
(1963) 02 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 5 of 1963

Satyanarayan Shrivallabh

APPELLANT

Vs

Bhagwantrao Marotirao and Others

RESPONDENT

Date of Decision : 21-02-1963

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 15, 27, 27(1)

Citation : AIR 1965 Bom 58 : (1963) 65 BOMLR 256

Hon'ble Judges : Chainani, C.J;Kotval, J

Bench : Division Bench

Advocate : M.N. Chandurkar, for the Appellant; B.R. Mandlekar, for the Respondent

Judgement

Chainani, C.J.

(1) The facts giving rise to this petition briefly are that the petitioner and opponent No.1 were candidates at the election held in Walgaon electoral division for electing councillors of the Zilla Parishad for the Amravati District. The election was held on 27th May 1962. The result of the election was declared on 1st June 1962 and the petitioner was declared to be elected. On 15-6-1962 opponent No.1 filled an election petition in which he challenged the election of the petitioner. Opponent No.1 also joined in his election petition opponents 2 to 10, who had originally stood as candidates, but who had withdrawn from the election before the date appointed in this behalf, i.e., 12-5-62. On 24-7-1962 the petitioner filed his written statement in reply to the election petition. In his statement he contended that opponent No.1 was not competent to file the election petition as he was not a voter in Walgaon constituency. On the same day he made an application that a preliminary issue should be framed regarding the maintainability of the election petition. Opponent No.8, who is also a voter in the constituency, then made an application for being transposed as petitioner No.1. Another application for the same purpose was made on 4-10-1962. That application for transposition was opposed by the petitioner. His objections were

overruled and the learned Assistant judge allowed the application of opponent No.8 to be transposed as petitioner No.1. The order is being challenged before us.

(2) Sub-section (1) of Section 27 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961, states that if the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question relates, such person may at any time within fifteen days after the date of the declaration of the results of the election, apply to the District judge of the district within which election has been held for the determination of such question. Under this sub-section, the validity of an election can be brought in question by any person qualified to vote at the election to which such question relates. It is not in dispute that opponent No.1 who had filed the election petition, was not qualified to vote in the constituency from which the petitioner was declared elected and it is the election from this constituency which is sought to be challenged by the election petition. Mr.Chandurkar has therefore contended that as opponent No.1 was not qualified to vote at this election, the petition filed by him could not have been entertained under sub-section (1) of Section 27. Mr. Mandlekar, who appears on behalf of the respondents, has on the other hand contended that the language used in sub-section (1) of Section 27 suggests that the procedure laid down in this sub-section is to be followed only if the validity of the election is questioned by a voter. He has contended that this provision does not debar another interested person from filing an election petition. This argument is not correct. Sub-section (2) and (3) of this section. Sub-section (2) states that an enquiry shall thereupon be held by a judge. The word "thereupon" in the context means on the filing of a petition under sub-section (1). This is further made clear by sub-section (1), in which the validity of the election of councillors to represent the same electoral division is in question, shall be heard by the same judge and the applications in which the validity of the election of the same councillor elected to represent the same electoral division is in question, shall be heard together. Sub-section (2) and (3), therefore, leave no doubt that the enquiry, which is to be held by the judge is an enquiry into the applications made under sub-section (1). Under sub-section (1) it is only the person qualified to vote at the election who can apply to the District judge. It follows that a voter in the constituency in which the election is held, and no other person can file an election petition u/s 27. In this connection, I may refer to the observations of the Supreme Court in Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others, that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. See also Jagan Nath Vs. Jaswant Singh and Others, .

(3) Mr. Mandlekar has also urged that the word "election" in sub-section (1) of Section 27 should be held to refer to the election of all the councillors from the district and not only to the election in the constituency in regard to which the dispute arises. This argument seems to be without any substance. The words "the election to which such question refers" have reference to the particular

election of a councillor, whose election is challenged. If therefore, the election of any councillor is challenged, the questions, which can be determined in the enquiry, will relate only to that particular election and not to the elections from the other constituencies in the district.

(4) Mr. Mandlekar has also referred us to certain decisions in which it has been held that even though the original plaintiff or one of the original plaintiffs was not competent to file a suit, the application for joining another person who is competent to sue as plaintiff should generally be granted. These decisions have no bearing on election petitions which have to be decided in accordance with the law applicable to them. As pointed out by the Supreme Court in Jagan Nath Vs. Jaswant Singh and Others, , the rule is well settled that the statutory requirements of election law must be strictly observed and that any petition seeking interference with an election must strictly conform to the requirements of the law. In this case, the original application was made by a person who was not competent to make such an application under sub-section (1) of Section 27. The subsequent application made by opponent No.8 for transposition as petitioner No.2 was made more than 15 days after the date of the declaration of the result. No fresh application could have been entertained at that time. The original application made by opponent No.1 was not maintainable. Consequently, on the date on which opponent No.8 applied for transposition as one of the petitioners, there was no valid application, amendment to which could be granted by the Assistant Judge. Different considerations might have arisen, if opponent No.8 had made his application within 15 days after the declaration of the result, but that is not the position here.

(5) Mr. Mandlekar has also referred to R. 20 and some other rules framed under the Act. We do not find anything in these rules, which has any relevance to the question which we have to decide in this matter.

(6) In our opinion, therefore, the learned Assistant judge was wrong in allowing the application of opponent No.8 for transposition as petitioner No.2. Accordingly we set aside the order made by him. The result therefore is that the election petition, having been made by a person who was not competent to make such an application, was liable to be dismissed. We accordingly direct that the election petition should be dismissed. The petitioner should get his costs both of the election petition and of this application from respondents Nos.1 and 8.

(7) It seems to us that there is a lacuna in the Act. u/s 15 every person whose name is in the list of voters of any electoral division in a district, shall be qualified to be elected. The voter in one electoral division in a district is therefore entitled to stand as a candidate from another electoral division in the same district. u/s 27(1), however, only a voter in the electoral division in which the election is held can challenge the validity of that election. The result therefore is that even a candidate at the election who was a voter in another constituency, cannot challenge the election. Government may, therefore, consider whether sub-section (1) of Section 27 should not be suitably amended in order to give a right to make

an application under this sub-section also to the candidates at the election, the validity of which is challenged.

(8) Order accordingly.