

(2002) 01 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 5141 of 1997

Anant Janardan Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 15
Bombay Village Panchayats Election Rules, 1959 — Rule 11(2A), 8
Constitution of India, 1950 — Article 226, 243(4), 243O

Citation : AIR 2002 Bom 87 : (2002) 2 ALLMR 80 : (2002) 4 BomCR 270 :
(2002) 2 BOMLR 40 : (2002) 2 MhLj 238

Hon'ble Judges : S.A. Bobde, J;R.M. Lodha, J

Bench : Division Bench

Advocate : R.K. Mendadkar, for the Appellant; C.R. Sonawane, A.G.P., for the Respondent

Judgement

R.M. Lodha, J.—Heard Mr. R.K. Mendadkar, learned counsel for the petitioner and Mr. Sonawane, learned Assistant Government Pleader.

2. By means of this writ petition the petitioner seeks to challenge the order dated 20th October, 1997 issued by respondent No. 1 Returning Officer rejecting his nomination form for contesting the election in Ward No. 4 of Village Gram Panchayat Navghar which is reserved ward for scheduled tribes. The petitioner claims that he belongs to Mahadeo Koli - a notified scheduled tribe. It is his case that the Executive Magistrate, Uran on 22-4-1980 has issued the certificate certifying the petitioner to be belonging to Mahadeo Koli - scheduled tribe. The petitioner filed his nomination form on 9-10-1997 for Navghar Gram Panchayat election as scheduled to be held on 25-10-1997. The Returning Officer rejected the petitioners nomination form on scrutiny of the nomination paper on the following grounds:--

"1. Your application does accompany with xerox copy of scheduled tribe certificate, but it is not found in prescribed format. For issuance of caste

certificate, Government in Social Welfare Department, Cultural Affairs and Sports Department has vide its G.R. No. CBC. 1680/43669/D-5, dated 29-10-1960 prescribed specimen format, and in that format, caste certificate is not annexed.

2. In an appeal filed by the Returning Officer of the change Grampanchayat, Ward No. 2 election before the Tahsildar Uran u/s 11 of the Village Panchayat Act, the Tahsildar, Uran has confirmed the decision of the returning officer dated 6-4-1995 holding vide its order No. VP/Appeal No. 2/95 dated 10-4-1995 that the Mahadeo Koli tribe in Uran Taluka is not eligible to be issued scheduled tribe certificate."

3. It would not be out of place to mention here that by way of interim order passed by this court on 16-1-1998, the Returning Officer was directed to accept the nomination of the petitioner, if presented before 6.30 p.m., on that day. The Returning Officer was further directed to scrutinise the nomination of the petitioner in accordance with law and it was observed that his nomination form shall not be rejected on the ground of caste claim of the petitioner as scheduled tribe. This court, however, clarified that result of the election shall be subject to the decision of this petition. The petitioner, accordingly, filed his nomination papers on 16-1-1998 and after scrutiny the Returning Officer found the petitioners nomination papers proper. The petitioner being the sole contestant was declared elected unopposed.

4. We may notice here that by reason of Article 243-O of the Constitution of India, election to Panchayat cannot be questioned except by an election petition. The bar of Article 243-O(4) fundamentally rests on two planks : (i) the election process must culminate in formal declaration of the result without intermediate interruptions; and (ii) the aggrieved party has adequate and efficient remedy under election laws in questioning the election under available grounds and that must exclude other forum. However, in the peculiar facts of the present case, though petitioner has challenged rejection of his nomination papers, he cannot now be relegated to pursue the remedy under election laws. Section 15 of Bombay Village Panchayats Act, 1958 provides that validity of any elected member can be questioned by way of election petition inter alia on the ground of wrongful rejection of nomination papers. As noted above the petitioners nomination papers were accepted under the interim order of this court and petitioner was elected unopposed being sole contestant. In the circumstances remedy under election law is not available to him in challenging the order of Returning Officer rejecting his nomination papers and matter has to be examined by us under Article 226.

5. Reverting back to the order passed by the Returning officer, we find that rejection of petitioners nomination paper was unjustified. Rule 8 of Bombay Village Panchayats Election Rules, 1959 provides that on the day appointed for the nomination of candidates, each candidate shall make an application in writing in form "A" signed by him and present it either in person or through a representative authorised in writing in this behalf to the Returning officer. Form

"A" reads thus -

"ANNEXURE

Form "A"

(See rule 8)

Nomination Paper

Name of the Ward for which the candidate is nominated

Full name of candidate

Sex:

Age:

Address :

In the case of a ward in which a seat is reserved for Scheduled Castes, Scheduled Tribes or backward Class of Citizens and Women (including for women belonging to the Scheduled Castes, Scheduled Tribes or backward Class of Citizens), state whether or not belonging to such castes, tribes and Backward Class of Citizens, which seat or seats is or are reserved. If belonging to a Scheduled name of the Caste or Tribe or Backward Class of Citizens, state the name of the caste or tribe or backward Class of Citizens, if consisting in a seat reserved for women, state so :

Name of Ward in which candidate is entitled to vote and his number in List of Voters :

I hereby declare that I am willing to serve as a member if elected.

Date:

Date on which and time at which nomination appear was delivered to Returning officer:

-----RECEIPT

6. It is seen from Form "A" that in the case of a Ward in which seat is reserved for scheduled castes, scheduled tribes or backward class, the member of scheduled caste or scheduled tribe or backward class has to state the name of the caste or tribe or class. Neither the rules nor the prescribed form provide for a format for submission of caste certificate. Reliance placed by the Returning Officer on G. R. No. CBC. 1680/43669/D-5 dated 29-10-1960 issued by Social Welfare Department only provides that for issuance of caste certificate, prescribed specimen format shall be used. This resolution dated 29-10-1960 is to be adhered to by issuing authority. Merely because the issuing authority of caste certificate did not follow the Government resolution dated 29-10-1960, that will not render the caste certificate issued by the said authority invalid. The caste

certificate has been issued by the Executive Magistrate, Uran and there being no prescribed format for tendering such caste certificate along with the nomination form, the Returning Officer could not have insisted on the caste certificate being tendered in the prescribed form. Moreover, Rule 11(2A) of Village Panchayats Election Rules in unequivocal terms provide that Returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The defect in the caste certificate annexed by the petitioner along with the nomination form pointed out by the Returning Officer is not of substantial character and therefore, the petitioner's nomination paper could not have been rejected. As a matter of fact, the ground for rejection of petitioner's nomination paper is untenable in the eye of law.

7. Whatever observations have been made by us in relation to caste certificate produced by the petitioner before Returning officer are for the purpose of election in question only and are not reflection over its legality or validity otherwise which shall be examined in appropriate proceedings.

8. For all these reasons, we make the rule absolute in terms of prayer (a) only. Prayer (a) reads thus -

"(a) that the Hon"ble Court be pleased to issue a writ, order or directions in the nature of certiorari quashing and setting aside the impugned order dated 20-10-1997 issued by the Respondent No. 1 Returning officer rejecting the nomination form of the petitioner and to allow the petitioner to contest the election in the Ward No. 4 in the Village Navghar, Tal. Uran, Dist. Raigad."

Prayer (b) which reads, thus, cannot be granted and is specifically rejected :--

"(b) this Hon"ble Court be pleased to declare that the caste certificate at Ex. A to the petition is valid, legal and subsisting on date."

9. However, it would be open to the petitioner to get the caste claim verified in accordance with law. No costs.