
(1993) 08 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 857 of 1992

Sabbirbhai Fakroddin

APPELLANT

Vs

Abdul Latif Din Mohammad and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 18A
Maharashtra Municipalities Act, 1965 — Section 21

Citation : (1993) 95 BOMLR 556

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The petitioner herein is challenging the order passed by the Third Additional District Judge, Akola in Election Petition No. 3/91.

2. Briefly stated, the facts are as under:

The petitioner is an elected candidate in the elections of Akola Municipal Council from Ward No. 73. It is an admitted fact that after the elections were held, the name of the petitioner was published in the official gazette on 5-12-1991. This election was, however, challenged by way of an Election Petition u/s 21 of the Maharashtra Municipalities Act (hereinafter referred to "as "the Act") at the instance of the respondent No. 1 Abdul Latif. It is also undisputed that this Election Petition came to be presented on 4-12-1991. It seems to have been prepared and signed on 3-12-1991. A preliminary objection was, therefore, taken by the petitioner and in that preliminary objection the petitioner pointed out that firstly the petition was presented not by the election-petitioner but by his counsel-and, therefore, it was not a proper presentation of the petition. The second ground which is germane to the controversy in the present petition was that though the names of the elected councillors were published in the official gazette on 5-12-1991 the petition was filed on 4-12-1991 and as such, it was a premature petition and could not be entertained by the Election Tribunal. It was

reiterated in this objection further that the election petition was liable to be dismissed summarily and the Tribunal could not proceed with the petition as the same was premature.

3. This preliminary objection dated 17-1-1992 was opposed by the election-petitioner and the trial Court by the impugned order dismissed the application raising the preliminary objections to the maintainability of the election-petition. The trial Court held firstly that the presentation by the Advocate was not fatal. On the second objection raised, the trial Court held that the petition could not be said to be prematurely presented even though the publication of the names in the official gazette was on 5-12-1991 and the petition was presented earlier to that. In short, the trial Court held that the limitation provided u/s 21 of the Act was only for the purposes of showing the outer limit within which the petition challenging the election could be presented. Aggrieved by this order rejecting the preliminary objections, the elected candidate and the respondent No. 1 in the Election Petition has filed this petition.

4. Shri G. B. Lohia, the learned Counsel for the petitioner, contended that the interpretation of Section 21 of the Act on the basis of which the application was rejected by the trial Court is wholly erroneous. He reiterated that language of Section 21 itself very clearly provided the exact points when the petition could be presented and also the period during which the said election petition could be filed by the parties. According to him, the interpretation holding that the petition was not premature is wholly incorrect and if the election petition which was presented prematurely was allowed to continue, it will mean giving a premium on an illegality which went to the root of the jurisdiction of the Election Tribunal. He restricted himself to the question of the premature nature of the petition itself. It will, therefore, have to be considered as to whether the Election Petition was premature and whether such premature Election Petition could be allowed to continue? Shri Lohia also relied heavily on the Division Bench judgment of this Court in 1960 Nag. L. J. 38, Narayan Bansi v. Ratanlal Jankilal and Ors. According to Shri Lohia, though the said decision is concerning the provisions of C. P. and Berar Municipalities Act, the law laid down in the decision applied wholly on all fours to the present controversy.

5. Shri S.C. Mehadia, the learned Counsel for the respondent No. 1, supported the order of the trial Court and contended that a correct interpretation is arrived at by the trial Court. He, therefore, prayed for the dismissal of the petition.

6. Section 21(1) of the Maharashtra Municipalities Act, 1965 which is a relevant provision runs as under:-

Section 21(1) No election, co-option or nomination of a Councillor may be called in question, except by a petition presented to the District Court by a candidate at the election or by any person entitled to vote at the election, within ten days from the date of publication of the names of the Councillors in the Official Gazette, u/s 19 or 20, as the case may be.

