
(1991) 04 BOM CK 0075
In the Bombay High Court
Case No : Writ Petition No. 452 of 1985

Murlidhar Bhaiyaji Kapgate and others	APPELLANT
Vs	
Krishna Jairamji Meshram and others	RESPONDENT

Date of Decision : 11-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) MhLj 897

Hon'ble Judges : S.M. Daud, J;B.U. Wahane, J

Bench : Division Bench

Advocate : N.S. Munshi, for the Appellant;

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution takes exception to the verdict of the Collector, Bhandara, upon an application u/s 33(5) of the Bombay Village Panchayats Act, 1958 (Act), confirmed in appeal by the Additional Commissioner, Nagpur Division.

2. The question that arises for determination in this petition requires the enumeration of the factual position which is as follows:

Petitioners Nos. 1 to 9 and respondents Nos. 1 to 7 were elected as members of the Village Panchayat, Sakoli, District Bhandara, in a poll held on 22-4-1984. The results were declared on 24-4-1984 and respondent No. 8 was appointed as the Presiding Officer for the conduct of elections to elect the Sarpanch and Upsarpanch of the Panchayat. The eighth respondent gave a notice on 24-4-1984 scheduling the election of the Sarpanch and Upsarpanch for 27-4-1984. All the members of the Panchayat participated in the poll and the rivals for the post of Sarpanch were petitioner No. 1 and respondent No. 1. Petitioner No. 1 was successful in getting the majority support and, therefore, was elected as a Sarpanch. The election was challenged by an application moved by respondent No. 1 u/s 33(5) of the Act. The Collector, who heard the application, upheld the contention that the result of the poll was vitiated because of the violation of Rule

4 of the Bombay Village Panchayats (Sarpanch and Upsarpanch) Elections Rules, 1964 (Rules). The Collector's decision was upheld in appeal by the Additional Commissioner and hence the present writ petition.

3. Respondents have been served, but none of them has come forward to oppose the petition. We see no merit in the petition and dismiss it for the reasons given below:?

Rule 4 of the Rules is worded thus :?

"The Presiding Officer shall cause a notice of such meeting to be given to every member of the Panchayat at least three clear days before the date of such meeting. Such notice may be issued by the Presiding Officer, or by the Secretary."

Counsel for the petitioners contends that the Rule though couched in mandatory terms, is in substance, directory. Respondent No. 1 had attended the meeting fixed for electing a Sarpanch. In fact, all the members of the Panchayat had attended the said meeting. None of them had objected to the notice of poll falling short by one day. No prejudice had been caused to respondents Nos. 1 to 7. Respondent No. 1, in particular, had not pleaded the invalidity of the notice at the meeting held to elect the Sarpanch and Upsarpanch. Therefore, he was estopped from questioning the election on the aforesaid ground by means of an application u/s 33(5) of the Act. The submission plausible as it stands, is devoid of merit. Three clear days" notice is prescribed by the Rules and the Rule is mandatory in not only language, but also the intent. It speaks of three clear days and the use of these words is an indication of the importance attached to the provision by the law-makers. It was argued that the object of the notice was to ensure the presence of all the elected members who had right to participate in the election of the Sarpanch and Upsarpanch. If that purpose was served, nothing further remained to be done. We cannot agree for the provision of three clear days" notice seems to be actuated by a desire to give sufficient time, not below three clear days in any case, to the rivals to muster support for themselves. It is for this reason that the rule provides for three clear days" notice and not merely to ensure the attendance of all those eligible to vote at the poll. The plea of estoppel can hardly be accepted seeing that the well-settled principle of law is that no estoppel can prevail against the clear provisions of a statute. The result of the foregoing discussion is that the petition fails and hence the order:

Rule and interim stay discharged with no order for costs.