
(2013) 11 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 9098 of 2013

Azhar Jahangir Shaikh

APPELLANT

Vs

The State Election Commission, The District Election Officer,
Ahmednagar, The Electoral Registration Officer, Ahmednagar
and The Commissioner, Ahmednagar

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 2 ALLMR 637 : (2014) 3 MhLj 410

Hon'ble Judges : Ravindra V. Ghuge, J;A.H. Joshi, J

Bench : Division Bench

Advocate : V.Y. Bhide holding for Mr. M.A. Shaikh, for the Appellant; S.T. Shelke, Advocate for Respondent 1, Shri Alok Sharma, ASG for Respondents 2 and 3 and Shri K.N. Lokhande, Advocate for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Rule. By consent, Rule is made returnable forthwith and the petition is heard finally. The petition pertains to the petitioner's claim for inclusion of his name in the voters list for the purpose of Elections of Ahmednagar Municipal Corporation.

2. Present writ petition and few more petitions espousing similar cause were heard on 13.11.2013 till 6.00 p.m. and the judgment was reserved.

3. The petitioner claims that:-

[a] He is a resident of Ahmednagar.

[b] He has applied for inclusion of his name in the voters list on 16th September, 2013.

[c] As per the programme regulating elections declared by the State Election Commission for the purpose of preparation of voters list, the respondent No. 3 was duty bound to publish the voters list on 01.10.2013.

[d] He is unable to ascertain the fact as to whether his name is included in the voters" list.

[e] Bar has been created by Section 23(3) of the Representation of Peoples Act, 1950 ("Act of 1950" hereinafter, for the sake of brevity) to include any person in the electoral roll after the last date of nominations.

[f] If the petitioner"s name is not included in the voters list, he would be unable to avail the opportunity and right for nomination as a candidate.

[g] Hence, the petitioner is before this court and prays for a direction to respondent No. 3 to include his name in the voters list of Ahmednagar city.

4. The petitioner"s submissions made before us are summarized as follows:-

[a] Voters list for the purpose of elections to Ahmednagar Municipal Corporation is a matter governed by Section 7A of the Maharashtra Municipal Corporation Act ("MMC Act" hereinafter, for the sake of brevity).

[b] Section 7A thereof, provides that the voters list of Assembly Elections, as in existence and prepared under the provisions of the Act of 1950 shall be the basis for the Municipal Corporation elections.

[c] Reference to Section 7A of the MMC Act results in bodily incorporation of the entire scheme for preparation of the voters list, commencing from Sections 21 to 27, both inclusive; and also the Registration of Electors Rules, 1960 (hereinafter referred to as, "the Rules of 1960").

[d] As the petitioner"s request for inclusion is undecided, petitioner is entitled for the relief sought.

5. The writ petition is opposed on the following ground:-

[a] The voters list to be used for elections of Municipal Corporation is the voters list as in vogue for the Assembly, as revised from time to time, under the scheme of the Act of 1950 and the Rules of 1960.

[b] The scheme and model as provided under the Act of 1950 and Rules of 1960 is not made applicable in so far as inclusion, amendment etc. for the purpose of local self government i.e. the elections to the Municipal Corporation are concerned.

[c] The updation of voters list as is being done as an ongoing procedure by Electoral Registration Officer, for purposes of Assembly Electoral rolls is independent of the elections of Municipal Corporations.

[d] The claim for inclusion of the petitioner"s name in the voters" list will be gone into as per the procedure laid down in the Act of 1950 and the Rules of 1960. However, petitioner does not have a legal right under any law to claim that his name must be included before a date fixed for nomination.

[e] Therefore, a direction to include petitioner's name keeping in view the Municipal Corporation's election cannot be issued as petitioner's claim is not supported by any legal right for that purpose.

6. Respondents have placed reliance on a reported judgment in the case of Shri Savio O. Fernandes and another Vs. State Election Commissioner and others, as followed by this court in Ramdas Nana Andhale Vs. Electoral Officer and others in W.P. No. 8720 of 2013 (Coram: B.P. Dharmadhikari and Ravindra V. Ghuge, JJ.), dated 23rd October. 2013.

7. We have examined the respective submissions. The question which arises for consideration formulated by us is as under:-

Does the petitioner have a right for issue of a direction in the nature of a Writ of Mandamus for inclusion of his name in the voters list and/or for consideration of his claim as regards probable non inclusion of his name in voters list?

8. The petitioner's contention suggests that:-

[a] Assembly electoral rolls as last revised has to be the basic roll.

[b] The preparation of list of voters for Municipal Corporation has to be independently carried out.

[c] For the purpose of updation of/preparation of list of voters for Municipal Corporation is to be under the rule book as laid down under the Act of 1950 and the Rules of 1960.

9. The Division Bench of this Court, at Goa had an occasion to deal with a similar request in connection with Goa Municipalities Act (Act No. 7 of 1969), in the case of Savio (supra). Advertence to this judgment reveals that:-

[a] There were four writ petitions in relation to the election of Panaji Municipal Council. The State Election Commission had published a calendar of events of the election programme in which the last date for filing nominations for elections was fixed as February 3, 1996.

