

(2013) 03 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 8606 of 2012

Pratima Prabhakarrrao Borikar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 307, 337, 353

Citation : (2013) 4 ABR 1042 : (2013) 4 ALLMR 747 : (2013) 5 BomCR 135 :
(2013) 4 MhLj 895

Hon'ble Judges : Mohit S. Shah, C.J.;S.B. Deshmukh, J

Bench : Division Bench

Advocate : S.S. Jadhavar, for the Appellant; V.D. Godbharale, A.G.P. for respondent No. 1, Shri S.S. Bora for respondent No. 2, Shri M.M. Patil Beedkar for respondent Nos. 3 and 7, Shri A.N. Sabnis for respondent No. 4 and Shri P.S. Lakhotiya holding for Shri R.R. Chandak for respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Mohit S. Shah, C.J.—The petitioner, resident of Parbhani, an Ex-Councillor of the Parbhani Municipal Corporation and practicing Lawyer at District Court Parbhani, has challenged the nomination of respondent Nos. 3 to 7 as Councillors of Parbhani Municipal Corporation under the Maharashtra Municipal Corporations (Qualifications & Appointment of Nominated Councillors) Rules, 2012. After general elections of the Parbhani Municipal Corporation, the meeting of the Councillors was held on 26 June 2012 to nominate 5 persons as Municipal Councillors of Parbhani Municipal Corporation. By Resolution dated 26 June 2012, the elected Councillors nominated respondent Nos. 3 to 7 as Councillors all of them being office bearers of N.G.Os., rendering social services and having 5 years experience in the field.

2. Section 5(1)(b) of the Maharashtra Municipal Corporations Act, 1949 provides for nomination of Councillors. The Rules framed under the said Act and other

Acts governing the nomination of members under the other Municipal Corporations Acts in the State of Maharashtra are the Maharashtra Municipal Corporations (Qualifications and Appointment of Nominated Councillors) Rules, 2012. The relevant Rules 3, 4 and 5 read as under:-

3. Meeting for nomination of Councillors:- Subject to the provisions of rule 4, the Corporation shall, in the first meeting of the Corporation after the election of the Mayor and Deputy Mayor, after general elections, nominate five persons to be nominated Councillors.

4. Qualification for nomination:- A person shall be eligible for being nominated as a candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he:-

(a) has been a recognized and registered medical practitioner in the State for a minimum period of five years, or

(b) has been an educationist including retired Professor, Lecturer, Principal, Head-master, etc. of a recognized school or college for a minimum period of five years, or

(c) has been Chartered Accountant or Cost accountant for a minimum period of five years, or

(d) possesses a degree in engineering from a recognized University and has professional experience for a minimum period of five years, or

(e) has been an Advocate for a minimum period of five years or is a person possessing degree in Law from a recognized University with an experience in the legal field in the State for a minimum period of five years, or

(f) has experience of working for not less than five years as the Chief Officer of a Municipal Council or as Assistant Commissioner or the Deputy Commissioner or has experience of not less than two years as the Commissioner of a Municipal Corporation, and has retired from service, or

(g) has experience of not less than five years as an office bearer of a Non-Government Organization registered under the Bombay Public Trusts Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

5. Nomination of Councillors:- (1) For the purpose of nomination of Councillors, the Commissioner shall, after consulting the leader of the House, leader of opposition and leader of each recognized or registered party or group in the Corporation, and after taking into account the relative strength of such parties and groups recommend the names of suitable persons to the Corporation for being nominated as a nominated Councillor. The names of such persons recommended shall not exceed the number of Councillors to be nominated in accordance with rule 3.

(2) The Corporation shall, after considering the recommendation by the Commissioner, nominate the Councillors:

Provided further that every endeavour shall be made to ensure that one Councillor each possessing any of the qualifications referred to in clause (a) to (g) of rule 4 has been nominated.

3. There is no dispute regarding the procedure followed before respondent Nos. 3 to 7 were nominated as Councillors. The main dispute is about the qualifications of respondent Nos. 3 to 7. The second contention is that criminal cases were pending against respondent Nos. 3, 5 and 7. Respondent No. 3 is involved in offences punishable under Sections 363, 367, 368, 452, 147, 148 and 427 of I.P.C., respondent No. 5 was involved in an offence punishable u/s 307 of I.P.C., and the respondent No. 7 was involved in an offence punishable under Sections 353 and 337 of I.P.C.

