
(1996) 06 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 809 of 1996

Rashidabi Musa

APPELLANT

Vs

Laxmibai Babasaheb Bhalekar and Others

RESPONDENT

Date of Decision : 26-06-1996

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 15

Citation : (1997) 99 BOMLR 257

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Judgement

A.D. Mane, J.—Rule is made returnable forthwith. In this Writ Petition the petitioner challenges the order made on 30.1.1996 passed by the learned Civil Judge, SD, Jalna, allowing the election petition and declaring that the election of the petitioner from Ward No. 2 of Village Gram Panchayat of Paradgaon from reserved seat of OBC (Woman) was invalid and further declaring the respondent as returned candidate from the said reserved seat by way of amending the result.

2. The respondent No. 1 filed the election petition No. 2 of 1995 in the court of Civil Judge, JD, Ambad, inter alia challenging the election of the petitioner for woman seat belonging to OBC. The only ground raised by the respondent No. 1 was that the petitioner though belongs to Qureshi Khatik community, it is not included in OBC category. It is in SC category. The Petitioner was, therefore, not entitled to contest the said election for the seat reserved for OBC category.

3. The Petitioner contested the election-petition by filing the Written Statement and though admitted that she belongs to Qureshi Khatik community never denied that community falls under the SC category as asserted by the respondent No. 1. She vaguely stated that she has produced the certificate showing that she belongs to Qureshi Khatik community. According to her, it was shown as OBC candidate in the nomination Paper.

4. At the trial the petitioner failed to adduce any acceptable evidence to show

that Qureshi Khatik community is listed in OBC category. On the contrary Section 3 of the Bombay Village Panchayats Act defines "Other Backward Classes of citizens" and Qureshi Khatik is nowhere included in the said list but it is included in SC List at Sr. No. 31. This being the clear position in support of the claim of the respondent No. 1, I do not think that there is any merit in the petition, when the election of the petitioner was declared invalid.

5. Mr. Deshpande, learned Counsel for the petitioner, no doubt, tried to urge that the Petitioner was not in the know of the fact that the election petition was withdrawn from Ambad Court and transferred to the Jalna Court. According to him, no notice by the District Judge on the transfer application was given to the petitioner. He had, therefore, no proper opportunity to adduce proper evidence before the trial Court. I, however, find no merit in the submission. There is no dispute that the petitioner was in the know of transfer of the petition from Ambad Court to the Jalna Court. Not only that but the petitioner participated in the inquiry before the Jalna Court. This contention is, therefore devoid of any merit.

6. There is, however, merit in other contention of Mr. Deshpande. He urged that the trial Court committed error of law apparent on the face of record by declaring the respondent No. 1 as elected in place of the Petitioner. In support of his contentions he relied on the decision in Gavaji alias Gawaji Sawleram Sarode. The State of Maharashtra 1992 Mh. L.J. 294 : 1991 (3) BCR 585. Wherein the view taken is that the trial Court had no power to declare the respondent No. 1 as elected in place of the petitioner from OBC category under the relevant provisions of Section 15 of the Bombay Village Panchayats Act.

7. On hearing Mr. Talekar, learned Counsel for the respondent No. 1 it is clear that Section 15 of the Act does not empower the court to declare the election petitioner as elected in place of returned candidate whose election has been held to be invalid for one or the other reasons except in case which falls under Clause (b) of Section 15(5) of the Act. on case where election of returned candidate is held to be invalid on account of his disqualification to contest the election in such a case the election Petitioner cannot be declared elected in his place. I, therefore, respectively agree with the view taken in the case cited supra. The result therefore is that part of the impugned order passed by the trial Court will have to be set aside.

8. The order passed by the trial Court declaring the respondent No. 1 as elected in place of the petitioner from reserved seat of OBC (Woman) from Ward No. 2 of Gram Panchayat Paradgaon is hereby quashed and set aside. It is directed that the returning officer shall hold election to the reserved seat of OBC (Woman) from Ward No. 2 of Paradgaon Gram Panchayat in accordance with law as early as possible. Rule is partly made absolute in above terms. The writ petition stands disposed of accordingly. There shall be no order as to costs.