

(1966) 07 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No's. 418 and 419 of 1966

Dhondba Adku and Another

APPELLANT

Vs

Civil Judge, Junior Division, Hinganghat and Others

RESPONDENT

Date of Decision : 05-07-1966

Acts Referred:

Bombay General Clauses Act, 1904 — Section 14, 21
Bombay Village Panchayats Act, 1959 — Section 12(2), 13(3), 15
Bombay Village Panchayats Election Rules, 1959 — Rule 3(4), 3(5)

Citation : AIR 1967 Bom 232 : (1966) 68 BOMLR 928 : (1966) MhLj 869

Hon'ble Judges : Patel, J;Deshmukh, J

Bench : Division Bench

Advocate : B.R. Mandlekar, for the Appellant; C.G. Madkholkar, C.S. Dharmadhikari and K.H. Deshpande, for the Respondent

Judgement

(1) These two petitions arise out of election to the Gram Panchayat.

2. In Special Civil Application No. 418 of 1966 the election to the Gram Panchayat of Taroda was held on November 29, 1965, the date of filing nomination papers being November 3, 1965. At this election the two petitioners got 90 and 85 votes respectively and respondents 2 and 3 got 73 and 72 votes respectively. They then made an election petition u/s 15 of the Village Panchayats Act challenging the election of the petitioners on several grounds one amongst them being that the voters' list was not in accordance with law, inasmuch as it contained, along with the names of persons in ward no. 3 for which the petitioners were elected, names of some persons who are residents in other wards, while some of the persons who are residents in ward no.3 were shown as voters in other wards. The other contentions need not be referred to as they do not affect the election.

3. The petitioners resisted the application. The Tribunal upheld the present contention and held that it can be a ground for setting aside an election u/s 15 of the Act. In view of its findings the Court set aside the election of the petitioners.

The petitioners seek to challenge the orders.

4. In Special Civil Application No.419 of 1966 the last date for nomination was November 3, 1965, and the elections were held on November 29, 1965, as in the other case, for village Shekapur. the petitioners and respondents 3 to 5 were candidates for ward No. 2. The petitioners were declared elected and the respondents then filed an election petition challenging the election of petitioners on several grounds. One of the grounds urged was that petitioner no. 1 was in arrears of taxes in spite of demand, and he was therefore disqualified from being a member of the Panchayat. The other ground was that the voters' list did not conform to the wards framed by the Collector with defects similar to the ones pointed out in the first petition. The learned Judges accepted the second contention and set aside the election of the petitioners.

5. Mr. Mandlekar on behalf of the petitioners contends that having regard to the provisions of section 13 of the Bombay Village Panchayats Act, 1958, it is not open to the respondent to raise this contention in an election petition u/s 15. In order to consider the validity of this contention, the general scheme of the Act with regard to election may be considered.

6. Section 10 provides for the constitution of the Panchayats. Sub-section (1) (a) provides that it shall consist of such number of members as the Collector may decide, but the number shall not be less than 7 nor more than 15. Clause (b) provides that each village shall be divided into such number of wards as the Collector may determine, and that from each ward such number of members may be elected to the Panchayat as may be determined by the Collector. We need not consider the other provisions with regard to the reserved seats. Section 11 provides for the election which is to be held on such date as the Collector may appoint in that behalf. Section 12 concerns with the list of voters. Sub-section (1) of section 12 prescribes that the electoral roll of the Maharashtra Legislative Assembly, prepared under the provisions of the Representation of the People Act, 1950, as in force on such date as the State Government may determine by a notification, shall be the list of voters for such ward or village. Sub-section (2) requires the Collector to designate an officer who is required to maintain a list of voters for each such ward or village. Section 13 provides for the qualifications to vote and to be elected at the Gram Panchayat election. Sub-section (1) of section 18 provides that every person whose name is in the voters' list, this would be the list which is maintained u/s 12 shall, unless disqualified under the Act or any other law, be qualified to vote at the election of a member for the ward to which such list pertains. Sub-section (2) lays down the qualifications for election to the Panchayat, and sub-section (3), which is the most material provision for the present purposes, provides that subject to any disqualification incurred by a person, the list of voters shall be conclusive evidence for the purpose of determining under the section whether any person is qualified or is not qualified to vote, or as the case may be, is or is not qualified to be elected at any election. Section 14 then prescribes the disqualifications for being elected to the

Panchayat, and section 15 provides for the determination of validity of elections. It enables either the candidate or any person entitled to vote at the Election within 15 days of the declaration of the result of the election, to make an application to the Civil Judge questioning the validity of any election. Unlike many other provisions, the section does not lay down grounds on which such elections can be challenged under this provision.

