarding elections was not quite satisfactory. Therefore by Act 27 of 1956 the Act was amended by introducing certain changes with regard to the constitution of the Tribunal and by providing an appeal against the final orders of the Tribunal under section 98 or section 99 of the Act. Instead of an Election Tribunal consisting of three persons as it was originally provided, under section 86 of the Act which was substituted in the place of the original section 86 of the Act, it was provided that if an election petition was not dismissed under section 85 of the Act by the Election Commission, the Election Commission shall constitute a Tribunal for trying the election petition by appointing a District Judge from a list of persons who were District Judges in the State and were in the opinion of the High Court fit to be appointed as members of the Election Tribunal. Under this provision the Tribunal thus consisted of a single member. A new chapter entitled 'Chapter IV-A' consisting of sections 116-A and 116-D was introduced into Part VI of the Act providing for an appeal from any order of the Election Tribunal made under section 98 or section 99 of the Act to the High Court of the State in which the Tribunal was situated. The decision of the High Court on appeal under the said Chapter and subject only to such decision the order of the Tribunal under section 98 or section 99 of the Act was final and conclusive. Thus by the above amendment the authority to decide election disputes constituted under Article 329(b) of the Constitution of India became a two-tier authority, the Election Tribunal being the original authority and the High Court being the appellate authority. The decision of the High Court was no doubt subject to appeal to this Court under the provisions of the Constitution. Even here there was no provision for an appeal against the interlocutory orders passed by the Election Tribunal but they were only subject to the jurisdiction of the High Court under Article 226 of the Constitution and this Court under Article 136 of the Constitution.

A The above situation continued till the Act was further amended by the Representation of the People (Amendment) Act, 1966. By this amendment the power to try an Election Petition was entrusted to the High Court. The new section 80-A which was introduced into the Act reads as follows:

B "80-A. High Court to try election petitions: (1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that C purpose.

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

D

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court."

E A new section was substituted in the place of the former section 86 of the Act by the amendment made in the year. 1966. The relevant part of new section 86 reads thus:

"86. Trial of election petitions—(1) The High Court shall dismiss an election petition which does not comply with the F provisions of section 81 or section 82 or section 117.

Explanation—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

G (2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

H .....

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial". A

By the above said amendment the former section 116-A of the Act was substituted by new section 116-A providing for an appeal against the order made by the High Court under section 98 or section 99 of the Act to this Court. The new section 116-A reads thus: B

"116-A. Appeals to Supreme Court—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under section 98 or section 99. C

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under section 98 or section 99. D

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period." E

Even on this occasion the Act did not provide for any appeal against any interlocutory order passed by Judge trying an election petition. After the above amendment the authority referred to in Article 329(b) of the Constitution to decide an election petition under the Act is again two-tier authority—the High Court Judge trying an election petition being the original authority and the Supreme Court the appellate authority. The effect of clause (b) of Article 329 of the Constitution as already referred to above has been explained by the Constitution Bench of this Court in *N.P. Ponnuswami's* case (supra). No Court exercising power under any ordinary law other than the judge of a High Court who has been assigned the work of trying an election petition under sub-section (2) of section 80A of the Act and the Supreme Court which is empowered to hear an appeal against any order passed by the Judge of the High Court under section 98 or section 99 of the Act can therefore decide any question arising out of an election petition. The power of the Supreme Court under the provisions of the Constitution which is the fundamental law of the land and not an ordinary law is however unaffected by any of the provisions of F G H

A the Act. It means that when the election petition is pending in the High Court only the Judge who is asked to try an election petition can deal with questions arising in it and no other Judge or Judges of the High Court can deal with them. When the order passed by the Judge of the High Court in an election petition is an order passed under section 98 or section 99 of the Act it is subject to the appellate jurisdiction of the B Supreme Court under section 116-A of the Act as Article 136 of the Constitution naturally stands excluded in view of the express provisions contained in section 116-A of the Act. The remedy available under Article 136 of the Constitution may, however, be resorted to by any party who is aggrieved by any order passed by the Judge trying an election petition which does not fall under section 98 or section 99 of the Act. It follows that the Division Bench of the High Court which is C entitled to hear an appeal against any order of a Single Judge under clause 15 of the Letters Patent of the High Court which is an ordinary law cannot hear an appeal against any interlocutory order passed in the course of the trial of an election petition by the Judge trying an election petition since the Division Bench is not specified in the Act as D an appellate authority which can deal with questions arising out of an election petition filed under the Act.

Clause 15 of the Letters Patent of the High Court of Gujarat (omitting the unnecessary portions) reads as follows:

E

> "15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.—And we do further ordain that an appeal shall lie to the said High court ..... from the judgment (not being a judgment passed in the exercise of appellate jurisdiction ....) of one Judge of the said High Court or one Judge of F any Division Court, pursuant to section 108 of the Government of India Act, ..."

