

(1987) 09 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 1315 of 1987

Pruthwiraj Parmeshwarlal Jaiswal and another

APPELLANT

Vs

Shrungas Shivilal Thakare and others

RESPONDENT

Date of Decision : 07-09-1987

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13(1)(a)

Citation : (1987) MhLj 1065

Hon'ble Judges : W.M. Sambre, J;V.A. Mohta, J

Bench : Division Bench

Advocate : S.V. Natu and V.V. Vidwans, for the Appellant; M.N. Ingley for Respondent No. 1, S.Z. Deshbhratar, Asstt. Government Pleader, P.C. Madkholkar, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Points of some importance arise in this petition by a person whose election as a member of Market Committee constituted under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (the Act) from agriculturists' constituency u/s 13(1)(a) of the Act has been set aside by the Collector on the ground that petitioner No. 1 Pruthwiraj Jaiswal is not an agriculturist as defined u/s 2(1)(b) of the Act in an election petition filed under Rule 88 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (the Rules) filed by his nearest rival Shrungas Thakare, respondent No. 1.

2. Undisputed factual background is this. The petitioner No. 1 owns land in the village, is a liquor trader and his father runs a ration shop. The nomination paper of petitioner No. 1 was filed in Co-operative Societies as well as Village Panchayat Constituencies. Nomination paper for a seat in Village Panchayat Constituency was accompanied by a certificate of the Talathi to the effect that petitioner No. 1 owns land in the village. No certificate accompanying the nomination paper for a seat in the Cooperative Societies' constituency was filed. Both the nomination papers were accepted by the Returning Officer in a scrutiny since there was no

objection. But petitioner No. 1 withdrew the nomination from the Village Panchayat Constituency. No appeal as provided under Rule 51 of the Rules against the order of the Returning Officer accepting the nomination paper was filed before the Collector. There was a contest between petitioner No. 1 and respondent No. 1. Respondent No. 1 lost and he filed an election petition under Rule 88 inter alia on the ground that petitioner No. 1 was not an agriculturist and was, therefore, not qualified to contest the election of 10 seats covered by Section 13(1)(a). The Collector upheld the contention, set aside the election and aggrieved thereby the present petition is filed.

3. Section 13 of the-Act provides for three constituencies for 13 elected members out of the total strength of 18.10 out of 13 have to be agriculturists, seven of whom to be elected by members of the Managing Committees of certain Co-operative Societies and three by the members of the Village Panchayats. Three members are to be elected by the licenced traders and commission agents. Rules are framed u/s 60 of the Act. They deal with the manner of holding election, election petition, etc. u/s 60(4) of the Act it is mandatory to place the Rules before each house of the State Legislature for a total period of 30 days during which time they may be modified or annulled by both the Houses. Rules 35 and 36 provide for preparation of list of voters. Rule 37 makes the list final subject to any disqualification. Rule 41 deals with disqualifications, Rule 45 provides for the presentation of nomination papers and requirements for valid nomination, Rule 50 for scrutiny of nomination papers, Rule 51 for appeal against decision of the Returning Officer accepting or rejecting the nomination of the candidate, Rule 88 for determination of validity of election and Rule 89 for declaration of disqualification. Here are extracts from the relevant rules :

"41.(1).....

(2) A person shall not be chosen as a member:

(i) representing the traders" constituency, if he does not ordinarily reside in the market area or if the licence issued to him is cancelled, or suspended or not renewed;

(ii) representing agriculturists" constituency, if his main income is not from agriculture or possesses a trader"s commission agent"s or broker"s licence or has interest in a joint family or a firm which has a trader"s or commission agent"s or broker"s licence.

Explanation :-- For the purpose of this sub-rule, a person shall be deemed to be ordinarily residing in the market area, if he resides in such area for not less than 180 days in a calender year."

"45. Presentation of nomination paper and requirements for valid nomination, --

(1) On or before the date appointed under clause (a) sub-rule

(1) of rule 43, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order

made under rule 43 a nomination paper completed as provided by rule 44 and signed by the candidate and by a voter of the constituency as proposer.

(2) Any person who is not subject to any disqualification as a voter under these rules and whose name is entered in the list of voters for the constituency for which the candidate is nominated, may subscribe as proposer. He shall not subscribe as proposer more than one nomination paper.

(3) On presentation of a nomination paper the Returning Officer shall satisfy himself that the candidate is an agriculturist, or as the case may be, a trader and that the name and number in the list of voters of the proposer as entered in the nomination paper are the same as those entered in the list of voters :

Provided that, the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said name or number to be corrected in order to bring them into conformity with the corresponding entries in the list of voters; and where necessary, any clerical or printing error in the said entries shall be overlooked.

