
(1995) 03 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 333 of 1994

Rama Wakhare

APPELLANT

Vs

Kashinath Antaram Gahane and Others

RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 15, 15(1)
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 3, 59, 61

Citation : (1996) 2 BomCR 463 : (1996) 1 MhLj 478

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : C.G. Madkholkar, for the Appellant; S.R. Deshpande, for Respondents 1 and 2 and Kankale, A.G.P. for Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—By this petition, the petitioner is seeking to challenge the legality and correctness of judgement passed by Civil Judge, Jr. Dn. Sakoli on 14-12-1993, whereby the said Court has allowed election petition filed by respondent Nos. 2 and 3 herein and has declared the election of the petitioner from reserved seat of Ward No. 1 of village Nilaj illegal and set aside his election.

2. Shorn of unnecessary details, the brief facts giving rise to the present controversy are that gram panchayat election for village Nilaj, Ward No. 1, which was a reserved seat for Scheduled Tribe, was notified and the last date for filing nomination was 6-10-1992. On 15-10-1992, the nominations were scrutinised and the present respondents 1 and 2 raised objections about the nominations filed by the petitioner on the ground that he was not Scheduled Tribe. It may be stated here that the objection was over-ruled by the Returning Officer and a writ petition was filed by the respondents 1 and 2 (for short "Election Petitioners before this Court") and this Court by order dated 20-10-1992 held that the

question can only be examined by way of election petition which was adequate alternative and efficacious remedy and the petition filed by the election petitioner was dismissed. On 1-11-1992, the elections took place and on 3-11-1992 after counting, the petitioner (for short "returned candidate") was declared elected from Ward No. 1 reserved constituency of village Nilaj. The returned candidate's election was challenged by the election petitioner on 16-11-1992 u/s 15 of Bombay Village Panchayat Act, 1958 by filing election petition. The Principal contention raised in the election petition was that the Returning Officer committed serious error in accepting nomination of returned candidate, since he was not a scheduled tribe and was disqualified from contesting election from reserved constituency.

3. The Election Petition was resisted by the returned candidate and he set up a defence that he was scheduled tribe and was entitled to contest the election and the Returning Officer did not commit any error in accepting his nomination. Various other objections were raised by the returned candidate.

4. The Election Petitioners led oral evidence and examined P.W. 1, Kashinath, P.W. 2, Markand and P.W. 3, Raut to show that the returned candidate was not "Gond Gowari" under Item 18, Part 9 of Second Schedule appended to Scheduled Caste and Scheduled Tribe Order, 1976.

5. On the other hand, returned candidate placed on record, caste certificate showing him as "Gond Gowari" issued by Taluka Magistrate.

6. After holding enquiry and hearing parties, Civil Judge, Jr. Dn. Sakoli concluded that the election petitioners have proved that Returning Officer committed error in accepting nomination of the returned candidate, as he was disqualified being not Scheduled Tribe. The Civil Judge, Jr. Dn. by judgment dated 14-12-1993 allowed the Election Petition and set aside the election.

7. Mr. Madkholkar, learned Counsel for the petitioner strenuously urged that it was not open to C.J.J.D. in the election petition filed u/s 15 of Bombay Village Panchayat Act to examine whether Returning Officer rightly accepted nomination of the returned candidate or not. According to him, the question of acceptance of nomination of returned candidate, is beyond the purview of election petition filed u/s 15 of Bombay Village Panchayat Act. Shri Madkholkar also submitted that C.J.J.D. seriously erred in holding that the returned candidate was not "Gond Gowari" covered in Item 18, Chapter 9 of Schedule II of Scheduled Caste and Scheduled Tribes Order, 1976. In support of his contention, he relied on 1965 Maharashtra Law Journal, Note 45.

8. In opposition to the submissions made by the learned Counsel for petitioner, on the other hand, Mr. Deshpande, learned Counsel for election petitioners submitted that the enquiry u/s 15 of Bombay Village Panchayat Act is wide enough to cover the controversy as to whether nomination has been rightly accepted or rejected by the Returning Officer or not. Mr. Deshpande contended that this question can only be examined in election petition as and when arises

and in the present case, this has been made clear by this Court in the order dated 20-10-1992 and, therefore, it is not open to the returned candidate to urge that in the election petition question of acceptance of nomination of returned candidate by Returning Officer could not have been gone into.

9. Mr. Deshpande relied on two decisions of this Court viz. in *Manohar v. G.S. Solanke*, 1964, *Maharashtra Law Journal*, 739 and in *Hanifabi v. Kamal* 1977 M L J 673. Mr. Deshpande also contended that the returned candidate did not examine himself to rebut evidence led by the election petitioner that he was not a Scheduled Tribe and the C.J.J.D. has given finding of fact based on evidence on record, that the returned candidate was not "Gond Gowari" covered under Scheduled Tribes Act.

10. Coming to the last point first, it may be observed that the election petitioners before the C.J.J.D. in the election petition in support of that case examined 3 witnesses i.e. Kashinath, Markand and Raut and all of them have clearly deposed that the returned candidate did not belong to Scheduled Tribe. P.W. 2 Markand has testified before the Lower Court that returned candidate was son of Sapku and Makharu had adopted him and Sapku and Makharu were real brothers. Election petitioners also filed documentary evidence i.e. Birth Extract of Govinda Gowari and Shriram Gowari to show that the caste of father as well as adoptive father of returned candidate belong to Gowari caste and therefore, were not Scheduled Tribes under the aforesaid item of Scheduled Tribes Act. The election petitioners also placed on record School Leaving Certificate of Shriram to show that he belonged to Gowari community. On the other hand, returned candidate did not enter the witness box and the only document placed by him to show that he was Gond Gowari was caste certificate issued by Taluka Magistrate. On appreciation of material evidence on record C.J.J.D. has rightly come to the conclusion that the returned candidate has been established to be not belonging to Scheduled Tribe under Item 18, Chapter 9 of Second Schedule of Scheduled Castes and Scheduled Tribes Amendment Act, 1976. This finding of fact recorded by the Lower Court does not suffer from any infirmity warranting interference by this Court.