7. Mr. Mandlekar, relying on the provisions of section 13 (3), contends that inasmuch as the list of voters prepared u/s 12 (2) is conclusive evidence of the right of a person to vote at the election, the election cannot be challenged on the ground that some of the persons who are entitled to vote in another ward are shown in this ward, and some persons who are entitled to vote in this ward are shown as voters in other wards. Mr. Madkholkar for the respondents relying on section 15, says that. as that section does not lay down any specific grounds on which the election can be challenged under it this contention is open to him in an election petition. He further contends that no machinery is provided for making corrections in the voters" list and this is an additional ground why the Court should hold that he is entitled to challenge the election on the ground mentioned above.

8. Now, it is true that section 15 does not mention any specific grounds as such for challenging an election. But then the question which arises in these cases cannot be decided only by reference to section 15. One has to consider the effect of S. 13(3) which in clear language makes the voters" list conclusive evidence for determining whether or not a person is entitled to vote. This must mean that no evidence can be led before the Tribunal that the list is not correctly prepared. In this connection it must be noticed that when this sub-section speaks of "the list of voters" it means the list of voters for each ward or village as required to be maintained under sub-section (2) and it is obvious that though section 15 does not specifically describe any ground of challenge to an election this ground must be deemed to have been excluded.

9. We have been referred in this connection to the rules made under this Act by the State Government. The rules are made u/s 1176, read with sub-section (3) of section 10 and section 11 of the said Act. Rule 3 requires the designated officer to maintain a list of voters of each ward of the village, containing the names of all persons who are enrolled as voters. He has to authenticate each list of voters so maintained and to sign it on every page thereof and to seal it with the seal of the Panchayat. Sub-rule (2) of this rule requires him from time to time to make all corrections corresponding to corrections which are made in the electoral roll of the Bombay Legislative Assembly and also requires him to make his initials below each correction which he has to make sub-rule (4) requires copies of list of voters to be kept open for public inspection at the Village Chavdi and at the village Panchayat office Sub-rule (5) requires a Mamlatdar at least one month before the date fixed for the nomination of candidates for every general election of the village Panchayat to give a public notice of the places where copies of the

relevant list of voters are kept open for public inspection. These are all the rules with regard to the preparation and maintenance of the voters' list ward wise, made by the State Government. This has enabled Me. Madkholkar on behalf of the respondents to make a ground that there is no machinery provided for getting the voters' list corrected, and therefore the intention of the Legislature must be that the matter should be brought up in an election petition.

10. Now, it is true that there is no specific provision, as it found sometimes in other statutes, for getting the voters' list corrected. In this connection it may be said that the scope of correction is comparatively very small, as the list has to correspond wholly with the voters' list maintained for the Bombay Legislative Assembly as on a particular date notified by the State Government. Mistakes, therefore, can only be with regard to the inclusion of certain names in certain wards. Even so, it is true that there is no specific provision for getting corrections made in this list. That, however, does not make any difference to the matter.

