

(2004) 07 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 2971 of 2004

Abdul Gaffar Abdul Karim Rarani

APPELLANT

Vs

Abdul Ruhim Pappu (Dr.) and Others

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 16, 403

Citation : (2005) 1 ALLMR 33 : (2005) 1 BomCR 863

Hon'ble Judges : Mohta Anoop V., J

Bench : Single Bench

Advocate : S.A. Gordey, for the Appellant; P.P. Mahalle, for the Respondent

Final Decision : Dismissed

Judgement

Mohta Anoop V., J.—Heard. This petition has been filed by a candidate who won the election by 6 votes. The Election Petition No. 2 of 2002, is pending before the competent authority, i.e. The Civil Judge, Senior Division, Amravati filed by the respondent No. 1, a defeated candidate. The petitioner won the election of the Councillor of respondent No. 11 Municipal Corporation. The respondent Nos. 2 to 10 are the rival candidates who contested the said election respondent Nos. 11 and 12 are the authorities connected with the aforesaid elections., Respondent No. 13 is the Judge, as defined under the provisions of the Bombay Provincial Municipal Corporation Act, 1949 (for short "the Act"), read with the Election Rules, framed u/s 453 of the Act. The election was held on 10-2-2002.

2. The basic prayer in the election petition as filed by the contesting respondent No. 1, is relevant which is reproduced as under:

"(i) Held and declare that respondent No, 1 has been illegally declared as elected, as Councillor from Prabhag No. 11-B of Amravati Municipal Corporation on the basis of illegal and improper reception of votes casted in his favour by himself, is agents and well wishers; and accordingly set aside the election declared in favour of respondent No. 1.

(ii) Upon perusal and verification of the tender votes immediately, declare the results of election from prabhag No. 11-B, accordingly.

(iii) Pass such other order as deemed necessary regarding cancellation of rejection of improper and void votes.

(iv) Declare this petitioner as duly returned/elected candidate from prabhag No, 11-B in substitution of respondent No. 1, in the interest of justice."

3. The written statement has been filed. The evidence has been led, and the matter is now fixed for the judgment.

4. On 12-7-2004, the learned Judge after considering the material, as well as, evidence led on the record, and looking into the merits of the matter and/ or controversy involved, passed an order on main election petition itself. The basic extract of the order is reproduced as under:

"..... The respondent No. 1 opposed by submitting that corrupt practice on the part of respondent (elected candidate) is not established, therefore, the Court need not open the sealed tendered votes and election roll. In my opinion, apart from merits and demerits of the submissions advanced, for proper appreciation of the submissions and for adjudication of the controversies in the matter, it is necessary to open up the sealed tendered votes and election roll. Therefore, it is directed that the sealed tendered votes and election roll shall be opened up. All the parties and their Counsel shall remain present in the Court on 15-7-2004, for this purpose."

5. The learned Counsel Mr. Gordey, appearing for the petitioner, contended that, in view of the provisions of Section 16(C) of the Act, read with Rule 41 of the Election Rules, (for short "the Rules") the opening of sealed tendered votes, and/ or order passed without giving "sufficient" or "good reason", for such directions will cause great prejudice and will affect their rights. He contended that, at this itself, the Judge, should give "good reasons" to open such sealed tendered votes.

6. The learned Counsel appearing for the petitioner, in support of his contention relied on Suresh Prasad Yadav Vs. Jai Prakash Mishra and Others, , and basically read para No. 5, extract of which is reproduced as under.

"5.....

The Court would be justified in ordering a recount of the ballot papers, only where:

(1) the election-petition contains an adequate statement of all the material facts on which the allegations of irregularity in counting are founded;

(2) on the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) the Court trying the petition is prima facie satisfied that the making such an

order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

He also read and relied on 2001 (3) S.C.C. 81, V.S. Achuthanandan v. P.J. Francis and Anr., basically para No. 16, the extract of which is also reproduced as under:

"16. We also do not agree with the submission of the learned Senior Counsel for the appellant that this Court directed the High Court to permit an inspection and re-count if a prima facie case was made out for such relief but the High Court has unreasonably insisted on availability of "good grounds" before allowing the relief of re-count. In Suresh Prasad Yadav case, the law stated by this Court is that the order for re-count of ballot papers would be justified, if inter alia, "on the basis of evidence adduced the requisite allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting". This answers the submission which is more a play of jugglery of words. What was needed was proof of "prima facie case of availability of "good grounds" wherein the election petitioner/appellant has failed."

7. The learned Counsel appearing for the Caveat or contesting respondent No. 1, in the matter has opposed the matter at the stage of admission itself, and basically contended that this petition is nothing but a move to delay the further proceedings of the Election Petition, which is practically concluded and awaiting a judgment. The learned Counsel appearing for the respondent No. 1 basically relied on the provisions of section as read by the learned Counsel for the petitioner and, in addition to that he relied on the portion of the Section 403 of the Act. The said Section 16(C), Section 403 of the Act, and Rule 41 of the Rules are reproduced as under:

" Section 16(C) the procuring or abetting of attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate of his agent, the application by a person for a voting paper in the name of any other person whether living or dead or in a fictitious name or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other word, he is entitled to vote;"

Section 403 Procedure in election inquiries.

