
(2001) 07 BOM CK 0107
In the Bombay High Court
Case No : Writ Petition No. 3612 of 2000

Martin Nirmal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 15, 19, 21

Citation : (2001) 4 ALLMR 420 : (2001) 4 BomCR 653 : (2001) 4 MhLj 643

Hon'ble Judges : S.K. Shah, J;R.M. Lodha, J

Bench : Division Bench

Advocate : I.T. Gilda, for the Appellant; Dangre, A.G.P. for Respondent No. 1, Dube and A.P. Raghute, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Rule. Returnable forthwith. Mrs. Dangre, learned A.G.P. waives service for respondent No. 1. Mr. Dubey, learned Counsel waives service for respondent No. 2. Mr. Raghute, learned Counsel, waives service for respondent No. 3.

2. By consent of learned Counsel for parties, we dispose of the Rule finally at this stage.

3. The petitioner is an elected Councilor/Corporate from Ward No. 23 of Nagpur Municipal Corporation, which is reserved for Scheduled Caste candidate. In the election held on 23-12-1997 the petitioner was elected defeating one Sheshrao Wasnik and Rajendra Tembhurne. Sheshrao Wasnik has filed Election Petition No. 73 of 1997 questioning petitioner's election as corporator from Ward No. 23. It appears that on the complaint of other defeated candidate, namely Rajendra Tembhurne respondent No. 3 herein the Divisional Social Welfare Officer (Caste Scrutiny Committee), invalidated petitioner's caste claim. The said order of Caste Scrutiny Committee invalidating petitioner's caste claim was challenged by petitioner in W.P. No. 2296 of 2000. The said petition stood dismissed on 28th

June. The Commissioner, Nagpur Municipal Corporation, Nagar, vide communication dated 29-9-2000 (Annexure P-5) informed the petitioner that the Divisional Social Welfare Officer vide Order dated 8-6-1999 has invalidated petitioner's caste claim and the writ petition filed by the petitioner challenging the said order dated 8-6-1999 has been dismissed by the High Court on 28-8-2000. As a result thereof u/s 15(g) of the City of Nagpur Corporation Act, 1948 petitioner was not qualified to be elected as Councillor and has ceased to be a Councillor u/s 19(a) of the Act of 1948. The said communication dated 29-9-2000 is impugned before us in the present writ petition.

4. In our view, the communication dated 29-9-2000 sent by the Commissioner, Nagpur Municipal Corporation, Nagpur, is wholly without jurisdiction and amounts to usurping the power of Election Tribunal u/s 428 of the Act of 1948. Section 15 of the Act of 1948 provides for disqualification of candidates. As we are concerned with Clause (g) of section 15, the relevant part of it provides that no person shall be eligible for election as a Councillor if he has been so disqualified by or under any law, (i) for the time being in force for the purpose of elections to the legislature of the State; and (ii) made by the legislature of the State of Maharashtra. Section 19 provides for effect of subsequent disabilities. The effect of section 19(a) that if any person has been elected or nominated a Councillor and subsequently becomes subject to any of the disqualifications specified in section 15 and such disqualification is not removable or being removable is not removed, such person shall cease to be a Councillor and the State Government shall, by notification, declare his seat to be vacant. Section 21 deals with the power of removal of any Councillor. It provides that any Councillor who becomes subject to any of the disqualifications specified in section 19 shall forthwith cease to be a Councillor and his office shall become vacant. Section 21(2) makes a provision that if any question arises whether a vacancy has occurred under sub-section (1), it shall be decided by State Government and its decision shall be final. Section 428 provides machinery to challenge the result of election. Section 428 along with Rules framed thereunder permit the person enrolled in the municipal election roll to question the validity of election on the grounds mentioned in sub-section (1), inter alia if the qualification of the elected Councillor is disputed. In other words, if the qualification of any elected Councillor is disputed the remedy provided under the Act is by way of election petition which is to be heard and disposed of by District Court. It would be, thus, seen that if the petitioner was not qualified to be elected as Municipal Councillor u/s 15(g) the remedy is to question the eligibility and qualification of petitioner to be elected as Councillor by way of election petition and the same has been already filed by one Sheshrao Wasnik defeated candidate. The power which is exclusively vested in Election Tribunal u/s 428 to decide the question of qualification of elected Councillor when disputed cannot be exercised by any authority muchless by the Municipal Commissioner. Even if we assume that the question regarding caste claim of petitioner has attained finality which in fact has not in view of review application filed by petitioner and order of status quo

passed thereon, then also the question that the petitioner being not Scheduled Caste could not have contested the election from Ward No. 23, which was reserved for Scheduled Caste the only forum which could invalidate petitioner's election as Councillor would be the Election Tribunal u/s 428. Thereafter it is for the State Government to issue necessary notification declaring the seat to be vacant. Neither the learned Counsel for Nagpur Municipal Corporation nor the learned A.G.P. could cite any provision from the City of Nagpur Corporation Act which enables the Commissioner of Nagpur Municipal Corporation to declare that a Councillor has ceased to be Councillor as he was disqualified at the time when he contested the election. Neither section 15 nor section 19(a) gives such power to the Commissioner of Nagpur Municipal Corporation.

5. On facts, it may be noted that though petitioner's caste claim was invalidated by the Divisional Social Welfare Officer vide communication dated 8-6-1999 and the petitioner's writ petition challenging the said order came to be dismissed on 28-8-2000 but this Court on the review application filed by petitioner while issuing notice to respondents vide order dated 18-10-2000 has ordered status quo as obtaining on that day to be maintained. Therefore, it cannot be said that the question regarding petitioner's caste claim has attained finality since review application is already pending before this Court.

6. For all these reasons, we have no hesitation in holding that the communication dated 29-9-2000 sent by the Commissioner, Nagpur Municipal Corporation, Nagpur to petitioner does not get any sanction from the provisions of City of Nagpur Corporation Act, 1948 and is without jurisdiction. The Commissioner, Nagpur Municipal Corporation, Nagpur, has no competence and power to send such communication to the petitioner.

7. Consequently writ petition is allowed. The communication dated 29-9-2000 is quashed and set aside. No costs.