
(1985) 10 BOM CK 0056
In the Bombay High Court
Case No : Election Petition No. 21 of 1985

Rustom Sheriar Tirandaz

APPELLANT

Vs

Manohar Gajanan Joshi and others

RESPONDENT

Date of Decision : 24-10-1985

Acts Referred:

Constitution of India, 1950 — Article 171, 171(3)(a), 171(4), 173
Representation of the People Act, 1951 — Section 100(I)(c), 11, 116A, 21, 30

Citation : (1986) MhLj 821

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : Rajni Iyyar instructed by M/s Solomon and Company, for the Appellant; C.J. Sawant for Respondents Nos. 1, 2 and R.B. Masodkar, for the Respondent

Final Decision : Allowed

Judgement

M.L. Pendse, J.—This is an Election Petition filed u/s 81 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") calling in question the election of respondents Nos. 1 and 2 as members of Maharashtra Legislative Council from "1-Bombay Local Authorities Constituency", at the election held on July 4, 1985. The petitioner seeks a declaration that the election of respondents Nos. 1 and 2 be declared void, on the ground that the nomination paper of the petitioner was improperly rejected by the Returning Officer-respondent No. 3, a ground available u/s 100 (I)(c) of the Act.

2. Article 171 of the Constitution of India provides for composition of the Legislative Councils and Article 171(3)(a) prescribes that of the total number of members of the Legislative Council of a State, as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament by law specify. Article 171(4) provides that the members to be elected shall be chosen in such territorial Constituencies as may be prescribed by or under any law made by

Parliament, and the election shall be held in accordance with the system of proportional representation by means of the single transferable vote. A person, who is a citizen of India and not less than thirty years of age is qualified to fill a seat in the Legislative Council, under Article 173.

Under Section 11 of the Act, the President of India required to determines the Constituencies into which each State having a Legislative Council shall be divided for the purpose of elections under various sub-clauses of Clause 3 of Article 171 of Constitution. In exercise of the power, the President has passed the Order, called the "Delimitation of Council Constituencies (Bombay) Order, 1951". The Order sets out various local authorities Constituencies, the extent of each such Constituency and the number of seats allotted to each such Constituency. Bombay Local Authorities is one of the Constituency and the extent of the Constituency covers Bombay City and Bombay Suburban Districts and two seats are allotted to this Constituency. Bombay Suburban Districts were subsequently merged in Greater Bombay and the only local authority for the entire area is Greater Bombay Municipal Corporation.

3. Biennial Elections, 1985 were held for electing members of Maharashtra Legislative Council and a notification was issued calling upon members of Greater Bombay Municipal Corporation to elect two members of the Council. The respondent No. 3, the Collector of Bombay, was appointed the District Election Officer, Greater Bombay and Returning Officer, 1-Bombay Local Authorities Constituency, in accordance with Section 21 of the Act, while Mr. Meshram was appointed as Assistant Returning Officer. On June 3, 1985 the respondent No. 3 published notice inviting nomination papers in the prescribed form and setting out election programme.

Nine Candidates, including the petitioner who is a Corporators, filed nomination papers before the stipulated time. The respondent No. 3 scrutinised the papers on June 11., 1985 and all nomination papers, except that of the petitioner, were found to be in order. The nomination paper of the petitioner was rejected only on the ground that the name of the Constituency was not correctly indicated, an objection raised by respondent No. 1 and upheld. The petitioner in his nomination paper had described the Constituency as "Bombay Municipal Corporation Constituency" instead of "1-Bombay Local Authorities Constituency", and that was the only flaw in the nomination paper.

4. At the election held on July 4, 1985 the respondents Nos. 1 and 2 were declared duly elected and thereafter the present petition was lodged on August 14, 1985 complaining that mistake in the description of constituency was a technical error and respondent No. 3 overlooked that it was not a defect of a substantial character.

The respondents Nos. 1 and 2 filed their written statement declared on October 4, 1985 asserting that nomination paper, of the petitioner was defective and erroneous description of the name of Constituency was fatal. The respondents

Nos. 3 and 4 did not file any reply.

5. The only issue for determination is whether the nomination paper of the petitioner was improperly rejected by the Returning Officer for non-compliance with Section 33 of the Act.

The petitioner entered the witness-box and produced the receipt for deposit of Rs. 250/- (Ex. B), receipt issued by Assistant Returning Officer acknowledging receipt of nomination paper (Ex. C) and certificate issued in respect of oath subscribed by the petitioner (Ex. D). The original nomination paper (Ex. A) filed by the petitioner was produced from the custody of the Returning Officer. The respondents did not lead any evidence. The documents (Ex. A to D) reflect that the Assistant Returning Officer has signed each document in his capacity as Assistant Returning Officer, "1-Bombay Local Authorities Constituency".

