

(2020) 01 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No. 5693 Of 2016

Sau. Soni

APPELLANT

Vs

Election Officer Gram Panchayat And Anr

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Maharashtra Village Panchayat Act, 1958 — Section 2(5)(a), 5(b), 6, 10(2), 11, 13, 13(2), 14, 14(1), 14(1)(j3), 14(1)(a1), 15, 15(1), 15(2), 15(3), 15(4), 15(5), 15(6), 15(5)(a), 15(5)(b), 15(5)(c), 15(5)(a)(b), 16, 16(2), 16(6)(a), 16(6)(b), 16(6)(c), 27, 27(2), 27(5), 176

Citation : (2020) 01 BOM CK 0097

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.M. Ghare, A.M. Balpande, K.S. Narwade

Final Decision : Allowed

Judgement

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the judgment and order dated 22.8.2016, delivered by the trial Court vide which Election Petition No.1/2015, has been partly allowed. The election of the petitioner to the post of member of the Village Panchayat, Taroba, Tal. Umarkhed, dated 23.4.2015, has been set aside.

3] The extensive submissions of the learned Advocate for the petitioner can be summarized as under:

(a) The petitioner, finds her name in the voters list of ward No. 1 that was published as a final voters list, on 10.2.2015. (b)The petitioner filed her nomination form for contesting the election to the post of member of the Village Panchayat, on 7.4.2015.

(c) Her nomination form was validated on 8.4.2015 thereby clearing her way to contest the elections.

- (d) The voting took place on 22.4.2015.
- (e) The election results were declared on 23.4.2015 and the petitioner polled 294 as against 280 votes polled by respondent No. 2 herein.
- (f) Respondent No. 2 preferred an Election Petition under section 15 of the Maharashtra Village Panchayat Act, 1958 seeking disqualification of the petitioner on the ground of she being less than 21 years of age.
- (g) The entire Election Petition is restricted exclusively to the ambit of Section 15 seeking a declaration that the petitioner be held to be less than 21 years of age on the date of her election.
- (h) There is no allegation of the petitioner having indulged in corrupt electoral practices in the entire memo of the Election Petition.
- (i) The Election Petition would be untenable under section 15, since Section 15(5)(a)(b) defines the scope and jurisdiction of the trial Court in interfering with the result of an election and unless a Judge finds any corrupt practice having been committed by the elected person or by any person known or unknown to the elected candidate, the election could not be set aside.
- (j) The corrupt practices have also been defined under section 16(6)(a,b&c) read with the 1st proviso and three explanations which make it further clear that a dispute as regards age of a candidate cannot be a subject matter of an Election Petition under section 15.
- (k) Section 16 of the Maharashtra Village Panchayats Act specifically deals with the disability of the candidate from being a member if the said candidate, who is elected or appointed, was subject to any of the disqualification mentioned in section 14, at the time of his election or appointment.
- (l) Section 14(1)(a-1) clearly provides for a disqualification of a candidate if he is found to be less than 21 years of age.
- (m) The disputant could have initiated proceedings under section 16 and could not have moved the Election Petition under section 15 which is restricted and limited only to corrupt electoral practices as defined.
- (n) The petitioner produced her Birth Certificate obtained from the Umarkhed Municipality on 27.6.2016 which indicates that her birth occurred on 20.5.1985 and the date of registration of such birth in the Birth and Death Register has taken place at registration No. 451 dated 1.9.1985. (o) Reliance is placed upon the following judgments:
- (i) Shrikrishna Wasudeo Dhage vs. Shivcharan s/o. Trimbakrao Kalne & Ors, 2010(3)Mh.L.J. 281;
- (ii) Jyoshna Gouda vs. Brindaban Gouda & anr, (2012)5 SCC 634 ;
- (iii) Suryakant Shivaji Munde vs. State Election Commission, Mumbai & Ors,

4] The learned Advocate for the 2nd respondent, who is the original petitioner before the trial Court in the Election Petition, has strenuously canvassed his pleadings in the Election Petition which can be summarized as under:

(a) The original petitioner need not approach any authority under section 16 or under section 14(1)(a-1);

(b) Sub section 1 & 2 of Section 15 covers every ground meant for declaring an election as being invalid;

(c) The school record was produced before the trial Court which indicated that the petitioner is born on 10.12.1995 and not on 20.5.1985;

(d) The school record indicates that the petitioner was admitted in the 1st standard on 10.7.2001, when she was 6 years old and her date of birth is shown as 10.12.1995;

(e) If her date of birth is accepted as being 20.5.1985, she would have been 16 years of age when she entered the 1st standard.