11. Section 14 of the Bombay General Clauses Act provides that where by any Central Act or Regulation made after the commencement of the Act, any power is conferred on any Government, then, unless a different intention appears, that power has to be exercised from time to time. Indeed, the section speaks of the power conferred on Government, but this principle is of general application, and we do not see why the principle should not apply to a person who is authorized to act under the statute. Similarly, section 21 provides that where by any Bombay Act a power to issue notifications, orders, rules or by laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or by-laws so issued. This again is an enunciation of the general principle and there is no reason why this principle should not apply to this case. The Panchayats Act has conferred power on the designated officer to prepare and maintain the voters' list as required, and in our view it must necessarily include the power to make necessary corrections which are within the scope of his authority. This is borne out from the fact that sub-rule (4) requires copies of list of voters to be kept open for inspection at the Village Panchayat office and the Chavdi. Everyone is free to go to the Village Chavdi and to the Panchayat office and inspect the copies of the voters' list. There is no limit of period prescribed for which the lists are to be kept open. Since the lists must be kept open, it must suggest, therefore, that there would be ample opportunity to any person to point out mistakes and get them corrected before the date of nominations. Even sub-rule (5) gives a sufficiently long notice prior to the nomination specifying the places where copies of relevant lists of Voters are kept open for public inspection. One of the essential purposes of keeping open these copies for public inspection must be, to have such mistakes corrected so far as are possible to be corrected within the frame-work of the Act. Though, therefore, there is no specific provision made by the State Government by the rules for getting mistakes in the voters' lists rectified, still in over view it would be open to the petitioners to have the list corrected. If no steps are taken to have the

same corrected, then for the purposes of election, under sub-section (3) of section 13 the list is conclusive evidence and cannot be challenged.

12. Mr. Madkholkar placed special reliance upon the decision in *Radhabai v. State of Maharashtra* (1964) M L. J. 65, where a Division Bench of this Court held that the right to challenge the validity of an election by an application u/s 15 (1) of the Act is an unqualified right and it includes the right to challenge the election on every ground on which an election can generally be challenged. What we have stated above is not in any manner contrary to what has been decided in this case. In this case the Court was not concerned with a voters' list which has been made conclusive evidence u/s 13 (3), but it was concerned with erroneous acceptance or rejection of a nomination paper. Mr. Madkholkar also relied upon the decision in *Poona v. Collector, Yeotmal* 1965 ML. J. 40, which is again a decision of a Division Bench, where the challenge to an election was on the ground that no seat was reserved for Scheduled Tribes in any of the wards, and the Court held that there was no estoppel against the petitioners in not getting the mistake corrected at the earlier stage, and the election could be challenged by a writ of quo warranto against those who were elected contrary to law. This again, in our view, does not touch the point.

13. The conclusion we have reached is supported by a decision of a Division Bench in Special Civil Appln. No. 137 of 1966, *Bajirao v. Civil Judge, Junior Division, Hingangahat*, decided on March 29, 1966 (Bom), a Bench to which my learned brother was a member. In this case the name of one Sitabai was included as voter for Panchayats of two different villages. The Election Tribunal, while computing the votes in an election petition u/s 15 (1), excluded her vote. This Court held that u/s 13 (3) the entry in the electoral roll was conclusive of the question whether she was entitled to vote, and it was considered as a valid vote.

14. The Tribunal in its reasoning has said that the list of voters referred to in section 13 (3) must mean a correctly maintained voters' list. If that were so, and the correctness of the voters' list could be challenged, there could be no purpose in providing that the voters' list shall be conclusive evidence of the right to vote of a person whose name appears therein. It would mean that the section is redundant. The only purpose of having such a provision in law could be not to permit errors in the voters' list to be raised as a ground for challenge, and the reasons are not far to seek. Elections involve considerable expense of time and money. Elections are not set aside except on certain ground. If such contentions are allowed to be raised in many cases it may have the effect of invalidating election of the whole Panchayat of a Village or a group of villages. The inconveniences of permitting an election to set aside wholesale in this manner are many, and it is for this reason that this provision has been made. Take for instance, the result in the present case. The contention of the respondents was that a large number of voters who were residents in another ward were included as voters in this ward (ward No. 3) and a large number of voters who were residents in this ward were shown as voters in other wards. Though the

judgment covers persons whose elections have been set aside, in effect it affects the entire election of the Panchayat in the absence of other elected members. It may also affect the validity of acts done by the Panchayat. To avoid this, section 13 (3), it seems, was enacted.

15. For the reasons stated above, we have come to the conclusion that the Tribunal is wrong in interpreting the scope of its jurisdiction. We allow the petitions and quash the orders passed by the Tribunal. Petitioners in Special Civil Application no. 418 of 1966 will get their costs from respondents 2 and 3, and the petitioners in Special Civil Application No. 419 of 1966 will get their costs from respondents 2 to 5

(16) Petition allowed.