
(2014) 12 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 927 of 2013

Milind	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 243T

Citation : (2015) 1 ALLMR 8 : (2015) 3 BomCR 389 : (2015) 3 MhLj 34

Hon'ble Judges : P.R. Bora, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : K.S. Narwade, Advocate for the Appellant; T.R. Kankale, Assistant Government Pleader and Firdoz Mirza, Advocate for the Respondent

Judgement

P.R. Bora, J.—In the instant petition, the petitioner has challenged the constitutionality of rule 16 (3A) of the Maharashtra District Planning Committee (Election) Rules, 1999 (for short, the "Rules of 1999"). Consequently, he has also prayed for setting aside the order passed by the Returning Officer (respondent no. 3 herein) on 7th February 2013 whereby he has rejected the nomination of the petitioner for the post of Member in the District Planning Committee of Yavatmal District. Petitioner has also prayed for setting aside order dated 13th February 2013 passed by the Collector, Yavatmal i.e. respondent no. 2 herein whereby he has confirmed the order dated 7th February 2013 passed by respondent no. 3. Respondents no. 4 to 11 are the persons who have been declared elected unopposed on District Planning Committee, Yavatmal.

2. The facts relevant for the purpose of deciding present petition are thus-

Vide Notification dated 28th January 2013, respondent no. 3 had declared the election to 32 constituencies of the District Planning Committee, Yavatmal District for electing members from rural areas and smaller urban areas of Yavatmal District. On 31st January 2013, respondent no. 3 declared a detailed programme of election. As provided in rule 3 of the Rules of 1999, the area of the District is to be divided into the following four constituencies:

- (a) Rural Area Constituency,
- (b) Transitional Area Constituency,
- (c) Smaller Urban Area Constituency, and
- (d) Larger Urban Area Constituency.

As per sub-rule (2) of rule 3, the total number of members to be elected from each constituency is to be determined by the Collector in proportion to the urban and rural population in the district as a whole and in each constituency. In so far as present matter is concerned, the election programme was declared for the candidate to be elected from the rural area constituency and smaller urban area constituency and the total number of candidates to be elected was 32. The petitioner had admittedly submitted his candidature from the rural area constituency. In rural area constituency, the members elected to the Zilla Parishad of the said District are the voters and the persons whose names are entered in the list of voters are eligible to contest the election to the District Planning Committee subject to the provisions made in rule 16 of the Rules of 1999.

The present petitioner submitted his nomination to be elected from the general seat though he belongs to reserved class, more particularly, the Scheduled Tribe. It is the contention of the petitioner that since no seat was reserved for the Scheduled Tribe, he submitted his nomination from the general seat. In the scrutiny carried out on 7th February 2013, the nomination of the petitioner was rejected by respondent no. 3 for noncompliance of rule 16 (3A) of the Rules of 1999. As is averred in the petition, along with his nomination paper, the petitioner had submitted certificate from the competent authority to the effect that he was elected to Zilla Parishad, Yavatmal from the reserved seat.

Respondent no. 3 while rejecting the nomination of the petitioner has referred to rule 16 (3A) of the Rules of 1999 and has recorded a finding that since the petitioner has failed to comply with rule 16 (3A), his nomination is rejected. The petitioner challenged the rejection of his nomination by preferring appeal under Section 21 of the Maharashtra District Planning Committee (Constitution And Functions) Act, 1998 before the Collector, Yavatmal. However, vide order passed on 13th February 2013, the Collector, Yavatmal (respondent no. 2) rejected the said appeal. Aggrieved thereby, the petitioner has preferred the present writ petition.

3. Since the petitioner has challenged the constitutionality of rule 16 (3A) of the Rules of 1999 along with the rejection of his nomination by the Returning Officer and its confirmation by the Collector, the petition has been entertained by this Court.

4. Petition was filed on 15.2.2013. Voting, if necessary, was to take place on 20th February 2013 as per the election programme declared on 31.1.2013. On 18th February 2013 notice was issued in the present matter for final disposal and the

matter was fixed on 20th February 2013 at 02.30 pm. On 20th February 2013, learned Government Pleader informed the Court that for eight vacancies, only eight candidates were left in fray and hence as per the Rules, all of them were declared elected unopposed. As such, the petitioner subsequently amended his petition and by way of amendment, added the prayer for quashing and setting aside election of respondents no. 4 to 11.

