
(2015) 01 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition Nos. 1313, 1314, 1315, 1316, 1317 and 1318 of 2014

Raju and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 4 ALLMR 200 : (2016) 1 BomCR 205 : (2015) 4 MhLj 231

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : P.S. Wathore, for the Appellant; K.L. Dharmadhikari, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.—These writ petitions can be conveniently decided by this common judgment in view of similarity of issues raised therein.

2. Rule. Heard finally with the consent of learned counsel for the parties.

3. The challenge in these writ petitions is to the order passed by the State Election Commission, Maharashtra-respondent No.2 thereby setting aside the order of disqualification of the returned candidates under the provisions of Section 10(1E) of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act"). Besides aforesaid challenge, the petitioner in all these writ petitions, is also seeking a declaration that after holding the respondent No.5 to be disqualified, the respondent No.6 be declared to be elected as a Councillor.

4. General elections to elect the Councillors at the Amravati Municipal Corporation were held in the month of February 2012. The results of said elections were declared on 17/02/2012. It was incumbent upon the candidates to submit the account of election expenses within a period of thirty days from the declaration of said results. As various candidates failed to submit account of election expenses within the stipulated time, proceedings for their disqualification were initiated by the Divisional Commissioner, Amravati Division, Amravati.

Accordingly, for failure to submit account of expenses, various returned candidates were held disqualified under the provisions of the said Act. The returned candidates who were so disqualified had initially approached this Court by filing various writ petitions but the same were permitted to be withdrawn with liberty to avail the alternate remedy. Accordingly the returned candidates approached the said Election Commission under the provisions of Section 10(1F) of the said Act for setting aside their disqualification. By the impugned orders, the State Election Commission allowed the applications preferred by the returned candidates and set aside the orders of disqualification that were passed by the Additional Commissioner. These orders passed by the State Election Commission are under challenge in these writ petitions.

5. Shri P.S. Wathore, learned counsel for the petitioner in each writ petition submitted that the State Election Commission was not justified in setting aside the order of disqualification. He submitted that the Divisional Commissioner had rightly found that the returned candidates had not submitted the account of expenses within the stipulated time and hence had disqualified the said candidates. Though the returned candidates had taken a stand that they had submitted the account of expenses, there was no acknowledgment or seal of the Municipal Corporation to indicate that such accounts had been submitted in the office of the Municipal Corporation. No records were available with the Municipal Corporation. He therefore submitted that in absence of any proper proof that the returned candidates had submitted an account of expenses, their case could not have been believed. The learned counsel for the petitioner placed reliance on the decision of Punjab And Haryana High Court in case of Capt. Chanan Singh Sidhu Vs. The Election Commission of India, New Delhi and others, in that regard. He therefore urged that the impugned orders deserve to be set aside.

6. Shri M. G. Bhangde, learned senior counsel for the returned candidates raised a preliminary objection to the tenability of writ petitions on the ground that the petitioner had no locus to challenge the orders passed by the State Election Commission. It was submitted that the petitioner had not contested election from the Wards from where the returned candidates were elected. It was submitted that challenge to an election could only be by initiating proceedings as prescribed by law and there was no right whatsoever with the petitioner to challenge the election of the returned candidates as the petitioner had not contested the election from the concerned Ward. In that regard, the learned senior counsel placed reliance on the decision of the Supreme Court in Sadashiv H. Patil Vs. Vithal D. Teke and Others, to urge that disqualification of returned candidates could only be in the manner prescribed by law. In absence of any common law right with the petitioner, the present proceedings were not tenable. On merits it was urged that the impugned orders did not suffer from any illegality or jurisdictional error. It was submitted that the State Election Commission was within its jurisdiction in accepting the explanation furnished by the returned candidates.

The learned counsel representing the State Election Commission, Amravati Municipal Corporation as well as the learned AGP has reiterated the stands taken by them before the State Election Commission.

7. In response to the preliminary objection as raised, the learned counsel for the petitioner referred to averments made in each writ petition in which it has been stated that the petitioner was a socially committed person and hence was prosecuting the present writ petitions. He further submitted that as he had contested election from Ward No.5, he was interested in seeing the rule of law prevailed. According to him, the State Election Commission had passed an illegal order and hence he was justified in invoking writ jurisdiction of this Court. In that regard, he placed reliance on decision of Division Bench in *Suhas Dashrathe and Another Vs. State of Maharashtra and Others*, . He therefore submitted that the writ petitions deserve to be entertained on merits. It was also stated that the petitioner's name was enrolled in the electoral roll and hence he was justified in seeking such relief.

