

(1987) 04 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 1046 of 1987

Daruwala M. Umar A. Rehman

APPELLANT

Vs

Namdeo Kondiba Chavan and Another

RESPONDENT

Date of Decision : 13-04-1987

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 15, 21

Citation : (1987) 3 BomCR 365 : (1987) 89 BOMLR 245 : (1987) MhLj 607

Hon'ble Judges : V.V. Vaze, J

Bench : Single Bench

Advocate : Bhimrao N. Naik, for the Appellant; P.S. Patankar and V.B. Rajure, for the Respondent

Judgement

V.V. Vaze, J.—The Maharashtra Municipalities Act, 1965 (hereinafter referred to as "the Act") in its Chapter II deals with the classification of municipal areas and municipal councils. The first group in the council consists of Councillors elected at Ward elections. The second group consists of Councillors co-opted by the elected councillors. An unusual contingency is envisaged by section 18 of the Act whereunder if at the general elections no Councillor is elected from any ward the vacancy is to be filled in by nomination of a duly qualified person by the State Government. Such a nominee of the State Government would be deemed to be elected at an election under the Act. Thus the municipal council can have councillors who are elected, those that are co-opted and some who are nominated.

2. Section 15 prescribes the qualification for becoming Councillor and disqualifications appear in section 16.

3. As is usual with an Act prescribing elections to a body, a machinery has been provided u/s 21 to resolve the disputes regarding elections, co-options or nominations of the Councillors. One Namdeo Kondibe Chavan, a voter of the Kurduwadi Municipal Council challenged by Election Petition No. 111 of 1985, the co-option of Rehman by a special meeting, of the newly elected councillors, held

on 15th May, 1985. Rehman as well as the Councillors opposed the petition on the ground that Namdeo Kondiba Chavan had no locus standi to file the petition as he was not an elected. Councillor who could have exercised his franchise at the time of co-opting a member. The learned District Judge held the petitioner is qualified to challenge the co-option and that Rehman did not satisfy the conditions of section 9 for being co-opted to the Council. Hence this writ petition.

4. The learned District Judge has made the expression "by any person entitled to vote at the election" appearing in section 21 of the Act as the bedrock of his judgment, to find locus in favour of the petitioner. The learned District Judge drew sustenance from the definition of the word "election" in Clause 12 of section 2 of the Act which is an inclusive definition to include election to a Council and by election.

5. It is unfortunate that a section like section 21 which deals with an important subject such as a challenge to an election by an election petition a challenge which appears every now and then-has not been drafted with the meticulousness of an election law. Co-opting and nominating members is not a new exercise in setting up a democratic body. Article 171 of the Constitution provides for nomination of members having special knowledge or practical experience in certain fields such as literature, science, art, co-operative movement and social. Section 81 of the Representation of the People Act, 1951, enables an elector to file an election petition calling in question any election and the section itself by its explanation defines "elector" to mean a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

6. For every election the voters are drawn from an electoral college. Under Article 54, the electoral College which elects the President consists of elected members of both the houses of Parliament and elected members of the Legislative Assemblies of the States. Section 2(d) of the Presidential and Vice-Presidential Elections Act, 1952, defines an "elector" in relation to a Presidential election to be a member of the electoral college referred to in Article 54.

7. Thus in respect of challenge to elections of a President the 1952 Act makes it clear that he must be an elected member either of the State Assembly or upper house or the Council of State.

8. Even though section 21 of the Act does not, in so many words, provide for the three separate contingencies of elections, co-options or nominations, but uses the minibus word "election", this word "election" will take the colour from the context in which it is used and the nature of the petition which challenges a particular election. A cursory reading of section 21 may lead one to the conclusion that any one who is entitled to vote in the ward elections or by-election would have the locus standi to challenge the ward elections, co-options or nominations. But for interpreting this word "election" regard will have to be had to the acts on the same subject in allied fields. As contemplated above, the

challenge to a presidential election under the Constitution can come only from an elector who belongs to the electoral college which elects the President. Any citizen of India who has the qualifications prescribed under Article 84 of the Constitution cannot challenge the election of the President; only an elected representative or a Member of Parliament or a Member of the State Legislature can alone do so. This philosophy which permeates through the constitution, the Representation of the People Act, 1951 and the Presidential and Vice-Presidential Elections Act, 1952 will operate as a touch stone upon which the word "election" will have to be interpreted. The word "election" has an according like quality which enables it to expand or contract depending upon the configuration in which it is used. For an election to a ward or general election to the Municipal Council, the challenge can come from any one whose name appears as a voter. But to the analogy of challenge to the election of a President of India, the word "election" in the present case will have to be given a constricted meaning to cover election of a co-opted member by the elected councillors. On this point alone the reasoning of the learned Judge cannot be sustained and I find that the petitioner had no locus standi to challenge the petition.

9. As regards the factual question as to whether Rehman satisfies the qualifications of being a person having special knowledge or practical experience in the field of Public Health, Local Self-Government, education to welfare of labour, I find that these qualifications cannot be tested in an objective manner, but would depend upon the subjective satisfaction of the members of the electoral college Rehman is a graduate in Economics and Politics. He has been a Special Executive Magistrate for 11 years and has associated himself with educational institutions of that area. This array of qualifications is enough to entitle him to claim that he has special knowledge and practical experience in the field of Public Health, Local Self-Government, education and social service.

10. Rules do not prescribe that the candidates should marshal all his qualifications in the form prescribed under the Act because ultimately it is not the qualifications mentioned in the form that would weigh with the members of the electoral college but their evaluation that the candidate does possess those qualifications.

11. Petition succeeds. Rule made absolute in terms of prayer Clause (b). No order as to costs.