
(2012) 03 BOM CK 0140
In the Bombay High Court
Case No : Writ Petition No. 1180 of 2012

Maruti Rayba Karche

APPELLANT

Vs

Nana Jayram Rane and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 33(5)

Citation : (2012) 3 ALLMR 750 : (2012) 3 BomCR 31

Hon'ble Judges : G.S. Godbole, J

Bench : Single Bench

Advocate : Sandeep Salunkhe, for the Appellant; Rahul Kate with Siddheshwar Kale for the Respondent No. 1 and Mr. R.M. Patne, AGP for the Respondent Nos. 11 to 14, for the Respondent

Judgement

G.S. Godbole, J.—Heard Mr. Salunkhe for the Petitioner, Mr. Kate for the Respondent No.1 and Mr. Patne, AGP for the Respondent Nos. 11 to 14.

2. The Petitioner and the Respondent No.1 both belong to other backward class (OBC). The Petitioner was elected from the seat reserved for OBC; whereas the Respondent No.1 was elected from the seat which was not reserved and was a general category seat. The post of Sarpanch of village Pimpri, Tal. Malshiras, Dist. Solapur was, however, reserved for OBC. The Petitioner and the Respondent No.1 both filed their nomination papers for the said post. The elections were conducted on 23rd May, 2011. The nomination paper of Respondent No.1 was rejected by the Returning Officer on two grounds, namely, (i) that the Respondent No. 1 was not elected from the seat reserved for OBC and (ii) that the validity certificate issued to the Respondent No.1 was not issued for the purpose of election. It is the case of the Petitioner that after rejecting the nomination paper; since the Petitioner was the only contesting candidate, he was declared elected on 23rd May, 2011.

3. According to the Respondent No.1, however, there was no sufficient quorum available for the meeting dated 23.05.2011 and the meeting was postponed to

24.05.2011 and the notice to that effect was issued. Thereafter, the Returning Officer, prepared minutes of the meeting allegedly held on 23.05.2011 and declared that the Petitioner is elected unopposed.

4. This order of Returning Officer was challenged by the Respondent No.1 by filing the Election Dispute Application No. 13 of 2011 before the Collector, Solapur u/s 33(5) of the Bombay Village Panchayats Act, 1958. The said Application was allowed by the Additional Collector, Solapur by the Judgment and Order dated 06.08.2011 and the proceedings of the Meeting allegedly held on 23.05.2011 were quashed and set aside. Certain other directions were also issued with which we are not concerned in this Writ Petition.

5. Aggrieved by this order, the Petitioner filed Village Panchayat Appeal No. 49 of 2011 before the Additional Commissioner, Pune Division, Pune. Pending the said Appeal new elections for the post of Sarpanch were held and that it is an admitted position that the Respondent No.1 was elected by majority. Thereafter, by impugned order dated 17.01.2012, the Additional Commissioner, Pune Division, Pune has dismissed the Appeal.

6. I find that both the reasons given by the Returning Officer for rejecting the nomination paper of Respondent No.1 were clearly unsustainable. In so far as the first reason is concerned, the law in that regard is well settled and Mr. Kate has rightly relied upon the following reported Judgments :

(i) Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others, . Paragraph 15 and 16 of the said Judgment discussed the law on the point and paragraph 18 of the said Judgment reads thus :

18. From the aforesaid discussion it follows that the appellant who belongs to the Backward Class was eligible to stand for the office of President even though he had been elected as a member of the municipality not from a reserved seat but from a general seat. As per the roster it is a Backward Class member who is in the year 1997 is to be the President of the Jambusar Municipality. The appellant, who admittedly belongs to a Backward Class could not be regarded as being ineligible merely because he had not been elected to a seat which had been reserved for a Backward Class candidate. Consequently, his election as the President, on this ground, could not have been set aside.

(ii) The Division Bench Judgment in the case of Pushpa Prakash Kalpande Vs. Collector, Amravati and others, in which it is observed as under :

4. In our view, the above ratio of the Apex Court decision, though under the Gujarat Municipal Act, 1963 clearly applies to the facts of the present case. There is nothing in the provisions of the Bombay Village Panchayats Act, 1958 or the relevant rules of election to the post of Sarpanch and Upsarpanch to suggest that in order to be eligible to contest the election for the post of Sarpanch which has been reserved for woman general category, it is necessary for the candidate to have been elected to the Gram Panchayat only from a seat reserved for woman

general category and further that if a woman belonging to O.B.C. has been elected as a member of the Gram Panchayat, she would be ineligible to contest such an election. In the absence of any such specific prohibition, against the third respondent, we do not think that the petitioner can prevent the third respondent from contesting the election to the post of Sarpanch of Jawala (Bk.) Gram Panchayat which post has been reserved for a woman in the general category.

(iii) The latest Judgment of the Supreme Court in the case of Bihari Lal Rada Vs. Anil Jain (Tinu) and Others, . Paragraph 43 reads thus :

43. In our view, wherever the office of the President of a Municipality is required to be filled in by a member belonging to Scheduled Caste, Scheduled Tribe or Backward Class as the case may be it would be enough if one belongs to one of those categories irrespective of the fact whether they have been elected from a general ward or a reserved ward. Likewise, the office of the President of a Municipality if not reserved or meant for general category, all the candidates irrespective of their caste, class or community and irrespective of the fact whether they have been elected from a reserved ward or a general ward are entitled to seek election and contest to the office of the President of the Municipality.

7. It is thus clear that the first reason given by the Returning Officer for rejecting the nomination of the Respondent No.1 was clearly unsustainable and was contrary to the law laid down by the Hon''ble Supreme Court and by this Court.

8. The second reason was equally unsustainable. Since Respondent No.1 was not elected from reserved category, there was no occasion for him to obtain validity certificate for the purpose of elections. Validity certificate indicates that he belongs to OBC community. Both the reasons given by the Returning Officer to reject the nomination of the Respondent No.1 were palpably wrong and without application of mind. In view of this, no case for interference is made out.

9. There is no merit in the Writ Petition. The Petition is rejected.

10. Interim order passed earlier will stand vacated forthwith and the Respondent No.1 can proceed to take charge of the post of Sarpanch.