(f) The register in which the birth of the petitioner is recorded at Serial No. 451 dated 1.9.1985, was produced in the Court and it appears that the entry of the birth of the petitioner is at Serial No. 451 and there is an entry of the birth of another person at Serial No. 451-A. The existence of two entry as above, creates a serious doubt.

(g) A witness Shri Mankar working with the Municipal Council, Umarkhed deposed in the inquiry and stated in his examination in chief that the Birth Certificate is correct and in the cross-examination he admitted that the original entry recording the birth of the petitioner in the original record is not legible.

(h) There are two entries bearing No. 451 and the perusal of the record indicates that the entry regarding the birth of the petitioner is recently done.

(i) This petitioner had raised an issue of maintainability of the Election Petition under section 15. A preliminary issue was framed by the trial Court and by order dated 3.3.2016, it was recorded that the trial Court had jurisdiction to entertain the Election Petition even on the challenge to the age of the petitioner.

(j) The present petitioner challenged the order dated 3.3.2016 in this Court vide Writ Petition 1788 of 2016 and by judgment dated 21.6.2016, this Court dismissed the petition by sustaining the order of the trial Court.

(k) The remedy under section 14 read with section 16, is not a remedy available to the original petitioner under section 15.

5] The learned AGP submits that he need not repeat the factual matrix of this matter in view of the extensive submissions of the learned Advocates for the respective sides. He, however, submits that the words "or submitted a false claim

or a false caste certificate" has been deleted from section 15(5)(a). He contends that earlier, the scope of interference of the trial Court in an election result was restricted to section 15(5)(a&b) read with section 15(b)(a,b,&c). The earlier language used prior to the amendment by Maharashtra Act No. 37 of 2006 dated 21.12.2006 would indicate that besides commission of corrupt practice, submission of a false claim or a false caste certificate were additional grounds for considering the conduct of an elected candidate which would affect his election result.

6] The learned AGP further submits that the deletion of the vital words, "submitted a false claim or a false caste certificate", on 21.12.2006, was not pointed out to this Court when the judgment in Shrikrishna Wasudeo Dhage (supra) was delivered on 15.2.2010. He then points out the observations of this Court at paragraph Nos. 10 and 11 in the judgment of Shrikrishna Wasudeo Dhage (supra) which read as under:

"10. This judgment relied upon by Shri Samarth, learned counsel shows that it does not favour petitioner at all, as present petitioner has been found to be an encroacher after commencement of her term and after noticing this, she tried to get those proceedings of regularization of encroachment dropped by giving her statement accordingly on 26.11.2009 to the Sub Divisional Officer. This judgment of Hon'ble Apex Court again shows that when ground for disqualification can be used in election petition and also in disqualification proceedings under Section 16[2] of the Bombay Village Panchayat Act, 1958 the question of parallel proceedings can arise. Here election petition is contemplated under Section 15 of the Bombay Village Panchayat Act. It's perusal reveals that the Civil Judge dealing with the election petition cannot nullify the election of petitioner on the ground that she has done encroachment or she was encroacher. The interference in election petition is possible only if the elected candidate is found to have committed a corrupt practice within the meaning of sub-section [6] or has submitted a false claim or false caste certificate as given in its sub-section [5] [a].