The language of the section is extremely clear and admits of no doubt. In fact, the words in the last clause of the section beginning from the words "within ten days from the date of publication of the names of the councillors in the official gazette" clearly bring out a position that an election petition shall be filed only within a time span of two points-the first point starting on the day on which the names of the elected candidates have been published in the official gazette and the second point ending after the lapse of ten days therefrom. In fact, the language of the whole section is in the negative terms suggesting that an election cannot be challenged except by a petition which is to be presented to the District Court within ten days from the date of publication of the names of the councillors. When the law specifically directs the presentation of the petition within ten days from the date of publication, it presupposes that the petition could not be presented earlier. Section 21 provides for the presentation of an election petition and relates to the election law and will have, therefore, to be strictly construed. The language also suggests the strict construction of the section, firstly because of its negative character and secondly because of its clarity. The word "within" has been defined in the Chambers Twentieth Century Dictionary as under:

within: in or to the inner part of (arch.): inside in the limits of: not going beyond: on the inner side of....

The Dictionary meaning "in the limits of" would support the view expressed by Shri Lohia because the word "within" is thereafter followed by the words "ten days from the date of publication" which clearly suggests the creation of two points of time during which the election petition has to be filed. Election Petition which is filed even prior to the publication of the names would, therefore, be rendered premature.

7. The word "within" was considered along with the words suggesting the time in number of English decisions. They being:

4. "Within" so many days "after" an event, means days exclusive of the day of the event Williams v. Burgess 10 L. J. Q. B, 10 Robinson v. Waddington 18 L.J.Q.B. 250; Radcliffe v. Bartholomew (1892) 1 Q.B. 161, cited CALENDAR MONTH; Stewart v. Chapman (1951) 2 K. B. 792. So, of "not exceeding" so many days "from" the event Frew v, Morris, 34 SLR 527. " Stroud "s Judicial Dictionary P. 28 76.

The words which fell for consideration in these decisions were "within so many days after an event" where the term was interpreted as meaning the days excluding the date of that event. In the present situation, the word "within" is followed by the words "ten days from the date of publication". Therefore, obviously the time of ten days would begin excluding the date of publication. Thus, the election petition will necessarily be filed or will be allowed to be filed during the ten days which follow the date of the publication of the names of the Councillors in the official gazette.

8. The afore-mentioned decision in *Narayan Bansi v. Ratanlal Jankilal* completely supports the contention of Shri Lohia. There Section 20-A of the C. P. and Berar Municipalities Act fell for consideration. The section ran as under:-

(1) No election notified u/s 20 shall be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition shall be presented to the District Judge...within" the local limits of whose jurisdiction the election was held and no petition shall be admitted unless it is presented within fourteen days from the date on which the result of such election was notified.

The controversy in that petition was absolutely similar to the one involved in the present case. There also the election petition was filed before the publication of the results of the election was made in the Official Gazette by the Deputy Commissioner, and the question was as to whether an election petition filed prior to the publication of the notification of the result was premature or not ? An argument was advanced therein that Section 2Q-A only fixed the posterior limit and did not prohibit the institution of an election petition prior to the date of notification and, therefore, an election petition "could be filed at any time after the result of election has been declared by the Supervising Officer but not later than the limit prescribed in the section from the date of the notification. In that case, the said limit was 14 days. After taking stock of various sections, including sections 10, 16(2), 17, 18 and Rule 3, as also Section 18-A of the C. P. and Berar Municipalities Act, the Division Bench observed firstly in paragraph 16 that it is only after the names of the elected members are notified that they enter the office and unless the newly elected members entered the office, the outgoing members did not go out of their office. The following observations are really telling:

All these provisions would indicate, that the election proceedings relating to the election of members or president end with the publication in the Official Gazette of a notification declaring the members or president elected at the election.

It is thereafter that the Division Bench proceeds to observe:

As a general rule the cause of action" to challenge an election by an election petition would arise only when the election proceedings are complete. The aforesaid discussion of the relevant provisions indicates that the election proceedings in the instant case terminate with the notification of the result. The reason therefore appears to be that the election proceedings should not be unduly retarded or protracted....

For this the Division Bench relied upon the reported decision of the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , wherein the Supreme Court held by observing :

Having regard to the important functions which the Legislatures has to perform in democratic countries, it has always been recognized to be a matter of first

importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

It is thereafter that the Division Bench has observed in paragraph 20:

If that be the true position, then the question of deciding validity of the election of a member would naturally arise when he becomes a member of that body; in other words, when he enters on his office. As already pointed out, under the Act an elected member enters on his office from the date of notification. It would therefore be, in our view, reasonable to assume that the right to challenge an election provided for u/s 20A of the Act arises when the Deputy Commissioner notifies in the Official Gazette the name of the elected member under rule 1 8A referred to above.