8. It would first be necessary to notice certain relevant provisions of the said Act. While provisions of Section 10(1E) of the said Act prescribes for disqualification on account of failure to lodge account of election expenses within the time and in the manner prescribed and there being no good reason or justification for such failure. This disqualification is for a period of three years from the date of the order. Under Section 10(1F) of the said Act, the State Election Commission can remove disqualification under Section 10(1E) or reduce the period of disqualification. Section 11 of the said Act prescribes disabilities from continuing as a Councillor and under sub clause (a) disqualification under Section 10 of the said Act is included. Thereafter, under Section 16 of the said Act, the remedy of challenging an election by filing election petition in the manner prescribed has been stipulated.

From the aforesaid, it is clear that while provisions of Sections 10 and 11 of the said Act prescribe disqualifications for a Councillor, Section 12 stipulates the manner in which the question as to disqualification has to be determined. Under Section 13 of the said Act, the State Government is granted authority to remove a Councillor. As far as filing of election petition under Section 16 of the said Act is concerned, the same can be done by any person enrolled in the municipal electoral roll within ten days after declaration of the result. It is therefore clear that various modes seeking disqualification or laying challenge to an election have been prescribed under the said Act.

9. The right to contest election and to challenge the same is purely a statutory right. The same is governed by the relevant provisions of the concerned statute and the right to challenge the election of a returned candidate is not a common law right. Such challenge has to be made in a manner prescribed. In *Jyoti Basu and Others Vs. Debi Ghosal and Others*, , the Supreme Court in paragraph 8 of its judgment observed as under :

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. An election petition is not an action at common law, nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down."

10. In the present case, while the returned candidates were held disqualified by the Additional Commissioner under Section 10(1E) of the said Act, said disqualification has been removed by the State Election Commission in exercise of powers under Section 10(1F) of the said Act. Hence the locus of the petitioner who was not a candidate at the concerned election will have to be first examined. In *Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others*, , the question of locus with regard to electoral matters was considered by the Supreme Court. In paragraphs 59 and 60 thereof, it was observed thus :

" 59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hand on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

"60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party. (*Vide* *Adi Pheroazshah Gandhi v. Advocate General of Maharashtra*, *Jasbhai Motibhai Desai v. Roshan Kumar*, *Maharaj Singh v. State of U.P.* , *Ghulam Qadir v. Special Tribunal* and *Kabushiki Kaisha Toshiba v. Toshiba Appliances Co.*) The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in the correct perspective at all.

11. From the aforesaid, it is clear that it is necessary for the petitioner to establish that a legal injury was caused to him on account of the orders passed by the State Election Commission setting aside the orders passed by the Divisional Commissioner. Except for stating that he was a socially committed

person, there is no other basis for the petitioner to challenge the impugned order. The petitioner not having contested the election in question, he had no locus to challenge the election of the returned candidates. Being a voter whose name was included in electoral roll gave him right to file an election petition under Section 16 of the said Act. Said right to file an election petition cannot be extended to such an extent that would give the petitioner locus to challenge the election of various returned candidates without having been a candidate at the concerned election. It is therefore clear that the said Act does not give any right whatsoever to challenge election of the returned candidates or for that matter the locus to challenge the orders passed by the State Election Commission. Right to challenge orders setting aside disqualification of returned candidates not being a common law right and there being no statutory provision whatsoever in the said Act enabling the petitioner to challenge said orders, it is amply clear that the petitioner has no locus whatsoever to challenge the impugned orders.

12. As regards the decision relied upon by the learned counsel for the petitioner in *Suhas Anantrao Dashrathe (supra)*, it is to be noted that said proceedings arose by way of writ petition in which a prayer was made to restrain a candidate from contesting the election from a reserved seat without producing validity certificate. In that background, it was observed in public interest the petitioner had no alternate remedy under the said Act to challenge the election in question.

Aforesaid observations would not apply to the facts of the present case inasmuch as the petitioner had contested election from Ward No.5 and had lost the said election. The election of the returned candidate from said Ward No.5 is subject matter of challenge by the petitioner in Writ Petition No.1039 of 2014 which is being entertained on merits. Hence in view of the observations made by the Supreme Court in *Ravi Yashwant Bhoir (supra)*, it will have to be held that the petitioner has no locus to challenge the various orders passed by the State Election Commission concerning returned candidates against whom the petitioner had not contested the elections.

13. In view of aforesaid discussion, without entering into merits of the controversy, all these writ petitions are dismissed for want of locus of the petitioner.

14. Rule stands discharged with no order as to costs. Needless to state that as a result of dismissal of the writ petitions, pending civil applications do not survive and they also stand disposed of.