11. The Division Bench of this Court has considered the similar challenge in proceedings in Maharashtra Zilla Parishad and Panchayat Samitis Act, in a judgment reported at 1976 Mh.L.J. 621 (Manik Mallappa Karale .vrs. Kisan Nagurao Patil and others). There the provisions of Section 27 permit filing of Election Petition while Section 16 prescribes disqualification. The Division Bench after considering all relevant provisions noticed that the election of respondent no.3 before it was challenged on the ground that he was initially disqualified to be elected. The jurisdiction of the Court trying election petition is regulated by sub-section [27] [2] and [5] of the Zilla Parishad Act. The Division Bench noticed that sub-section [5] thereof gives the ground on which election of an elected candidate can be set aside, and hence it held that the said Court had no power to go into the question whether elected candidate was disqualified at the time when his nomination paper was accepted. It has relied upon the earlier Division Bench

judgment taking similar view and reported at 1965 Mh.L.J. Note 56 (Brijlal Sao .vrs. D.J. Bhandara). This judgment covers the controversy involved before me. It is apparent that the question whether nomination paper of present petitioner deserved to be rejected under Section 14[1] [j-3] of the 1958 Act, cannot be gone into in election petition under section 15 thereof. In short, there are no parallel proceeding in so far as the disqualification of petitioner as encroacher is concerned, contemplated in law. I therefore, do not find any substance in challenges raised by petitioner Vandana and Writ Petition No. 5658/2009 accordingly deserves to be dismissed by upholding the concurrent views and findings of respondent nos.1 and 2".

7] I find that it would be apposite to reproduce certain provisions of the Maharashtra Village Panchayats Act for the sake of clarity . Section 14(1)(a-1) reads as under:-

Sec.14(1)No person shall be a member of a Panchayat continue as such, who -

(a) has, whether before or after the commencement of this Act, been convicted

(i) of an offence under the Untouchability (Offences) Act, 1955, (XXII of 1955), or under the Maharashtra Prohibition Act (Act No. XXV of 1949) or any law corresponding thereto in force in any part of the State, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his conviction, or

8] Section 15 reads as under:

15. Determination of validity of elections; enquiry by Judge; procedure. - (1) If the validity of any election of a member of a panchayat is brought in question by [any candidate at 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 (Junior Division) and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereafter, in each case referred to as "the Judge") having ordinary Jurisdiction in the area within which the election has been or should have been held for the determination of such question.

(2) Any 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 purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive.[If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11.

(3) All applications received under sub-sections (1)-

(a) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question; shall be heard together.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend any pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is bona fide and not collusive.

(5) (a) If on holding such enquiry the Judge finds that a candidate has for the purpose of the election committed a corrupt practice within the meaning of subsection (6) [* * *] he shall declare the candidate disqualified for the purpose of that election and of such fresh election as may be held under [sub-section (2)] and shall set aside the election of such candidate if he has been elected.

(b) If, in any case to which clause (a) does not apply the validity of an election is in dispute between two or more candidates, the Judge shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected:

Provided that, for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person known or unknown, in giving or obtaining it:

Provided further that, after such computation if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

(6) A person shall be deemed to have committed a corrupt practice,-

(a) who, with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person, or

(b) who with a view to inducing any to stand or not to stand or to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person, or

(c) who hires or procures, whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station:

Provided that, the hiring of a vehicle or vessel by a voter or by several voters at their joint cost for the purpose of conveying him or them to or from any such

polling station shall not be deemed to be corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that, the use of any public transport vehicle or vessel or any tram-car or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation 1. - A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2. - "A promise of individual profit" does not include a promise to vote for or against any particular measure which may come before a panchayat for consideration, but subject thereto, includes a promise for the benefit of the person himself or any person in whom he is interested

Explanation 3. - The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicle or otherwise.

[(7) If the validity of any election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made in this behalf under section 176 read with sub-section (2) of section 10 and section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.]

9] Section 16 reads as under:

16. Disability from continuing as member. - (1) If any member of a panchayat,-

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) [If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the [Commissioner], and the orders passed by the [Commissioner] in such appeal shall be final:

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

10] Considering the submissions of the learned Advocates as noted above and keeping in view the provisions of law and the order passed by this Court on 21.6.2016 in Writ Petition 1788 of 2016, filed by this petitioner, the issue raised by respondent No. 2 complainant is as to whether section 15(1) and (2) define the scope of interference of the trial Court in such election matters and as to whether, as per the contention of the petitioner, the scope of interference is restricted to sub sections 5 and 6 of section 15.

