
(2007) 07 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 2857 of 2007

Deepak Pendam

APPELLANT

Vs

Nagpur Municipal Corporation and Another

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 9AA

Citation : (2008) 1 MhLj 617

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : F.T. Mirza, for the Appellant; C.S. Kaptan, instructed by M.V. Samarth, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable, and the petition is heard.

Petitioner"s claim proceeds on a very simplified logic. According to the petitioner:

(a) The petitioner and Shri Deorao Umredkar were the only candidates in the process of election of Mayor as other three candidates whose nominations were valid had withdrawn.

(b)Admittedly, Shri Umredkar who was elected as a Mayor has suffered invalid action of his caste claim and as per the provisions of law he lose his status as Councillor retrospectively.

(c)Therefore, it is a case where only one candidate i.e. petitioner remained in the fray for being elected as a Mayor.

(d)It was the duty of the Returning Officer to declare him elected.

2. In support of his contentions, learned Advocate Mr. Mirza placed reliance on various judgments for various points.

3. Learned Advocate Mr. Mirza then placed reliance on the following judgments.

(1) The Management of National Projects Construction Corporation Ltd. Vs. Their Workmen and Others, , 2 Rupadhar Pujari Vs. Gangadhar Bhatra, , 3 Sagiruddin v. State of Maharashtra 2007 (2) Mh.L.J. 65.

The dictum sought to be relied upon from these judgments is that if the candidate seeking a declaration for himself to be returned candidate can get a declaration to that effect, if only contesting candidate or the candidates as the case may be either simultaneously one after another lose their candidature leaving such candidate to be only candidate in the fray of election, would be entitled to be declared as returned candidate.

4. Learned Advocate Mr. Mirza has placed reliance upon a reported Judgment Sujit Vasant Patil Vs. State of Maharashtra and Others, to urge that the Office occupied by any person on the basis of caste claim which has been invalidated gets automatically vacated, and it is not necessary to have a formal pronouncement of his vacating the said Office through the channel of election tribunal. We consider that this proposition is obvious in the light of Sub-section (4) of Section 10 of Maharashtra Act No. 23 of 2001, and proviso which has been added to Section 9AA of City of Nagpur Corporation Act, 1948. This Court finds that this preposition is not in dispute nor is an issue in this case.

5. The invalidation of tribe certificate of Shri Deorao Umredkar would relegate back to the date of nomination form for the candidature as a Councillor itself, and not just at the stage of nomination to the election for seat of Mayor as urged by the petitioner. This conclusion reached by this Court is based on collective effect of observations contained in foregoing para.

6. When the facts of case are viewed from this angle entire scenario would change. Withdrawal of nomination by other three candidates was in the background that the petitioner and Shri Deorao Umredkar were only two candidates were left to contest. The possibility that the nomination for Councillor's candidature was to become and had become void. In the result, Shri Deorao Umredkar could not have got nominated at all. It, therefore, becomes too speculative to hold that had Shri Deorao Umredkar not been in fray, yet three other would have chosen to withdraw leaving the petitioner in the fray alone. The submission, therefore, is based on hypothesis which is too speculative, and does not warrant acceptance by the Court.

7. We, therefore, find that the citations, relied upon by the petitioner for seeking the declaration as a returning Candidate, do not apply to the present case.

8. Learned Advocate for respondent Nos. 1 and 2 placed reliance on the Judgment reported in (2006) 8 SCC 200 Jayrajbhai Jayantibhai Patel v. Anil Bhai Nathubhai Patel. This judgment supports our view to the effect that Courts ought not be guided by speculation.

9. In this background, we find that the contentions and submissions of the petitioner cannot be accepted.

10. In the result, we discharge Rule, and dismiss the petition. In the circumstances, parties shall bear own costs.