Explanation : -- For the purpose of satisfying the Returning Officer that the candidate is an agriculturist, a certificate of the Sarpanch or Talathi of the Village or the Secretary of the Primary Co-operative Credit Society in the village where the candidate resides to the effect that the person is an agriculturist as defined in clause (b) of sub-sections (1), (2) of Section 2 of the Act, shall be produced along with the nomination paper. The certificate shall be conclusive proof that the candidate is an agriculturist.

(5) Nothing in this rule shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency:

Provided that, not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer for election in the same constituency."

"51. Appeal -- (1) Any candidate, aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper, may present an appeal therefrom to the Collector within a period of seven days from the date on which the notice, containing the names of the candidates accepted by the Returning Officer is affixed on the notice-board under sub-rule (8) of Rule 50 and shall ordinarily furnish on the same day to the Returning Officer a copy of the petition of appeal together with as many copies of the petition as there are candidates whose nomination papers have been accepted (excluding himself).

(2) The decision of the Collector on appeal under this rule and subject only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of candidate shall be final and conclusive."

"88. Determination of validity of election. --

(1) If the validity of any election, including by election of a member of a Market

Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers, such person may, within seven days after the date of the declaration of the result of the election, apply in writing to the Collector.

(2) On receipt of an application under sub-rule (1), the Collector shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he deems fit, pass an order confirming or amending the declared result of election or setting the election aside. If the Collector sets aside the election, he shall fix a date, as soon as conveniently may be, for holding a fresh election.

(3) Any person aggrieved by the decision of the Collector may, within seven days from the date on which the decision is communicated to him, appeal to the Director against such decision; and the decision of the Collector, subject to the decision of the Director in appeal, shall be final."

4. The first point is whether the points which were raised or could have been raised at the time of scrutiny of nomination papers before the Returning Officer or in an appeal against his decision before the Collector, can be agitated in an election petition in view of the finality attached to the decision of the Returning Officer by Rule 51(2). It seems to us that the answer has to be recorded in the affirmative despite somewhat confusing language used in Rule 51(2) and the first impression created thereby to the contrary.

5. Rule 88 uses the word "election." Even a voter is entitled to question the validity of the election. Sub-rule (2) of Rule 88 empowers the Collector to confirm or amend the result of the election or to set it aside, "after making such inquiry as he deems fit." All this indicates that a wide and not a narrow meaning to the word "election" has to be given. The concept "election" embraces the whole procedure and all stages thereof. It is difficult to exclude the stage of scrutiny of nomination papers from the purview of Rule 88. At the time of scrutiny of the nomination papers under Rule 50, only the candidates, one proposer of each candidate and one other person duly authorised in writing by such candidate can attend and raise objection to the nomination papers. No other person is entitled to attend. Scrutiny of nomination papers has to be done in short span of time and the inquiry has to be done in a summary manner. There is no real scope for elaborate inquiry irrespective of nature of the objections. No adjournment can be allowed as per sub-rule (5) of Rule 50. Appeal, if any, has to be filed within seven days. To hold that objection pertaining to validity of nomination paper cannot be raised in an election petition, would not only defeat the purpose of the election petition, but would shut out even those who have no opportunity to raise the questions relating to validity of nomination paper before the result of the election is declared. If a voter cannot be shutout from raising the relevant contentions which he had no opportunity to raise before in view of the wide scope of the inquiry under Rule 88, it is difficult to see how the scope can be reduced only because election petition is filed by a voter who has contested the election.

6. A legitimate question that arises then is what could be the object behind making the decision of the Returning Officer or the Collector final and conclusive under Rule 51(2). It does appear in the first flush that there is some conflict between Rule 51 and Rule 88. But on closer scrutiny of the provisions and the scheme as a whole the conflict does not appear to be real. Even if there is any such conflict, as far as possible the provisions have to be harmoniously construed. The only answer that strikes is that the finality and conclusiveness referred to in Rule 51(2) is ad hoc and is operative only upto the stage of completion of election process, intention behind the same being that the process should not be stalled by questioning the decision of the Returning Officer in any manner by approaching Civil Court or any other forum. The summary nature of the inquiry and the limited category of persons who are entitled to participate in the inquiry militates against a view that the decision is final and conclusive for all purposes and is not amenable even to the jurisdiction of a Collector in an election petition where full-fledged inquiry into all relevant questions pertaining to the validity of the election can be made.

7. The learned counsel for the petitioner contended that legislative intention appears to be to make the decisions final stage-wise in the election process and thus the decision of the Returning Officer operates as res judicata in subsequent proceedings arising out of the very same election. It is not possible to accept these contentions for the reasons already recorded about the nature and scope of enquiry by the respective authorities at different stages.