11] I find from sub section 1 under section 15 that it pertains to the filing of a proceeding for questioning the validity of an election of a candidate, by any person, qualified to vote at the election and such a proceedings has to be instituted within 15 days after the date of the declaration of the result. These proceedings come up before the courts mentioned in sub section 1. Sub section 1 does not define the grounds on which the judge can interfere with an election.

12] Sub section 2 under section 15 pertains to an enquiry that a Judge can hold after a proceeding is lodged in his Court. After conducting an enquiry he may pass an order confirming or amending the declared result or set aside the election. If the election is set aside, as date for holding fresh elections would be forthwith fixed by the Judge. This sub-section also does not prescribe the grounds on which an election can be set aside. It only prescribes that a judge can hold an inquiry and after conducting an enquiry he can pass an order confirming or amending the declared result.

13] Sub sections 3 & 4 under section 15 pertain to applications filed in which validity of the election of members to represent the same ward can be heard by the judge and in case the validity of the election of the same member elected to represent the same ward is in question, shall be heard together. Sub section 5 pertains to the power of the judge under the Civil Procedure Code in refusing to permit an application to compromise or withdraw the petition and no person can be permitted to alter or amend the pleadings unless the Court is satisfied that such application for compromise or withdrawal or alteration or amendment is bonafide and not collusive. These two sub-sections also therefore, do not define the grounds for interfering with an election.

14] Sub section 5(a) is in continuation to sub section 2 wherein it is provided that a Judge, after holding an enquiry, finds that a candidate has, for the purpose of the election, committed a corrupt practice within the meaning of sub section 6, he can be declared as a disqualified candidate. The additional ground available in sub section 5(a) viz. "submitted a false claim or a false caste certificate" has been deleted on 21.12.2006. Sub section 5(b) provides that a case (to which sub clause (a) would not apply) in which the validity of an election on the basis of a vote count in dispute between two or more candidates is in question, the Judge shall scrutinize and compute the votes recorded in favour of each candidate and

declare the candidate who has greatest number of valid votes in his favour, to be duly elected. This is more clear in view of the 1st proviso below clause 'b'.

15] Section 6 defines corrupt practices of three types and none of these types or the proviso thereunder or the three explanations below the proviso, would include a challenge to the result of an election on the ground of an elected candidate being under age. All these grounds pertain to corrupt electoral practices.

16] I find that if the words 'submitted a false claim or a false caste certificate', were continued under 15(5)(a), the case of the complainant that the petitioner has submitted a false birth certificate, could have been tenable. It is possible that the words 'false claim' could have included a false claim as regards the date of birth of a candidate and if such interpretation is to be arrived at, the case of the complainant could have been covered under 15(5)(a). However, now that the said words have been deleted, discloses the intent of the legislature in restricting section 15 only to corrupt electoral practices.

17] I find that though this petitioner had approached this Court in Writ Petition 1788 of 2016 on the ground that section 15(5)(a) would not include any challenge to the age of an elected candidate, it does not appear that the petitioner in the said petition had canvassed the above grounds as are now been canvassed before this Court. My learned brother was therefore, not assisted in the 2016 petition and the above stated provisions and the meaning emerging from the phraseology in the backdrop of the deletion of two grounds on 21.12.2006, were not at all pointed out.

18] In *Suryakant Shivaji Munde (supra)*, this Court has concluded in paragraph 9 and 10 as under:

"9. The right to elect, though it is fundamental to democracy is neither a fundamental right nor a common law right. It is purely a statutory right. So is the right to be elected. So is the right to dispute an election. Dehors the statute, there is no right to elect, no right to be elected and no right to dispute an election. They are statutory creations and therefore, subject to statutory limitation. A election petition is not an action at common law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity always remain strangers to election law. In the trial of election dispute, Court is put in a straight jacket.

10. The Maharashtra Village Panchayat Act, 1958 (for short "Act of 1958") is a complete code in itself and lays down the entire scheme for election process commencing from issuance of notification, calling upon election of member or members and right upto the final resolution of dispute, if, any concerning election. The elections of village panchayat have to take place in accordance with

the provisions of Act of 1958 and rules framed thereunder.

However, it can be seen from the judgment in Suryakant Shivaji Munde (supra) that the scope and ambit of the Election Petition was not addressed to the Court.