[b] The date of taking the poll was fixed as February 25, 1996. The Chief Electoral Officer had allowed the petitioners appeal vide order dated January 25, 1996 and had directed the inclusion of their names in the list of supplement of 1996 for Panaji Assembly Constituency.

[c] Consequent thereupon, the petitioners approached the Returning Officer i.e. Mamalatdar of Tiswadi for inclusion of their names in the voters list in the relevant wards.

[d] The Returning Officer stated that it was not possible to include the petitioners' names in the voters' list.

[e] Since the petitioners wanted to contest the Panaji Municipal Council elections, to be held on February 25, 1996, they sought an order from the Court to permit

them to contest and vote in the said elections.

[f] After considering the law on the said issue and after considering the rival contentions of the parties, who had placed reliance upon several judgments of the Honourable Apex Court and various High Courts, the Division Bench of this Court dismissed the said writ petitions.

10. In the case of Savio (supra) this Court has considered the view of the Honourable Apex Court in the case of Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, . The law as laid down by the Honourable Apex Court from paragraph Nos. 16 to 20 has been reproduced in the said judgment. The conclusion of the Honourable Apex Court in the said judgment is found in paragraph No. 20, which is as under:-

20. As a result of this discussion, it must follow that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

(emphasis supplied).

11. Thus, while considering the claims, which are filed in accordance with law, the Honourable Apex Court concluded that the failure to finally dispose off claims and objections cannot arrest the process of election to Legislature and that the election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

12. This Court had yet another occasion to deal with the issue based on similar set of facts in the case of Ramdas Nana Andhale (supra). The Aurangabad Bench of the Bombay High Court vide its order dated 23.10.2013 to which one of us (Ravindra V. Ghuge, J.) is a party has considered a similar challenge in respect of voters" list for election of Ahmednagar and Dhule Municipal Corporations. In paragraph No. 7 of the said order, the Division bench of this Court has concluded as under:-

7. We find that very same challenge has been gone into by the Division Bench of this Court at Goa. In fact, in said matter, there was challenge to constitutionality of Section 11 of the Goa Municipalities Act on the ground that it does not permit correction in voters list for the purposes of Municipal elections. That challenge has been turned down. Hence, impugned order dated 17.10.2013 does not call for any interference

13. It is seen that the scheme for using the voters list for the Municipal Corporation elections contains a mandate that voters list of Assembly is to be used.

14. Any scheme and mechanism for preparation of a separate voters list for Municipal Corporation election is not provided. Even the machinery acting under

Representation of People Act, 1950 and Registration of Elector's Rules, 1960 have not been fastened with any obligation under Representation of People Act 1950 and Registration of Electors Rules, 1960, independently or when read with MMC Act to revise the list and do additions or amendments in the list of voters specially for the purpose of Municipal Corporation elections.

15. The availability of petitioner's right is dependent upon existence of a statutory provision in favour of such a claim.

16. These contentions of petitioner need to have a foundation in the legislative enactment. For such foundation there has to be some direct or indirect mandate in the scheme of legislation i.e. MMC Act. Any such mandate is totally absent.

17. The list of voters in vogue in relation to Assembly elections, is to be the basis for Municipal Corporation elections, the list whatever and as it is, will have to be acted upon. For any individual, the claim for being included or to raise an objection as regards inclusion, non-inclusion, will have to be in relation to assembly elections only. The fact that the provisions of Representation of People Act and Rules of 1960, have not been made applicable expressly, and all that is provided by Section 7A is only use of list of voters in existence for Assembly Elections as a voters list. However, it shall not imply that the provisions of the Representation of People Act and Rules of 1960, stand bodily incorporated.

18. The scheme of Section 7A of the MMC Act, as it stands, will have to be read as a conscious legislative act of the State Legislature. If it is to be held that Sections 21 to 27 of the Representation of People Act, are bodily incorporated and read in Section 7A of the MMC Act, such a scheme has to expressly exist. Existence has to be seen obvious and distinct from a desire, expectation and a demand. Petitioner could suggest a direct or indirect mandate of law that such bodily incorporation is the legislative mandate. No such mandate is apparent, even when Section 7A is read and seen from any angle.

Considering the judicial dictum as noted in the two cases above named, we see no justification to uphold the plea and call it an exercise of judicial legislation.

19. The conscious omission of not providing a separate scheme and mechanism appears to have been done by the State legislature while drafting Section 7A of the MMC Act. This conscious omission will have to be respected as it stands.

20. As such the petitioner cannot seek a direction in exercise of the extraordinary jurisdiction of this Court. Similar challenges having been considered by the Division Benches of the Bombay High Court at Goa and Aurangabad respectively, put to rest, the challenge put forth by the petitioner.

21. Therefore, in the light of foregoing discussion and since the Court has already taken a view in two similar cases, we find no distinguishing factor so as to take a different view in the case on hand. In the result, the petition fails and is dismissed accordingly. Rule is discharged. No order as to costs.