8. It appears that there has been some divergence of views on the question. In the case of *V. A. Ransing vs. Shankar Vithal Sape* (57 Bom LR 254), question arose in the context of the Bombay Primary Education Act, 1947 whereunder there is no specific provision for making the decision of the Returning Officer final in "the matter of validity of a nomination paper. However, judicial notice of the provisions in other enactments attaching finality was taken and it was held that even those specific finality clauses are operative upto completion of election process. In *Radhabai Jaiswal vs. State of Maharashtra*, "Special Civil Application No. 345 of 1962 decided by the Nagpur Bench of this Court on 11.2.1962 in the context of Bombay Village Panchayats Act, 1958, it was held that finality is attached only "at that stage" and in no way in the scope of the election petition is restricted.

9. The case of *Venkatmo Vithalrao vs. Vithal Sambhaji*, 1963 Mah. L J. 834, decided in the context of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1962 and election rules framed thereunder, however, takes a different view of the matter. It is held that even though an ordinary voter has no right to challenge the validity of nomination paper before the Returning Officer he cannot raise the ground pertaining to disqualification or invalidity of nomination paper in view of the finality attached to the decision subject to appeal under Rule 20 sub-rule (8) of those rules as those grounds could have been raised at the stage of scrutiny. The principal reason adopted by the Court was that "in the matters of

election, there are no common law or inherent rights as such" and rights are only those which are granted or can be inferred from the scheme of each enactment.

10. A Full Bench of this Court in the case of Dattatraya Narhar Pitale vs. Vibhakar Dinkar Gokhale, 1975 Mah. LJ. 701, considered the point in the context of the Maharashtra Municipalities Act, 1965 and held that the provision by which the decision of the Returning Officer in the matter of nomination is made final, cannot bar the right to question validity of election even on the grounds of wrongful acceptance or rejection of the nomination paper and that grounds available to ordinary voter and candidate cannot be different. A similar question arose before the Madhya Pradesh High Court in the case of Bapusingh Ramsingh vs. Additional Collector, Indore, 1977 M. P. L J. 550 in the context of the Madhya Pradesh Krishi Upaj Mandi (Adhisuchana, Prakashan, Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, 1973, taking a view similar to the one which we have taken it is observed :

"The mere use of the words "final and conclusive" in sub-rule (5) of Rule 17 cannot be held to debar the aggrieved party from agitating his right by preferring an election petition under Rule 43 as both the forums are distinct and independent. In our opinion, the finality and conclusiveness indicated in Rule 17(5) must be construed to be only in respect of a decision of the election authority in accepting or rejecting the nomination of the election candidate. In other words, the decision of the appellate authority is final and conclusive in so far as the election authority is concerned. The use of the words, "and subject only to such decision" used in Rule 17(5) would support our view. The rule making authority appears to have employed the use of the expression "the decision shall be final" wherever possible. We may notice in this regard the later part of sub-rule (8) of Rule 43 which provides such usage, "The decision of the Collector or his subordinate officer, as the case may be, shall be final." The decision of the Collector or his subordinate officer may be final in so far as the statutory authorities are concerned." "Where the statute or statutory rules provide for more than one remedy to an aggrieved party, it is open to the concerned party to avail himself of the remedies provided therefor under law, unless the very statute restricts or bars any one of the remedies, if he happened to choose the other. Rule 17(4) and (5) and Rules 43 and 44 can be harmoniously and beneficially construed, with regard to the right of a candidate to file an election petition as provided in Rules 43 and 44 in Chapter 11, which deals with election petitions. On the application of the principle of harmonious and beneficial construction of statutes, we are of the view that the candidate whose nomination has been rejected by the election authority can prefer an appeal under Rule 17(4) and if he is aggrieved by the decision of the appellate authority; he can avail of the remedy of election petition provided under Rule 43 read with Rule 44(2)(c) as there is no bar for him from agitating the same point in an election petition."

11. Now, the only decision which has taken a different view is the case of

Venkatrao (supra). Apart from the fact that it deals with different piece of legislation, it seems to us that the attention of the Court was not drawn to the case of V. A Ransingh or Radhabai (supra). Full Bench in the case of Dattatraya (supra) considered Venkatrao and Radhabai (though not V. A. Ransingh) and preferred the view taken in Radhabai. The Full Bench decision is not only binding on us but commends itself to us. True it is that all the above cases deal with different enactments. But in our judgment, their central theme is by and large the same. As far as the decision rendered by the Madhya Pradesh High Court is concerned, the same refers to an almost similar scheme. A controversy about the provisions of the substantive Act overriding the provisions in the rule in case of conflict between the two need not detain us, for in the instant matter we are concerned with the conflict (if any) between different provisions in the Rules. We may at this stage make useful reference to the following passage in Maxwell on Interpretation of Statutes, Tenth Edition (pages 50 and 51) :

"Instruments made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either House, but that if not so annulled they are to be of the same effect as if contained in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these instruments and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the instrument would be treated as subordinate to the diction. If a statutory instrument contains words identical to those used in the act under which it is made, these words must be construed in the same way as they are construed in the Act."