19] In Shrikrishna Wasudeo Dhage (supra), as has been rightly pointed out by the learned AGP it was held that the issue of encroachment in order to disqualify an elected candidate, was subject matter of a disqualification proceeding under section 16(2). It was held that in an Election Petition under section 15 of the Maharashtra Vilalge Panchayats Act, the Civil Judge dealing with the Election Petition cannot nullify the election of the petitioner on the ground that she has indulged in an encroachment or that she was an encroacher. It was further held that the interference in Election Petition is possible only if the elected candidate is found to have committed a corrupt practice within the meaning of sub section 6 or has submitted a false claim or a false caste certificate under sub section (5a). These observations of this Court in Shrikrishna Wasudeo Dhage were not pointed out to my learned brother when he delivered the order in Writ Petition 1788 of 2016 on 21.6.2016.

20] The learned Advocates for the respective sides submit that the issue that was actually taken up before this Court in Writ Petition 1788 of 2016, was the lis regarding the preparation of the list of persons qualified to vote and be elected under section 13. By an amendment introduced by Maharashtra Act No. LIV/18 dated 13.8.2018, section 13(2) prescribes that every person whose name is in the list of the voters and who is not less than 21 years of age on the last date fixed for making nomination, would be qualified to be elected for any ward of the village or a constituency set out in the said provision. There is no dispute that the name of the petitioner is found in the valid voters list, but her age is said to be 19 years.

21] The Judgment delivered by the learned Division Bench of this Court in Jagannath Pundlik Date vs. Sukhdeo Onkar Wankhede, 1967 Mh.L.J. 126 was again with regard to the voters list, the entry of a candidate in the electoral role to be a valid voter and a grant of injunction on the basis of any disqualification emerging on the basis of the age of a candidate.

22] As such, I do not find that the verdict delivered by my learned brother dated 21.6.2016 in Writ Petition 1788 of 2016, was based on a detailed argument revolving around section 15, section 16 and the disqualification under section 14(1)(a-1). Considering the above and keeping in view that no other judgment of this Court is cited, I therefore, do not find that the view taken in the judgment dated 21.6.2016, can be said to be an impediment for the petitioner to canvas that his age factor cannot be considered in an Election Petition which is restricted only to corrupt electoral practice, under section 15.

23] Since I have drawn a conclusion that the petition filed by the complainant respondent No. 2 would not be maintainable before the Civil Court under section 15 and the appropriate remedy available to her was an application for

disqualification under section 14(1)(a-1) read with section 16 of the Maharashtra Village Panchayats Act, I am not dealing with the controversy about whether the petitioner has procured a false or fabricated Birth Certificate by which, she appears to have entered class 1 in the school at the age of 16 years. The remedy of seeking disqualification of the petitioner, under section 14(1)(a-1) read with section 16, will be available to respondent No. 2 and in the event respondent no. 2 raises such a challenge within a period of four weeks from today the District Collector dealing with such proceedings shall be obliged to decide the said proceedings within three months from the date of its lodging, keeping in view that the petitioner has four months left to complete her tenure as an elected member of the Gram Panchayat. A decision before her tenure concludes would be necessary and hence this direction.

24] In view of the above, this petition is allowed. The impugned judgment of the learned trial Court dated 22.8.2016 in Election Petition No. 1/2015 is quashed and set aside. The petitioner shall be reinstated as a member of the Village Panchayat. Election Petition No. 1/2015 is held to be untenable in law and hence dismissed.

25] The learned Advocate for the original complainant respondent No. 2 submits that the status-quo granted by this Court earlier on 30.9.2016 may be continued for a period of four weeks as she desires to approach the Hon'ble Apex Court. The learned Advocate for the petitioner strenuously opposes and submits that if she desires to approach the Hon'ble Apex Court, the liberty granted to approach under section 14(1) and section 16 and the time frame granted to the District collector, may be recalled.

26] As such, this judgment shall not come into operation upto 10.2.2020 and in which case, the time scale granted to the District Collector to decide a claim if respondent No. 2 prefers an appeal under section 14(1) read with section 16, shall not be applicable.