4. On the one hand learned counsel for the petitioner has submitted that the very object of Rules 4 and 5, particularly second proviso to Rule 5 is to see that the Municipal Corporation should have 5 Councillors having special knowledge or experience in municipal administration and also having professional qualification and experience in diverse fields such as Medicine, Education, Engineering, Law, Chartered Accountant/Cost Accountant, Chief Officer/Assistant/Deputy Municipal Commissioner and N.G.O. Only for a former Commissioner of Municipal Corporation the experience could be of two years. Because all the 5 nominated Councillors i.e. respondent Nos. 3 to 7 herein are stated to be belonging to category of office bearers of Non-Government Organization engaged in social welfare activities, it is submitted that the object of these Rules has been defeated by nominating all the 5 members from one category instead of nominating 5 Councillors from 5 different categories.

5. On the other hand, the learned counsel for the Municipal Corporation as well as the learned counsel for respondent Nos. 3 to 7 have opposed the petition and submitted that the nominated Councillors may belong to any of the 7 categories and it is not necessary that the 5 nominated Councillors should come from 5 different categories. Relying upon the second proviso to Rule 5, it is submitted that each of the 5 nominated Councillors may possess any of the qualifications referred to in Clause (a) to (g) of Rule 4 and, therefore, the requirement of Rule 4 read with the second proviso to Rule 5 are satisfied in the instant case as respondent Nos. 3 to 7 have experience of not less than 5 years as office bearers of N.G.Os., engaged in social welfare activities.

6. Learned counsel for respondent No. 4 has also challenged the locus of the petitioner and has submitted that the petitioner has no locus standi to file the present petition as the petitioner is not one of the elected Municipal Councillors. Reliance is placed on the decision of a single Judge of this Court in Daruwala M. Umar A. Rehman Vs. Namdeo Kondiba Chavan and Another, , particularly, the observations to the effect that the challenge to an election can come only from

an elector who belongs to the electoral college which nominated the members whose nomination is under challenge. There the relevant provisions were of the Maharashtra Municipalities Act, 1965. There are three categories of Councillors. The first group consisting of Councillors elected in Ward elections, the second group consisting of Councillors co-opted by the elected Councillors and the third group consisting of persons nominated by the State Government to fill in vacancies where no Councillors are elected from Wards.

A voter of the Kurduwadi Municipal Council filed election petition challenging the co-option of Councillor Rehman by special meeting of the newly elected Councillors. Rehman as well as the Councillors opposed the petition on the ground that the election petitioner had no locus standi to file the petition as he was not an elected Councillor who could have exercised his franchise at the time of co-opting a member. The District Judge hearing the election petition held that a person entitled to vote at the election was eligible to file the election petition and further held that the co-opted member in question did not satisfy the conditions of the provisions for being co-opted as Councillor.

In the writ petition challenging the above decision the learned Single Judge held that though election petitioner Namdeo Chavan was eligible to vote at the Ward elections, he was not eligible to vote at the election for co-opting a Councillor. The learned Single Judge then held that to have locus standi to challenge the election for co-option such challenge can come only from the elector in the election of the electoral college which co-opts the concerned person as a Councillor.

7. We do not find any substance in the above preliminary objection. The petitioner is a resident of Parbhani and was Ex-Councillor of the Parbhani Municipal Corporation. The petitioner herself being a practicing Lawyer at Parbhani was eligible for being nominated as a Councillor under Rule 4 (e). There is no dispute about the petitioner's contention that the petitioner falls in category (e). Apart from the fact that the petitioner herself belongs to category (e) and is, therefore, eligible to be nominated as a Councillor, we are of the view that any resident of Parbhani whose name is found on the electoral roll for the Ward elections of Parbhani Municipal Corporation, would be eligible to file writ petition for compliance with the provisions of Rule 4 read with second proviso to Rule 5. We, therefore, overrule the preliminary objection.

8. Now coming to the merits of the main controversy, qualifications for nomination are laid down in Rule 4 and clearly indicate that the nominee has to have special knowledge or experience in municipal administration and he is professional in one or the other of the following fields for 5 years:-

- (a) Medical practitioner
- (b) Educationists
- (c) Chartered Accountant or Cost Accountant

(d) Engineering

(e) Advocate

(f) Chief Officer of a Municipal Council or an Assistant Commissioner/Deputy Commissioner for 5 years or Commissioner of a Municipal Corporation for two years prior to retirement.

(g) Office bearer of a Non-Government Organization registered under the Bombay Public Trust Act, 1950 engaged in Social Welfare activities working within the area of a Municipal Corporation or a Council.

These qualifications are required to be read with the second proviso to Rule 5 which provides that every endeavour shall be made to ensure that one Councillor having qualification and experience in each category has been appointed.

