

(1985) 07 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2434 of 1985

Ashok Anandrao Bhandare and another

APPELLANT

Vs

The Kolhapur Municipal Corporation and others

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Citation : (1985) MhLj 613

Hon'ble Judges : H.H. Kantharia, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : Ajit P. Shah, for the Appellant; S.G. Mandrekar, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—The General elections to the Kolhapur Municipal Corporation were held on 30th January 1985. The petitioner No. 1 Shri Ashok Anandrao Bhandare had filed a nomination paper from ward No. 49. His name was proposed and seconded by the voters whose names were enrolled in the ward electoral roll of ward No. 57. The petitioner No. 1 was also a voter enrolled in ward No. 57. Thus neither the candidate nor the proposer or seconder were voters whose names were enrolled in the electoral rolls of the ward concerned i.e. Ward No. 49. Since the petitioner No. 1's name was not proposed by the voters in ward No. 49, his nomination paper was rejected by the Returning Officer. Thereafter the elections were duly held to the said ward and the respondent No. 3. Shri Tukaram Manik Gothadki was declared as duly elected Councillor from ward No,49. The petitioners then filed an election petition challenging the said election. On the construction of rule 9 read with other provisions of the Act and the rules, the learned Civil Judge S.D. Kolhapur, came to the conclusion that the proposer and the seconder should be voters in the concerned ward to which the candidate wants to contest the election. The learned Judge held that this rule is mandatory and, therefore, the nomination paper of the petitioner No. 1 was rightly rejected by the Returning Officer. Therefore the election petition filed by the petitioner came to be dismissed. It is

this order of the Civil Judge S.D., Kolhapur which is challenged in this writ petition.

2. We have heard the counsel for both sides at the stage of admission itself. Shri Shah the Learned Counsel for the petitioners contended that on true construction of rule 9 it ought to have been held by the authorities below that a voter whose name is included in any of the ward list can propose or second the name of a candidate from any ward. It is not necessary that the proposer and the seconder should be the voters from the concerned ward only, and therefore, the learned Civil Judge, S.D. Kolhapur, has committed an error apparent on the face of record in holding that the nomination paper of petitioner No. 1 was rightly rejected. It is not possible for us to accept this contention for more than one reason.

3. Section 5 of the Act, speaks about the constitution of the Corporation. Each Corpn. consists of such number of Councillors, not exceeding one hundred, elected at ward election as the State Government may from time to time by notification in the official gazette fix. The State Government is obliged to fix the number of councillors and boundaries of the wards, by dividing the city for the purpose of election. Each ward has to elect one councillor. Section 7A, also speaks about the ward rolls which collectively shall be deemed to be the Municipal Election Roll. Section 7 B declares that every person whose name is included in any ward roll shall be deemed to be enrolled in the Municipal Election roll. Thus it is clear that a candidate can be elected as a councillor from a particular ward, by the persons enrolled as electors or voters for that particular ward. Then comes section 8 which deals with the qualification of a person to vote. It lays down that every person whose name is in the ward FOLL shall be deemed to be entitled to vote at the ward election and every person whose name is not in said roll shall be deemed to be not entitled to vote. By section 9 qualification for election as a councillor is laid down. A person who is enrolled in the Municipal Electoral Roll as a voter for award is qualified to be the councillor and to be elected either from such ward or from any other ward. Therefore, so far as the candidate is concerned, he can contest election from any ward if he is enrolled in the Municipal Electoral Roll as voter. Section 453 of the Act lays down that the rules in the schedule as framed from time to time shall be deemed to be part and parcel of the Act. Then comes the relevant portion of rule 9 which reads as under :

"9(1) Candidates for elections at a ward election must, be duly nominated in writing in accordance with the provisions hereinafter contained.

(2) With respect to such nominations, subject to sub-rule (3), the following provisions shall have effect, namely;

(a) nomination papers shall be in form A.