5. The petitioner has assailed sub-rule (3A) of rule 16 of the Rules of 1999 being ultra vires the Constitution. Mr. K.S. Narwade, learned counsel submitted that the candidates belonging to scheduled caste or scheduled tribe or any other backward class cannot be deprived from contesting the election for the general seat and no such restriction can be imposed that the said candidate must have been got elected in Zilla Parishad elections to a general seat. Learned counsel invited our attention to rule 55 (4) of the Rules of 1999 which provides that candidate belonging to any reserved category shall will be eligible to contest the election to the general seat. Learned counsel submitted that rule 16 (3A) is in direct conflict with rule 55 (4) of the Rules of 1999. Learned counsel relied upon the decision of the Honourable Apex Court in the case of Bihari Lal Rada Vs. Anil Jain (Tinu) and Others, to substantiate his contention. Learned counsel invited our attention to the observations made in paragraphs 23, 32 and 43 of the aforesaid judgment.

6. Mr. Kankale, learned Assistant Government Pleader appearing for respondents no. 1 to 3 had sought time to assist the Court stating that he intends to study the judgment relied upon by petitioner and wishes to bring to the notice of the Court certain other judgments to substantiate the contentions of respondents no. 1 to 3 as set out in Return. Since controversy involved was limited to the extent of deciding validity of rule 16 (3A) of the Rules of 1999 and available material was sufficient for the purpose, we rejected the request so made and proceeded with the matter. Learned Assistant Government Pleader relied upon the submissions made in the Return submitted on behalf of respondents no. 1 to 3 on 15th July 2013.

7. We have carefully considered the submissions made on behalf of petitioner and contentions raised by respondents in their Return.

8. Rule 16 (3A) of the Rules of 1999 constitutionality of which is challenged in the present writ petition, reads thus :

"(3A) If a person belonging to a reserved category has been elected from the general category, and if such person submits a certificate of general category from the Competent Authority at the time of presenting a nomination, then the nomination paper of such person shall be treated as valid for the general category."

9. The aforesaid sub-rule though thus permits a person belonging to reserved category to contest the election for a general seat, it impliedly disqualifies the person belonging to reserved category from contesting the election to a general

seat if the said person has been elected in the respective body from the reserved seat. Is such a provision necessary ? The aforesaid rule tested on the anvil of the Constitutional provisions and the law laid down by the Honourable Apex Court in the case of Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others, and subsequently relied and crystallized in the case of Bihari Lal Rada" (supra), we find the same to be not in consonance with the Constitutional provisions as well as the law laid down by the Honourable Apex Court in the cases cited supra.

10. As has been held by the Honourable Apex Court in the cases of Kasambhai F. Ghanchi and Bihari Lal Rada, the unreserved seat, euphemistically described as general category seat or open seat is available for all candidates irrespective of their caste who are otherwise qualified to contest to that office. As has been clarified by the Honourable Apex Court, there is no separate category like general category. The expression "belonging to the general category" wherever employed, means the seats or offices earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. It is thus evident that the candidate belonging to a reserved class cannot be disqualified and deprived from contesting the election to the general seat. As has been said by the Honourable Apex Court in Bihari Lal Rada (supra) there can never be any Constitutional or legal objection if more members from weaker section get elected to the public body on their own merit from the seats meant for unreserved category.

11. "Whether any Act or Rule can curtail and put an embargo on the right of the municipal councillor elected from the reserved ward to contest the election to the office of President of Municipal Council if by virtue of roaster, such office is notified to be filled in by a member belonging to the general category" was the question for determination before the Honourable Apex Court in case of Bihari Lal Rada. In the said case, appellant before the Honourable Supreme Court who was belonging to reserved class, was elected on the post of President of Municipal Council, Hissar though at the relevant time, according to the roaster, the post of President of the said Municipal Council was notified to be filled in by a member belonging to the general category. Election of the appellant was challenged in a writ petition seeking writ of certiorari to quash the proceedings whereunder appellant was declared to have been duly elected as President of Hisar Municipal Council. Learned single Judge of the High Court of Haryana, dismissed the writ petition and upheld the election of the appellant as President of the Municipal Council. In appeal preferred by respondent, the Division Bench set aside the judgment of the learned single Judge and quashed the election of appellant as President of the Municipal Council. The matter was then taken to the Honourable Apex Court and the Honourable Apex Court set aside the order passed by the Division Bench and upheld the decision of the learned single Judge, thereby upholding the election of the appellant as President of said Municipal Council. We find it expedient to reproduce herein, the conclusions recorded by the Honourable Apex Court in the aforesaid judgment, which are thus :

"40. Be that as it may, neither Article 243T of the Constitution nor Section 10(5) of the Haryana Municipal Act provide for any reservation to the office of the President in favour of any candidate who does not belong to Scheduled Caste or Backward Class. Obviously there cannot be any such reservation of seats in municipalities nor to the office of Chairperson in favour of candidates belonging to general category. There is no separate category like general category. The expression "belonging to the general category" wherever employed means the seats or offices earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. The unreserved seats euphemistically described as general category seats are open seats available for all candidates who are otherwise qualified to contest to that office.