Thus there was nothing illegal in the Collector examining in an election petition the point about disqualification incurred by the petitioner before his nomination though such point was not raised at the stage of scrutiny of the nomination paper.

12. This takes us to the point whether the petitioner is an "agriculturist" as defined by the Act. Explanation in Rule 45 states that for the purpose of satisfying the Returning Officer about the candidate being agriculturist, a certificate of Talathi or other officer specifying therein that the person is agriculturist within the meaning of Section 2 sub-sections (1) and (2) of the Act has to be produced along with the nomination paper and the said certificate shall be conclusive proof that the candidate is an agriculturist. As per Section 2(1)(b) of the Act, "agriculturist" means a person who ordinarily by himself or by hired labour or otherwise is engaged in the production or growth of agricultural produce which has not been processed but does not include a trader, commission agent, processor or broker in agricultural produce although such trader, commission agent, production or growth of agricultural produce. The certificate filed along with the nomination paper of petitioner No. 1 only states that he owns

land in the Village. Bare reading of the term "agriculturist" would indicate that one does not become an agriculturist by virtue of the only fact of owning land. That certificate did not satisfy the requirement of Rule" 45. In the election petition the Collector held that petitioner No. 1 is running a liquor shop, his father is running a fair price shop and he owns land in the village. The Collector, relying on a Government Resolution issued by the Food and Civil Supplies Department dated 24-8-1976, held that it was mandatory for a fair-price shop-keeper to obtain a licence under the Act and the Rules. Perhaps he wanted to say that second part of Rule 41(2)(ii) was attracted and the petitioner No. 1 was disqualified on account of his joint father carrying on trade which required licence under the Act and the Rules. He further held that a certificate filed along with the nomination paper of one constituency cannot be read for the nomination paper for the seat in the other constituency. Now, apart from the later aspect which may be termed as technical, the fact remains that there was no acceptable material on record to hold that petitioner No. 1 was ordinarily engaged in production or growth of agricultural produce which has not been processed. The whole object of Rule 41(2)(ii) seems to be that only bona fide agriculturist should represent the constituency of Co-operative Societies and/or Village Panchayats. Three seats are reserved for being filled in by traders and commission agents holding licence to operate as such in the market area u/s 13(1)(b) of the Act Thus distinct line between the two categories is drawn and the same is not allowed to be crossed. Mere owning the land or mere actual cultivation does not make one an agriculturist. One may be an agriculturist even without owning the land. Ownership thus is not the deciding factor though it is a relevant factor to decide the principal occupation of a person. One may cultivate the land but cultivation may be incidental. Rule 41(2)(ii) says that a person shall not be chosen as a member representing agriculturists" constituency, if his main income is not from agriculture or if he possesses a trader's commission agent's broker's licence or has interest in a joint family or a firm which has a trader's or commission agent's or broker's licence. It is possible to contend that under this rule the licence contemplated is a licence under the provisions of the Act and the Rules and not a licence issued under any other enactment. While holder of a licence or a person who is required to take licence under the Act and the Rules is disqualified to represent agriculturists"s constitutency, that disqualification may not occur in case of traders licenced under other enactments. But the crucial test still survives -- is his main income from agriculture. Thus a liquor licence issued in favour of the petitioner No. 1 may not ipso facto debar him from representing agriculturists" constituency, but point still survives -- does he depend upon income from agriculture. Certificate issued by the Talathi does not say so and there is no other material to hold so. We may at this stage make a reference to the case of Parshuram Nivrutti Magar and Another Vs. Dinkar Keshav Shinde and Others, in which it is held that Rule 41(2)(ii) refers only to a licence which only the Market Committee is competent to issue. Rightly, therefore, has the Collector come to the conclusion that petitioner No. 1 could not have represented the agriculturists" constituency and his election was invalid and illegal.

13. The Collector has held that even the other nomination papers did not accompany the requisite certificates. The Collector while setting aside the election of petitioner No. 1 has also directed verification of the other nomination papers as, according to him, the Returning Officer was unaware of the relevant rules. There was some debate over this finding. But that is not germane to the point involved in the instant matter in which we are concerned with the election of petitioner No. 1.

14. To conclude, the petition is dismissed. Rule discharged. No order as to costs.