(b) the Commissioner shall provide printed forms of nomination papers, and any person entitled to vote at the election shall be supplied, at any time within seven days previous to the day fixed for the nomination of candidates and up to four

O'clock in the afternoon on which day, with as many such forms as may be required, free of charges.

(c) each nomination paper must state the name, abode and description of the candidate in full, and be subscribed by two persons entitled to vote at the election as proposer and seconder and must bear the signature of the person nominated in token of his willingness to be so nominated.

(d)

The form of the nomination referred to in Rule 9(2)(b) is as under : -

"Form A.

(See Chapter I, rule 9).

Nomination paper.

Name and number of the ward :

Name of candidate :

Father's/husband's name :

Age :

Address :

Ward in the election roll of which the name of the candidate is included :

Number of the candidate in the ward election roll.:

Community and caste (only to be filled in by member of. a scheduled caste) candidate when election is for the seat reserved for (members of the scheduled caste) :

Name of the proposer, Number of proposer in the election roll of the ward :

Signature of the proposer :

Name of the seconder, Number of the seconder in the election roll of the ward :

Signature of the seconder :

Declaration by candidate

I hereby declare that I agree to this nomination.

Dated : (Signature of candidate)

(To be filled in by the Commissioner).

Certificate of delivery.

Serial No.

This nomination paper was delivered to me at my office at (date and hour).

(Signature of Commissioner).

4. From the provisions of the Act read with the rules it is quite clear that the election of the councillor is qua a particular ward. He represents the ward as a representative of the people residing in the concerned ward. Therefore if the rule 9 is read with the form A it is clear that his name should be proposed and seconded by the persons who are voters in the ward concerned. If an election or representation is contemplated qua the ward, it is but natural that the candidate should be proposed by the voters of the ward and not of other ward who are not entitled to vote in the concerned ward election. This position is further clear from the form itself. The form contemplates that together with the names of the proposer and seconder, their number in the electoral roll of the ward should also be disclosed. Therefore what is implicit in rule 9 is made clear by the form which is also part and parcel of the Rules and consequently part and parcel of the Act.

5. Bose C.J. (as he then was) had an occasion to consider somewhat similar question in *Gendalal Hukumchand vs. Lakshmikant Dubey & anr.* AIR 1950 Nag. 109 The expression "duly qualified elector" was construed by the learned Judge to mean a person entitled to vote and elect a candidate in the constituency in which he is an elector. Consequently, where the proposer and seconder of a candidate are not electors in the ward in which a candidate is seeking election but are electors in the other wards of the municipality, the nomination paper is liable to rejection, [his decision was subsequently followed by the Division Bench of this Court in *Narayan Rajbhan vs. Vishwanath Shamrao*, 1965 Mh.L.J Note 115 wherein it was held :

"A candidate who stands for election to a municipal committee from any ward can only be elected by those electors or voters whose names are entered in the electoral list of that ward. The proposer and seconder must both be electors in the same ward in which the candidate whose name they have proposed or seconded stands for election. A person whose name is entered in the list of voters in one ward cannot propose or second a candidate who stands for election from another ward. Where such a person proposes a candidate for another ward the nomination paper of that candidate becomes invalid".

In our view the law laid down in these decisions will aptly apply to the present legislation also.

6. The fundamental principle of election law is that a candidate is to be proposed and seconded by an elector who is entitled to cast vote at the election, in the absence of any specific provision to the contrary made in the relevant statute. We do not find any specific provision to the contrary in the present enactment. If the contention raised by the petitioners is tested qua a by-election of one ward only, it will result in absurdities and anomalies, because in that case the voter from other wards will not be entitled to vote in the said election at all. Therefore, the expression "entitled to vote at the election" can only mean entitled to vote in the election of that particular ward, and not generally.

Therefore we agree with the view taken by the learned Civil Judge, Senior Division, Kolhapur. Hence writ petition stands summarily rejected.