41. The word "general" is derived from Latin word genus. "..... It relates to the whole kind, class, or order..... Pertaining to or designating the genus or class, as distinguished from that which characterises the species or individual; universal, not particularised, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognised universally, as opposed to particular; universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only. Extensive or common to many." (See Black's Law Dictionary, 6th Edn.)

42. There is nothing in the provisions of the 1973 Act suggesting that in case the office of the President of a municipality is required to be filled in from the members belonging to the general category then only a member who has been elected as such from an unreserved ward alone can stand for election. There is nothing in law that a person belonging to Backward Class who got himself elected from a ward reserved for that class is debarred from contesting the election to the office of President/Chairperson when that office is not reserved and meant to be filled in from the members belonging to the general category.

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."

12. In the instant case, there is no dispute that the petitioner has been elected to Zilla Parishad, Yavatmal from a reserved seat. There is further no dispute that the petitioner had filed his nomination to be elected as member in the District Planning Committee, Yavatmal from the general seat and by the impugned order, his nomination paper was rejected for the reason that he did not produce a

certificate from the Competent Authority at the time of presenting his nomination showing that in the respective body i.e. Zilla Parishad, Yavatmal he was elected to a general seat. In view of the observations reproduced hereinabove from the judgment of the Honourable Apex Court and in view of the law laid down by the Apex Court in the aforesaid judgment, the impugned decision rejecting nomination of the petitioner apparently cannot sustain and is liable to be set aside. Since rule 16 (3A) of the Rules of 1999 violates the Constitutional mandate, the same is also liable to be struck down. We also agree with the contention raised by the petitioner that rule 16 (3A) of the Rules of 1999 is in direct conflict with and contrary to rule 55 (4) of the said Rules. As has been stated earlier, rule 55 (4) provides that a candidate belonging to any reserved category shall be eligible to contest the election to a general seat. This rule, in fact, lays down correct position of law which has been explained by the Apex Court in the case of Bihari Lal Rada (supra).

13. In view of the discussion made hereinabove, in so far as the elections to the District Planning Committee as per Rules of 1999 are concerned, the correct legal position may be stated as below.

(i) election to the reserved seat can be contested by a candidate belonging to the reserved category for which the seat is reserved irrespective of the fact whether the said candidate has been elected to the respective body from a general seat or the reserved seat.

(ii) along with the candidates belonging to open category, the open seat can also be contested by a candidate belonging to reserved class irrespective of the fact whether the said candidate is elected to the respective body from a reserved seat or a general seat.

Before parting with the judgment, we wish to note that though the validity of sub-rule (3) of Rule 16 of the Rules of 1999 has not been challenged in the present petition, in view of the discussion made by us hereinbefore and considering the law laid down by the Apex Court in the judgments cited supra it has to be stated that rule 16 (3) is liable to be read down. The restriction imposed vide the said sub-rule that the candidate desiring to contest the election to the reserved seat in District Planning Committee must have been elected from the reserved seat in the respective body impliedly disqualifies a candidate got elected from general seat in the respective body though he may be belonging to the reserved class. Restriction so imposed is unconstitutional. For making a candidate eligible to contest an open seat in District Planning Committee, it is absolutely unnecessary and irrelevant to require the said candidate to produce the certificate from the competent authority certifying from which seat, whether reserved or general, the candidate is elected to the respective body. Constitutional mandate is clear that a candidate undisputedly belonging to reserved class cannot be disqualified to contest any further election to an unreserved or general or a reserved seat on the ground that in the respective body he has been elected from a general seat. This controversy has been dealt with by the Hon''ble Apex Court in Bihari Lal

Rada"s case (supra).and now the law stands settled that any seat 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 the said reserved category for which the seat is reserved irrespective of the fact whether he has been elected from a general seat or reserved seat.

14. Since we have struck down rule 16 (3A) of the Rules of 1999 being unnecessary and unsustainable and have also quashed order dated 7.12.2013 passed by respondent no. 3 and order dated 13.2.2013 passed by respondent no. 2, the petitioner has become entitled to contest the election to a general seat on the District Planning Committee, Yavatmal. In the circumstances, though respondents no. 4 to 11 have been declared elected unopposed, the said election will have to be set aside.

15. In the result, following order is passed :

(i) Writ Petition is allowed.

(ii) It is declared that rule 16 (3A) of the Maharashtra District Planning Committee (Election) Rules, 1999 is ultra vires the Constitution of India and hence, the same is struck down.

(iii) Order dated 7.2.2013 passed by respondent no. 3 and order dated 13.2.2013 passed by respondent no. 2 are quashed and set aside.

(iv) The election of respondents no. 4 to 11 is set aside.

(v) Respondent no. 3 may reschedule the programme of election for vacant seats in the Rural Area Constituency of the District Planning Committee, Yavatmal.

(v) Rule made absolute accordingly. No costs.