The Division Bench also further observed that if the parties were allowed to file the election petition even before the publication of the notification in the Official Gazette, then it would result in protracting the election proceedings, disturbing the time schedule provided for in the various provisions of the Act and the Rules made thereunder and also confusion in the working of the system. This is what the Division Bench further observes:

...If a challenge to the election of a member is allowed on the declaration of the result, but prior to its notification then naturally on a good cause being shown the Election Tribunal would prevent notification of his name in the Official Gazette. In that event, the elected member does not enter on his office, consequently under sub - section (3) of Section 16 the outgoing member continues in office, Under rule 18A the Deputy Commissioner has to forthwith notify in an Official Gazette the names of elected members. A problem is created before him whether he should notify the names of the elected members minus the names of the member notifying whose name is prohibited by the Court, or whether he should wait till the election petition is decided. The Deputy Commissioner of different districts may take different views. In the event he chooses to adopt the latter course, the election of the president is indefinitely withheld. In the event he chooses to follow the former course, it may lead to startling results. Under rule 3 of the rules framed under Sub-section (6) of Section 18 the Collector (Deputy Commissioner) has to convene a meeting within 25 days for electing a president. Notice of that meeting has to be given to all the members. As already stated the outgoing member is still continuing to be a member of the municipality and the Collector will naturally have to give notice of this meeting to that member. He thus not only gets a right to vote at the meeting convened for the election of the president, but can even offer himself for the post of president. It is difficult to assume that the Legislature intended that the outgoing member should vote at the election of a new president or that he should get a right to contest the election for the post of the president....

At the end, the Division Bench deduced that if such election petition was allowed to be filed even prior to the date of notification, then a confusion was likely to be caused which had to be avoided in all the cases. Ultimately, the Court came to the conclusion in paragraph 22 and observed:

In our judgment, therefore, the right conferred u/s 20A of the Act to challenge an election arises only on the result of the election being notified. The view taken by us would ensure smooth progress of election proceedings and their completion within the time scheduled as provided in the Act and the rules framed thereunder.

9. Now turning to the provisions of the Maharashtra Municipalities Act, 1965, almost all the provisions referred to by the Division Bench in the judgment cited *supra* and relied upon for arriving at the conclusion that it did are present in the Maharashtra Municipalities Act and the Rules thereunder. A short resume of those provisions will not be out of place. Section 19 provides that as soon as possible after the counting of votes in a ward if it is a bye-election and in all the wards if it is a general election in a municipal area is over, the Collector shall publish the result in the Official Gazette, as soon as conveniently may be. The Collector is thus duty bound to publish the names of the elected Councillors in the Official Gazette as soon as possible. It is to be noted that Rule 59 of the Maharashtra Municipalities Election Rules, 1966 provides for the declaration of result. The Returning Officer under Rule 59 has to declare the result and issue a certificate in Form No. XIV. The Returning Officer has to send the signed copies of this Form No. XIV to the Collector as soon as possible. As provided in Section 19, the Collector sends the results for publication on the basis of this Form No. XIV which he receives from the Election Officer, In addition to this, Section 19 which is amended by Maharashtra Act No. 10 of 1967 provides very specifically:

If at a general election, the poll could not be taken in any ward or wards for any reason on the date originally fixed for the purpose but it was taken on that date in more than two-thirds of all the wards, the Collector shall, as soon as possible after the counting of votes in the said wards is over, publish the available results in the Official Gazette, and as regards the remaining ward or wards, the Collector shall subsequently publish the results in the Official Gazette as and when the poll is taken and counting of votes therein is over. In determining two-thirds of the number of the wards, a fraction shall be ignored. After every general election upon the publication of the results, or, as the case may be, the first publication of the results, in the Official Gazette, under this sub-section, the Council shall be deemed to be duly constituted.

The section, therefore, specifically provides that it is only after the said publication that the Council is deemed to be duly constituted. The amendment of Section 19 thus makes it abundantly clear that the Council itself is deemed to be constituted only after the publication of the result in the Official Gazette.

10. Section 40(1) provides for a term of the Council. It says:

Section 40(1) Save as otherwise provided by this Act, Councillors, elected at a general election, shall hold office for a term of five years, which may be extended by the State Government in exceptional circumstances by notification in the Official Gazette, to a term not exceeding in the aggregate six years for reasons which shall be stated in such notification.

