
(1998) 07 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 5399 of 1996

Laxmibai Darpel

APPELLANT

Vs

The Returning Officer, Kopargaon, Nagar Palika, Kopargaon,
Dist. Ahmednagar and others

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Bombay General Clauses Act, 1904 — Section 11
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 4
Maharashtra Municipalities Election Rules, 1966 — Rule 15

Citation : (1998) 4 BomCR 800 : (1999) 1 MhLj 486

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Gulam Mustafa, for the Appellant; R.P. Phatke, A.G.P., for the Respondent

Judgement

R.M. Lodha, J.—Rule. Returnable forthwith.

2. Mr. Phatake, learned A.G.P. waives service for respondents Nos. 1 and 2 A. As regards other respondents, the learned Counsel for the petitioner submits that the relief against them does not survive but since pure question of law is involved he is pressing the present writ petition. By consent rule is heard finally at this stage. The said question of law is : Where the limitation of an appeal preferred under Rule 15 of Maharashtra Municipalities Election Rules, 1966 expires on holiday and such appeal is filed on next day, can such appeal be treated within time? The said question arises in the facts narrated hereinafter.

3. The election for various wards of Municipal Council, Kopargaon was notified by the State of Maharashtra. According to the declared election programme the last date for nomination form was 13-11-1996. Scrutiny was to be made on 14-11-1996 and withdrawal was permitted upto 23-11-1996. On 24-11-1996 allotment of symbol was to be made to contesting candidates. The election was

to be held on 1-12-1996 and the result was to be declared on 2-12-1996. Kopergaon Municipal Council has 24 wards and out of the said wards" Ward No. 21 is reserved for Scheduled Tribe, The petitioner claims to be belonging to Scheduled tribe and accordingly, filed her nomination form before the Returning Officer. The Returning Officer however, rejected her form on 14-11-1996 and published list of validly nominated candidates on that day. Aggrieved by the order of the Returning Officer, the petitioner preferred appeal under Rule 15 of the Maharashtra Municipalities Election Rules (hereinafter referred Election Rules) on 18-11-1996. The said appeal has been dismissed by 4th Additional District Judge, Ahmednagar as time barred vide his order dated 22-11-1996 giving rise to the present writ petition.

4. Rule 15 of the Maharashtra Municipalities Election Rules, 1966 provides that appeal shall lie to the District Judge of the district in which Municipal area is situated from any decision of the Returning Officer accepting or rejecting the nomination paper. Sub-clause (2) of the said Rule provides that any candidate aggrieved by a decision of the Returning Officer accepting or rejecting the nomination paper, may present an appeal therefrom to the District Judge within a period of three days from the date of publication of the list of validly nominated candidates. It would be advantageous here to refer the relevant portion of the Rule 15 of Election Rules which reads thus :

"15. Appeal. --(1) An appeal shall lie to the District Judge of the district in which the Municipal area is situated as herein provided from any decision of a Returning Officer accepting or rejecting a nomination paper.

(2) Any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper, may present an appeal therefrom to the District Judge within a period of three days from the date of publication of the list of validity nominated candidates;

Provided that, where an appeal is presented, such candidate shall, not later than 3 O'clock in the afternoon of the day next following the date of presentation of the appeal to the District Judge, give a notice of the appeal to the Returning Officer."

5. The undisputed fact is that the limitation for preferring appeal against the order of Returning Officer rejecting petitioner's nomination form expired on 17-11-1996 which was Court holiday being Sunday and appeal was presented on 18-11-1996 by the petitioner. The Additional District Judge, Ahmednagar dismissed the appeal as time barred by holding that petitioner (appellant therein) could not be given benefit of section 4 of Limitation Act since provisions of Limitation Act have no application.

6. The order passed by the Additional District Judge would not have called for interference if its soundness rested on applicability of section 4 of Limitation Act to that extent he seems to be right- but he overlooked the relevant provision of Bombay General Clauses Act to which I shall refer immediately and that renders

the impugned order unsustainable. Section 11 of the Bombay General Clauses Act, 1904 provides thus:

"11. Where, by any Bombay Act (or Maharashtra Act) made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open."

7. It would be clear from the aforesaid provision, that if an act or proceeding under the Maharashtra Act is required to be taken on or before particular day or in due time in the Court and that day or last day of such time is Court holiday if such act or proceeding is taken or done on the next day when such Court is open, by legal fiction such act or proceeding is deemed to have been done or taken in time. This general provision of section 11 of the Bombay General Clauses Act is fully attracted in the present case and can be surely availed to save limitation under Rule 15 of Election Rules inasmuch as, the list of validly nominated candidates was published by the Returning Officer on 14-11-1996: the appeal could have been filed by 17-11-1996; on 17-11-1996 the Court was closed being Sunday and appeal was filed on the next day i.e. 18-11-1996. Thus, the appeal filed on 18-11-1996 would be deemed to have been filed in due time as prescribed under Rule 15 of Election Rules. The view which I have taken is fully fortified by the decision of the Apex Court in *Simhadri Satya Narayana Rao Vs. M. Budda Prasad and Others*, though relating to election petition filed under Representation of Peoples Act, 1951 and its earlier decisions, *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, ; *Hari Shanker Tripathi Vs. Shiv Harsh and Others*, and *H.H. Raja Harinder Singh Vs. S. Karnail Singh*, .

8. There cannot, therefore, be any doubt about the legal position that the benefit of section 11 of the Bombay General Clauses Act, 1904 has to be given to the party preferring appeal to District Judge under Rule 15 of the Election Rules if the Limitation of such appeal expires on the day when such Court is closed and on the day next immediately thereafter, the appeal is filed when such Court is open.

9. Writ petition is thus allowed and the order passed by the 4th Additional District Judge, Ahmednagar on 22-11-1996 is set aside. However the appeal preferred by the petitioner under Rule 15 has admittedly become infructuous and is disposed of accordingly.

10. Rule is disposed of in the aforesaid terms. No costs.

11. Petition allowed.