6. Part V of the Act deals with conduct of elections and Section 33 of the Act refers to presentation of nomination papers and requirements for a valid nomination. Sub-sections (1) and (4) of Section 33 of the Act read as under : -

Presentation of nomination paper and requirements for a valid nomination. - (1) On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued u/s 31 nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer: -

Provided that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

Section 36 of the Act deals with scrutiny of nominations and sub-section (4)

prescribes that the returning officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character. A duty is cast on the Returning Officer u/s 33(4) of the Act to satisfy on presentation of nomination paper, that the names and electoral roll numbers of the candidate and proposer are the same as those in the electoral rolls and to permit correction of inaccurate description of names and roll numbers and direct that any technical or printing error may be overlooked. At the stage of scrutiny undertaken by the Returning Officer u/s 36 of the Act, there is no power to permit correction of nomination paper but a fiat is issued to the Returning Officer by the Act, not to reject unless the defect is of a substantial character.

7. On perusal of the relevant provisions and taking into consideration, the undisputed facts, in my judgment, the inaccurate description of the name of Constituency in the nomination paper is not a defect of a substantial character. The undisputed facts are : (i) only local authority in the area covered by "1-Bombay Local Authorities Constituency", is Greater Bombay Municipal Corporation, (ii) the Electoral College of the Constituency consists of only 170 elected Corporators of Municipal Corporation, (iii) Respondent No. 3 was appointed Returning Officer only for this Constituency and there was no confusion as for which Constituency the petitioner filed the nomination paper and, (iv) the endorsements made by the Assistant Returning Officer on documents (Exs. A to D) demonstrates that nomination paper was delivered and accepted in respect of "1-Bombay LOCAL Authorities Constituency". From these facts, the conclusion is irresistible that though the petitioner inaccurately described the Constituency as "Bombay Municipal Corporation" in the nomination paper, the defect is not of a substantial character to warrant rejection of nomination paper. Bombay Municipal Corporation being the sole Bombay Local Authority, the erroneous description of the Constituency would not be a material defect.

8. Reference can be usefully made to the decision of the Supreme Court reported in Rangilal Choudhury Vs. Dahu Sao and Others, . A nomination paper was filed to fill up a vacancy in Bihar-Legislative Assembly from Dhanbad constituency but the name of the Constituency was described erroneously as "Bihar1 instead of "Dhanbad". The nomination paper was rejected and the Section Tribunal upheld the decision, but the High Court reversed the same holding that rejection was improper. In an appeal to the Supreme Court, it was held : -

Generally speaking if the nomination paper does not disclose at all the name of the constituency for which the nomination has been made, the defect would be of a substantial character, for there would then be no way of knowing the constituency for which a candidate is being nominated. But there may be cases where the nomination form shows the constituency for which the nomination is being made though there may be some defect in filling up the form. In such a case, it seems to us that if the nomination form discloses the constituency for which the nomination is being made even though the form may not have been

properly filled in that respect, the defect in filling the form would not be of a substantial character.

Mr. Sawant, learned counsel for respondents Nos. 1 and 2 submitted that Supreme Court found the defect not of a substantial character because the printed nomination form issued by the Government was defective and at one place in the nomination form, reference was made to Dhanbad Constituency. The ratio laid down by the Supreme Court cannot be brushed aside on this ground though the question as to whether defect is of a substantial character must be determined with reference to facts and circumstances of each case. It was then urged by the learned Counsel that non-description of Constituency in the nomination form and misdescription stands on par and in both cases, nomination form must be turned down. It is not possible to accede to such sweeping submission. As held by the Supreme Court, failure to disclose the name of the Constituency would be normally fatal, but the mis-description need not necessarily be so. In cases where it could be easily ascertained and demonstrated from the nomination paper itself, as for which Constituency it was delivered, then mere mis-description of the name of the Constituency cannot be a material defect. Take for illustration, Kolaba District in Maharashtra, the name of which is now changed as Raigad District; a nomination form describing the Constituency as "Kolaba" instead of "Raigad" cannot be discarded as the defect is not of a substantial character. It is necessary for the Returning Officer to ascertain in case of mis-description of Constituency, as to whether the defect is of a substantial character.

9. Mr. Sawant referred to decisions of Supreme Court reported in Prahladdas Khandelwal Vs. Narendra Kumar Salave, and Dharam Singh Rathi Vs. Hari Singh, M.L.A. and Others, wherein the failure to mention the name of the Constituency was held to be a material defect and reliance was placed on the earlier decision in Rangilal 's case (supra), In my judgment, failure to mention name of the Constituency and erroneous description are not one and the same. In cases, where there is no difficulty in identifying the Constituency, the defect is only a technical one and nomination paper cannot be rejected in face of provisions of sub-section 4 of Section 36 of the Act. In my judgment, the Returning Officer was clearly wrong in rejecting the nomination paper of the petitioner, and such rejection must lead to the conclusion that election of respondents Nos. 1 and 2 is void.

10. Accordingly, the petition succeeds and it is declared that election of respondents Nos. 1 and 2 to Maharashtra Legislative Council from "1-Bombay Local Authorities Constituency", is void. The respondent No. 1 shall pay the costs of the petitioner.

Mr. Sawant applies for stay of operation of order as respondents Nos. 1 and 2 are desirous of preferring an appeal to the Supreme Court, as provided by sub-section (2) of Section 116A of the Act. The operation of the order is, therefore, stayed for a period of five weeks from today, on condition, that though

respondents Nos. 1 and 2 may sign the Register kept in the Legislative Council and attend the Session, they shall not participate in the proceedings, shall not vote and shall not draw any remuneration as members of the Legislative Council.