The relevant part of clause 15 of the Letters Patent which is referred to above provides for an appeal against a judgment passed by a Single Judge of a High Court to the same High Court and the scope G of the said appellate power has been explained by this Court in *Shah Babulal Khimji* v. *Jayaben D. Kania & Anr.*, [1982] 1 S.C.R. 187. An appeal no doubt lies under that clause from an order of a Single Judge of the High Court exercising original jurisdiction to the High Court itself irrespective of the fact that the judgment is preliminary or final or that it is one passed at an interlocutory stage provided it satisfies the H conditions set out in the above decision but the said provision cannot

be extended to an election petition filed under the Act. Conferment of the power to try an election petition filed under the Act does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable by the Single Judge under the Act is a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. Having regard to the history of the legislation and the limited nature of the appeal expressly provided in section 116-A of the Act it should be held that any other right of appeal (excluding that under the Constitution) is taken away by necessary implication. We, therefore, find it difficult to subscribe to the view that when once the jurisdiction to try an election petition is conferred on the High Court all other powers incidental to the ordinary original jurisdiction exercised by a Single Judge of a High Court would become applicable to an election petition filed under the Act. It is no doubt true that in *Dr. Chotalal Jivabhai Patel's* case (supra) the Division Bench of the High Court of Gujarat applied the rule laid down in *National Telephone Company Ltd.* v. *Post Master General*, [913] A.C. 546 namely "When a question is stated to be referred to an established Court *without more,* it ..... imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches" to an election petition filed under the Act which the High Court could try in exercise of the special jurisdiction conferred on it by the Act and held that except an order under section 98 or section 99 of the Act which was made expressly appealable under section 116A of the Act to this Court all other orders passed by the Judge trying an election petition would be appealable to the High Court under clause 15 of the Letters Patent. The principle applied by the High Court is not an unqualified one. That rule itself suggests that even where a court is asked to hear a case, it is quite possible that the nature of the jurisdiction may be such that all the incidents of procedure or any general right of appeal from its decision may not be attracted. Perhaps the Division Bench would not have reached the said conclusion if it had considered the effect of Article 329(b) of the Constitution which authorised the creation of an authority for trying disputes arising out of elections to the Houses of Parliament and to the Houses of State Legislatures and the history and the scheme of the Act and the limited right of appeal provided in section 116-A of the Act. We do not find any discussion about the effect of the constitutional provision in Article 329(b) in the course of the said decision. There was also no adequate appreciation of the need to construe the Act as a complete code regarding all matters relating to settlement of election disputes. It is significant that in sub-section (7) of section 86 of the Act it is stated that every election petition shall be

A B C D E F G H

A tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. If Parliament intended that the Division Bench of the High Court should exercise its appellate jurisdiction under clause 15 of the Letters Patent of the High Court probably it would not have enacted sub-section (7) of section 86 B of the Act having regard to the well-known tendency of one or the other party to an election petition preferring appeals against interlocutory orders to the Division Bench. The presence of such a remedy is enough to defeat the object of enacting sub-section (7) of section 86. If such appeals against interlocutory orders to the High Court are permitted perhaps no election dispute will be finally settled until the C next election becomes due. The intention of Parliament is that at the level of the High Court only the Judge who is asked by the learned Chief Justice to try an election petition should be the sole Judge to decide any question arising out of any such election petition and that at the appellate stage the Supreme Court alone should deal with any matter arising out of the election petition. We are of the view that as D regards the jurisdiction to try an election petition and the right of appeal of the parties to an election petition, the provisions of the Act (apart from the provisions in the Constitution) constitute a complete code and no other Judge or Judges other than the Single Judge of the High Court who is asked to try an election petition and the Supreme Court exercising appellate powers under section 116A of the Act in E respect of orders passed under section 98 or section 99 of the Act or under Article 136 of the Constitution in respect of other orders can have any jurisdiction to deal with any matter arising out of an election petition filed under the Act. We do not therefore agree with the view expressed on this question by the High Court of Gujarat in *Dr. Chotalal Jivabhai Patel's* case (supra). We therefore overrule the said F decision. We also overrule the decision of the Madras High Court in *Kadiravan alias Shamsudeen* v. *B. Thirumalaikumar*, I.L.R. (1970) 2 Mad. 183 and the decision of the Madhya Pradesh High Court in *Laxmi Narayan Nayak* v. *Ramratan Chaturvedi and Ors.*, A.I.R. 1986 Madhya Pradesh 165 which have taken the same view as in *Dr. Chotalal Jivabhai Patel's* case (supra). We are, however, in agreement G with the view expressed by the High Court of Allahabad in *Siaram* v. *Nathuram & Ors.*, [1968] All. L.J. 576 and by the High Court of Rajasthan in *Ramdhan* v. *Shanwarlal*, A.I.R. 1985 Rajasthan 185 which have held that by necessary implication an appeal to the High Court from an interlocutory order passed by the Single Judge of the High Court in the course of a trial of an election petition filed under H the Act is excluded. The reasons given in the latter case by the Full

Bench of the Rajasthan High Court are indeed quite substantial. A

The Division Bench of the High Court of Gujarat had, therefore, no jurisdiction to hear the appeal filed by the Ist respondent against the interlocutory order passed by the learned Single Judge who was trying the election petition. We, therefore, set aside the judgment of the Division Bench of the High Court and dismiss the Letters Patent appeal filed before the High Court. We however express no opinion on the merits of the case. The parties are at liberty to resort to any other remedy open to them in law. The appeal is accordingly allowed. No costs. B

S.L. Appeal allowed. C