11. Thus the position is clear that the returned candidate was not a Scheduled Tribe and therefore, was not entitled to contest the election from reserved constituency of Ward No. 1 of Nilaj village since Ward No. 1 was reserved constituency reserved for Scheduled Tribe. However, the legal objection raised by Shri Madkholkar is that in the election petition, acceptance of nomination paper by Returning Officer of the returned candidate could not have been gone into and, therefore, C.J.J.D. was not justified in setting aside election of the returned candidate on that count.

12. In Special Civil Application No. 320 of 1963 decided on 23-9-1964, this Court held as under :-

"In an election petition u/s 15 of the Village Panchayat Act, matter pertaining to

disqualification of a successful candidate cannot be raised or enquired into."

This judgment is reported by way of Notes in 1965 Maharashtra Law Journal Note 45. In this judgment, of course observation has been made that in election petition u/s 15 of Bombay Village Panchayat Act allegation pertaining to disqualification of elected candidate cannot be raised or enquired into. However, in Manohar's cited supra 1964 M L J 739, the Division Bench of this Court dealing with the scope of section 15 has held as under:-

"An enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purpose of the said enquiry the said Judge may exercise all the powers of a Civil Court and his decision shall be conclusive."

13. The Division Bench judgment of this Court in Manohar's case (cited supra) has been again considered by the Division Bench in Hanifabi v. Kamal 1977 M L J 673 reiterating the principles laid down in Manohar's case (cited supra). The Division Bench held as under :

"Section 51(1) of the Village Panchayat Act provides that if the validity of any election of a member of a Panchayat is brought in question by any candidate as such election or by any person qualified to vote at the election to which such question refers, such candidate or person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the Civil Judge, for the determination of such question. Section 5(2) provides that an enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside, what is the scope of such enquiry came to be considered by a Division Bench of this Court in Manohar Ramchandra Mapekar v. G.S. Solanke, Mamlatdar. It was argued before the Bench that a decision regarding acceptance or rejection of a nomination paper is not within the ambit of enquiry u/s 15 of Bombay Village Panchayat Act. Repelling that argument the Division Bench held that they did not find any limits on the power of the Judge making an enquiry into an election petition u/s 15(2) which in any way hampers him from adjudicating as to the proper or improper acceptance of the nomination paper of a candidate. It will thus be seen that an election petition cannot be filed under section. 15(1) of the Act on the ground that a nomination paper of a candidate is improperly rejected. If election petition can be filed on this ground it would follow that it may be filed either by a voter qualified to vote at the election or by a candidate concerned. The rejection of the nomination paper of a candidate may prevent him from going to the poll. However, in view of the fact that rejection of his nomination paper can be contested in an election petition, it cannot be said that his right to contest the election after the rejection of his nomination paper is suspended temporarily. If he files an election petition and succeeds in that petition and obtains a finding that his nomination paper was wrongly rejected, he will be able to contest the election. In view of this position,

it will have to be held that a candidate whose nomination paper has been rejected does not cease to be a candidate at the election."

14. Obviously, in the judgment of this Court in Special C.A. No. 320/63 decided on 23-9-1964 referred to above, Division Bench Judgment of this Court in Manohar's case has neither been referred nor considered. In Manohar's case (cited supra), Division Bench of this Court after considering the scope and ambit of the enquiry u/s 15 of Bombay Gram Panchayat Act, in unequivocal terms, has held that election petition can be filed u/s 15(1) of Bombay Village Panchayat Act on the ground that the nomination paper of a returned candidate is improperly rejected. The position laid down by the Division Bench in Manohar's case (cited supra) has been reiterated by the Division Bench in Hanifabi's case (cited supra) and therefore, I do not have any hesitation in holding that in election petition filed u/s 15 of Bombay Village Panchayat Act, it is open to the election officer to consider proper or improper acceptance of nomination paper of a candidate. In the present case, this Court in W.P. No. 2384 of 1992 filed by election petitioners against improper acceptance of nomination paper of the returned candidate relating to this very election held as under :-

"The petitioner is challenging the acceptance of nominal paper of respondent No. 4 in Gram Panchayat Election in the reserved category of Scheduled Tribe as the respondent No. 4 claims to be Gond Gowari. The learned Counsel for the petitioner has submitted before us that on earlier occasions, the respondent No. 4 has contested the election to the Gram Panchayat in open category and his caste is shown as "Gowari". However, it appears from the order of the Returning Officer that the respondent No. 4 has produced the certificate from Mamlatdar on the basis of which his nomination paper is accepted. In our view, the dispute whether the respondent 4 belongs to Gond Gowari community or not cannot be decided in the instant writ petition. The petitioner has adequate remedy by way of an election petition. Hence on the ground of an alternative and efficacious remedy, the instant writ petition is not entertained and is dismissed."

Thus between the same parties, relating to the question as to whether nomination paper of a returned candidate has been properly accepted or not by the Returning Officer, this Court made it clear that the said question can be gone into in the election petition only. Consequently, there is no merit in the contention raised by the petitioner.

15. No other point has been argued in this petition. In the result, this writ petition is dismissed with no order as to cost. Rule is discharged. On dismissal of petition, interim order passed by this Court stands vacated.