9. Since there is serious dispute about the interpretation of the second proviso to Rule 5 and since the learned counsel for the petitioner has relied upon the original Rule framed in Marathi we may set out the second proviso to Rule 5 in Marathi which reads as under:-

The Marathi version has been translated by the learned Advocate for the petitioner as under:-

Provided further that, every endeavour shall be made to ensure that one person each possessing one of the qualifications referred to in clause 4(a) to (g) of Rule 4 has been nominated.

10. We find that the object of the Rule 4 read with the second proviso to Rule 5 is to make an endeavour that the Municipal Corporation gets the benefit of experience of professionals from five out of the seven fields such as Doctors, Educationists, Engineers, Chartered Accountants/Cost Accountants, Advocates, Chief Officer/Assistant/Deputy Commissioner or office bearers of an N.G.O., each professional having 5 years experience in the concerned profession.

11. Learned counsel for the respondents would submit that if the interpretation canvassed by the petitioner were to be accepted there would have to be 7 nominated Councillors because there are 7 categories. However, Rule 3 provides for nomination of only 5 persons to be nominated Councillors. Hence in any event the nominated Councillors will not be from each of the 7 categories.

12. We are unable to accept the above argument. It is true that the number of nominated Councillors is to be 5 and there are 7 categories, but the object of the Rules is that every endeavour should be made to ensure that professionals coming from as many diverse professions out of the 7 as are available should be nominated. In a given case the elected Councillors may not be able to find professionals from some out of the 7 professions and, therefore, the Rule making authority has given the Councillors latitude to select from out of as many as 7 professions. The Legislative intent could not be that all 5 nominated members should be from the same profession. The very purpose of having such a Rule is

to see that there are many experienced professionals who can make significant contributions to the municipal administration and represent different view points from different angles at the meetings of the municipal Councils. Such professionals however, do not like to participate in elections to local authorities which have not only become very competitive, but are also very politicized. The Rule making authority, therefore, has provided in Rules, 3, 4 and 5 that the elected municipal Councillors should nominate experienced professionals from different fields who can bring in their valuable experience in different fields to assist the Municipal Council in formulating policies and in implementation of such policies. The different inputs from professionals from diverse fields will be very useful as the local authorities are now required to perform functions and discharge duties in almost all walks of life like running Municipal Dispensaries, Municipal Schools and various projects which would benefit from the inputs from professional engineers. The Municipal Corporation also has large funds to be generated from sources of income and various projects of which Municipal funds will be expended where Chartered Accountant/Cost Accountant can give his valuable inputs, as a professional in the field. Similarly, the Municipal Council must act in accordance with law and an experienced Lawyer can make his contribution to assist the Municipal Corporation in defending cases against the Municipal Corporation. The inputs from an office bearer of an N.G.O., would also be helpful in seeing that benefits of the Municipal projects reach the beneficiaries. In short the Municipal Corporation must have benefits of experienced professionals from 5 different fields from out of the 7 professionals enumerated in Rule 4.

13. We, therefore, accept the petitioner's contention that Rule 4 read with the second proviso to Rule 5 provide that the five persons to be nominated as Councillors should come from five different professions and not only from one profession. It may be that in a given case the elected Councillors may be able to find professionals from only four professions and not from five. In such a case, there may be two nominated Councillors from one profession, but that would be after the Councillors fail to find persons from five professions, out of the total eligible seven professions.

14. In view of the above interpretation, it is not necessary for us to go into the question about the criminal cases against the respondent Nos. 3, 5 and 7. Learned counsel for respondent No. 3 has submitted that respondent No. 3 has been acquitted from the offences for which he was charged. However, it is not necessary for us to express any opinion on this aspect as in our view the impugned resolution dated 26 June 2012 nominating respondent Nos. 3 to 7 as Municipal Councillors of the Parbhani Municipal Corporation was illegal.

15. The Writ Petition is allowed. The Municipal Corporation Resolution dated 26 June, 2012 is quashed and set aside. The Municipal Commissioner shall convene another general meeting of the Parbhani Municipal Corporation for the purpose of holding elections for nominating 5 persons to be nominated Councillors from out

of the 7 professions enumerated in light of interpretation placed by us on Rule 4 and second proviso to Rule 5. The petition is accordingly allowed in the above terms. Rule is made absolute with no order as to costs.

S.B. Deshmukh, J.

At this stage, learned counsel for the respondents pray for stay of operation of this judgment for some time.

Operation of this judgment is stayed upto 3 May 2013.