(1) If an application is made u/s 16 for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all the candidates who were duly nominated for the seats or seats in the ward in question, whether or not the said candidates have been declared elected, and shall proceed against the candidate or candidates declared elected.

(2) ...

(3) If, after making such inquiry as he deems necessary, the Judge finds that the election of a returned candidate has been produced or induced or the result of the election has been materially affected by any corrupt practice, or any corrupt

practice has been committed in the interest of a returned candidate or the result of the election has been committed in the interests of a returned candidate or the result of the election has been materially affected by the improper acceptance or rejection of any nomination or by reason of the fact any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of a vote which is void, or by any non-compliance with the provisions of this Act or any Rules made thereunder relating to the election, or by any mistake in the use of any prescribed form, or the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed, he shall declare the election of returned candidate to be void and if he does not so find he shall confirm the election of the returned candidate.

(4)....

(5) If an application is made u/s 16 that any particular candidate [other than the candidate declared to have been elected.] shall be deemed to have been elected, then the returned candidate or any other party may give evidence to prove that the election of the person in whose favour such declaration is sought would have been void, if he had been declared elected and an application had been presented calling in question his election.

If the Judge is of opinion -

(i) that in fact any candidate in whose favour the declaration is sought has received a majority of the valid votes, or

(ii) that but for the votes obtained by the returned candidate by corrupt practices, such candidate would have obtained a majority of the valid votes, the Judge shall after declaring the election of the returned candidate to be void declare the candidate in whose favour the declaration is sought, to have been duly elected.

(6) The Judge's order under this section shall be conclusive."

"Rule 41. Production and inspection of election papers. While in the custody of the Commissioner the packets of ballot papers, whether counted, rejected or tendered, of the counterfoils thereof, and of the marked copy of the election roll, shall not be opened and their contents shall not be inspected or produced except under the order of the Judge, but all other documents relating to the election shall be open to public inspection, subject to such conditions and to the payment of such fee as the Corporation may prescribe; and any person, or compliance with such conditions and on payment of such fee, shall be entitled to obtain a copy or copies thereof or any part thereof."

The controversy which appears to be in this petition at this stage, is that whether the learned Judge, is empowered to open the sealed tendered votes and, whether detail reasoning and/or good reasoning as contended, is a must. 7-A. After considering all the provisions referred to above, including the submission of

both the parties, one thing is very clear that there is nothing in this section or provision, which requires or compel the said Judge or authority, to give detail reasoning while ordering to open such tender votes. There is no specific provision made out, and/or pointed out which necessitates the said Judge, to give detail reasoning before ordering to open the sealed tendered votes before the final judgment, in such matters. There is no dispute that this is a election petition which needs urgent disposal. The whole chapter read with the rules provides for the election enquiry. There is no dispute that under the Act, in the matter of election enquiry the discretion is available to the Judge, which he must exercise within the framework of law. In this present case, there is no dispute that the case is placed for a judgment. The parties have already been heard. What remains is the final decision. In this background, I see there is no reason to halt such procedure of delivering judgment and/or expecting any reason and or good reason from the Judge, to disclose his mind, for direction to open such sealed tender votes. The Acts and Rules provides only all order of the Judge to open such sealed tendered votes.

8. The judgments cited by the learned Counsel for the petitioner is a settled position of law. There cannot be any dispute about the same. The question is whether those procedure are relevant to be invoked and/or those principles are to be made applicable at this stage to the proceedings, looking to the procedure as well as the stage of election enquiries, as contemplated under the Act and the Election Rules. In my view this procedure and/or reasoning at this stage, cannot be extended in such election petition. This is not the case of revoking or recounting. The learned Judge shall bound to take into consideration all the details, after getting materials for the purpose or proper adjudication of such election petition. The phrase "Election Inquiries", itself provides the detail scrutiny as well as collection of materials to arrive at proper conclusion, before giving a final judgment. This is a case where the parties have lost their election by marginal 6 votes, and therefore, more and detail material should be collected after due enquiries, which will be helpful for arriving at a proper conclusion, and/or judgment.

9. The prayers as read and reflected from the election petition, further contemplate that the Judge will take decision at one stroke, and he will declare or he will dismiss or he will allow the petition. The Court can definitely pass final order while considering the material including of the relevant tender votes. If this is done, I see that no prejudice will be caused to any parties. On the contrary this will help the Court to arrive at a particular conclusion. There is no illegality and order is within the frame work of the Act and Rules. There is no question of invoking principle of natural justice in view of specific provisions of Election Inquiries, in view of the facts and circumstances of the case.

10. In view of this, I am of the view, that without going into the details of the merits of the evidence led by the parties, and/or shown to the Court, the order passed by the learned Judge, date 12-7-2004, needs no interference. The interim

order as passed on 15-7-2004, is vacated. The petition is dismissed in limine, with no order as to costs.

11. Mr. Gordey, the learned Counsel appearing for the petitioner, requested to extend the interim relief/order, which was granted on 15-7-2004, for one week more. It may be mentioned herein, that as already observed, in the interim order dated 15-7-2004, that was passed on an urgent circulation, without detail hearing, and as the matter is heard today finally, I am of the view of the reasoning given above, there is no question of extension of stay, in the matter further. Accordingly, this prayer is also rejected.