Sub-section (2) thereof provides as under:-

Section 40(2) The term of office of such Councillors shall be deemed to commence on the date of the special meeting, after general election, held to elect the President u/s 51.

Section 51 provides the mode of holding the election of the President and the co-option of the Councillors. It provides in Sub-section (2) as under:-

Section 51(2) Within twenty-five days from the date on which the names of Councillors elected to a Council are published or, as the case may be, first published, Under Sub-section (1) of Section 19, in the Official Gazette, the Collector shall convene a special meeting of the Councillors for election of a President.

Thus, it will be seen that the period of twenty-five days within which the first meeting of the Council is to be held starts from the first day of publication in the Official Gazette of the names of the members who are elected. This will clearly go to show that if the election petition is allowed to be filed even prior to the date of publication, then the fears expressed by the Division Bench in Narayan Bansi's case (cited supra) could come true even under the present circumstances when the Maharashtra Municipalities Act, 1965 is on anvil. Indeed, the resume of all these provisions would show that the Councillor enters his office only after the publication of his name in the Official Gazette and till such an eventuality takes place, it is not possible for anybody to challenge this election by way of an election petition. As has been found by the Division Bench in Narayan Bansi's case, under the provisions of the Maharashtra Municipalities Act also the election proceedings are complete only after the names are published in the Official Gazette and an election petition could be allowed only after the election proceedings are complete. The principles enunciated in the decision of Narayan Bansi, therefore, apply with full force to the present situation though the C. P. and Berar Municipalities Act is no more on the statute-book and has been replaced by the Maharashtra Municipalities Act, 1965, In fact, the situation has been clarified more by the amendment of Section 19 by the Maharashtra Act No. 10 of 1967 vide Section 3-A wherein the specific provision is made that the Council shall be deemed to be duly constituted only after the results are published in the Official Gazette. Such was not the position in the C, P. and Berar Municipalities Act and the clarification added by the Amending Act of 1967 has dispelled the whole controversy and set it at naught.

11. Shri S.C. Mehadia, the learned Counsel for the Respondent No. 1, drew my attention to the decision in the case Of Avi J. Cama v. Banwarilal 1953 Nag. L.J.

503 : AIR 1953 Nag. 81, and contended that the High Court had held that although a Councillor declared elected could not enter on his Office before the notification u/s 16, the proviso to that section provided that he should be deemed to have entered on his office for the purposes of selection of Councillors u/s 9 from the date of his election. The High Court had further held in that case that if a person is declared to be elected it must be open to a voter to prevent him from entering his office, even for a limited purpose of selection of Councillors, by having recourse either to a District Court u/s 428(1) or to this Court for a writ of quo warrant. Otherwise, a disqualified person will function as a Councillor and may be able to affect the composition of the Corporation and the election of Mayor and the Deputy Mayor. In fact, this case has been considered by our High Court in Narayan Bansi's case cited supra. The Division Bench has distinguished this case and has found that in the case of Aui J. Cama, it was Section 16 of the City of Nagpur Corporation Act which fell for consideration. The Division Bench observed that in fact even in Avi J. Camna's case the principle that the right to challenge an election arises only when the elected candidate became entitled to enter on his office was well accepted. It further observed that under the City of Nagpur Corporation Act a member declared elected got a right to enter on his office for certain purposes and it is only under those circumstances that the right to challenge an election arose on the declaration of results. Indeed, the decision in Avi J. Cama's case considered entirely the different provisions of law and, therefore, the reliance on the same cannot be permitted particularly in the wake of a direct decision of our High Court in Narayan Bansi's case which is binding on this Court.

12. In view of the discussion above, it will have to be held that the preliminary objection raised to the tenability of the petition was correct in so far as it relates to the question of premature nature of the election petition. If on that ground alone the election petition is rendered premature, then it is not necessary for me to consider" the other ground about the presentation of the petition by the counsel and not by the election-petitioner.

13. In the result, the petition succeeds. The order passed by the trial Court rejecting the preliminary objection is set aside and it is held instead that the Election Petition is premature as it was presented on 4.12,1991 when there was no publication of the petitioner's name as a Councillor in the Official Gazette. Consequently, the Election Petition will have to be dismissed as premature on that ground alone. Rule is made absolute in the above terms. In the circumstances, however, there shall be no order as to costs.