

(2014) 06 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 8962 of 2013

Sharanbasappa Rachappa Khambad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 243(2G)
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 19, 20, 21, 42, 9

Citation : (2015) 3 ALLMR 852 : (2014) 5 BomCR 474 : (2014) 4 MhLj 293

Hon'ble Judges : Abhay Shreeniwas Oka, J; A.A. Sayed, J

Bench : Division Bench

Advocate : Ramdas Sabban a/w Mr. D.G. Dhanure, Advocate for the Appellant; A.D. Kango, AGP for the Respondent Nos. 1 to 4, Mr. Kada Omer Mohamood Najma for Respondent Nos. 5 and 7 and Mr. Prasad B. Kulkarni for Respondent No. 6, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—By this petition under Article 226 of the Constitution of the India, the petitioner has challenged the appointment of the sixth respondent as the nominated Councillor of the Municipal Council of Maindargi (for short "the said Municipal Council") Taluka Akkalkot, District Solapur. The notice for final disposal was issued on 13th January 2014.

2. Sub-section 1 of Section 9 of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 (for short "the said Act of 1965") provides that every Municipal Council shall consist of the president and Councillors elected at ward elections by direct elections and such number of Councillors shall not exceed 10% of the total number of elected Councillors or 5 whichever is less having special knowledge or experience in municipal administration, to be nominated by a Municipal Council in the manner as may be prescribed. In exercise of the rule making powers, the Maharashtra Municipal Councils and Nagar Panchayats and Industrial Townships (Qualifications and

Procedure for appointment of Nominated Councillors) Rules, 2010 (for short "the said Rules") have been framed. The qualifications for nomination of nominated Councillors have been laid down in Rule 4 of the said Rules. Rule 4 reads thus:

4 Qualification for nomination-A person shall be eligible for being nominated as a candidate for the office of the nominated Councillors if he has special knowledge or experience in municipal administration and he,-

(a) has been a recognized and registered medical practitioner in the State for a minimum period of five years, or

(b) has been an educationist including retired Professor, Lecturer, Principal, Head-master, etc of a recognised school or college for a minimum period of five years, or

(c) has been a Chartered Accountant or Cost Accountant for a minimum period of five years, or

(d) possesses a degree in engineering from a recognized University and has professional experience for a minimum period of five years, or

(e) has been an Advocate for a minimum period of five years or is a person possessing degree in Law from a recognized University with an experience in the legal field in the State for a minimum period of five years, or

(f) has experience of working for not less than five years as the Chief Officer of a Municipal Council or as Assistant Commissioner or the Deputy Commissioner or experience of not less than two years as the Commissioner of a Municipal Corporation, and has retired from service, or

(g) has experience of not "less than five years as an officer bearer" of a Non-Government Organization registered under the Bombay Public Trusts Act, 1950, engaged in Social Welfare activities, working within the area of a Municipal Corporation or a Council.

3. By a resolution passed by the said Municipal Council on 6th January 2012, the sixth respondent was nominated as a Nominated Councillor of the said Municipal Council.

4. We have heard the learned counsel for the petitioner. The challenge by the learned counsel for the petitioner is on the following grounds:

(A) Along with the nomination form, the sixth respondent submitted recommendations/letters of the three non Government Organizations (i) Maharshi Vivekanand Samajkalyan Sanstha, Akkalkot (ii) Shri Phatesinha Shikshan Sanshta, Akkalkot and (iii) Seva Sanstha (Social Educational, Economical & Environmental Welfare Association), Kurnoor. None of these three organizations are working within the area of the said Municipal Council.

(B) The sixth respondent does not possess any special knowledge or experience in the municipal administration. No document showing that he possesses the said

qualification was produced by the sixth respondent along with the nomination form.

(C) As per clause (g) of Rule 4 of the said Rules, the sixth respondent ought to have produced documents to show that he has experience of not less than 5 years as an Office Bearer of a non-Government Organization registered under the Bombay Public Trusts Act, 1950 engaged in social, welfare activities and working within the area of a Municipal Corporation or Council. The sixth respondent has not produced any evidence to show that he was working as an Officer Bearer with any Non-Government Organization as provided under clause (g) of Rule 4 of the said Rules.

5. The petitioner is relying upon the representations made on 9th August 2013 and 15th August 2013 to various Authorities for challenging the nomination of the sixth respondent.

6. The submission of the learned counsel for the sixth respondent is based on interpretation of clause (g) of Rule 4 of the said Rules. According to him, the sixth respondent falls in the category of clause (g) of Rule 4. His submission is that the reference to area of a Municipal Council in clause (g) will have to be read as any Municipal Council and not the Municipal Council of which the candidate is seeking to become a nominated Councillor. His second submission is that the petitioner has no locus to challenge the nomination of the sixth respondent as the petitioner is not an elected Councillor of the said Municipal Council and has no right to vote at the time of election or nomination of the Nominated Councillors. It was contended that a Writ Petition is not maintainable as the petitioner has a remedy under sub-section 2 of section 42 of the said Act of 1965. The learned counsel for the sixth respondent relied upon the decision of the learned Single Judge of this Court in the case of Daruwala M. Umar A. Rehman Vs. Namdeo Kondiba Chavan and Another, . Based on the said decision, he urged that the petitioner has no locus. We have also heard the submissions of the learned counsel representing the fifth and seventh respondents as well as the learned AGP for the State.

7. We have given careful consideration to the submissions. We have made a reference to clause (b) of sub-section 1 of section 9 of the said Act of 1965. Clause (b) provides for nomination by the Municipal Council of such number of Councillors as provided therein. It provides that the nomination should be of the persons having special knowledge or experience in the municipal administration. The nominations are to be made in such manner as may be prescribed. We have already adverted to the said Rules which lay down the qualifications of the persons seeking nomination. We have already quoted Rule 4 in earlier paragraphs. On plain reading of Rule 4, a person is eligible for being nominated as a candidate for the office of the nominated Councillors, if he has a special knowledge or experience in municipal administration and he possesses one of the 7 qualifications provided in clauses (a) to (g) thereof. Thus, a person becomes eligible for being nominated as a candidate for the office of the nominated

Councillors provided he has special knowledge or experience in the municipal administration and he possesses one of 7 different qualifications prescribed by clauses (a) to (g) of the Rule 4. Thus, a person will not become eligible unless he possesses one of the 7 different qualifications prescribed by Rule 4. Merely because the person has a special knowledge or experience in municipal administration, he does not become eligible for being nominated as a nominated Councillor.

8. The specific ground pleaded in paragraph 5 of the petition is that the sixth respondent, along with the nomination form, apart from 3 certificates issued by three institutions referred to above did not file any document or any other evidence to show that he has a special knowledge or experience in the municipal administration. We have minutely perused the affidavit-in-reply filed by the sixth respondent. In the affidavit he has not stated in what manner he has a special knowledge or experience in the municipal administration. Apart from the fact that he has not annexed a single document to the affidavit-in-reply, he has not even set out the nature of his special knowledge or experience in municipal administration. Taking the statements made in the affidavit-in-reply as correct, the sixth respondent does not satisfy the first mandatory qualification laid down by Rule 4.

9. Even assuming that the sixth respondent has a special knowledge or experience in municipal administration, the question is whether the sixth respondent has a qualification prescribed by clause (g) of Rule 4. The sixth respondent has come out with a case that he was possessing qualification as provided in clause (g). We have already quoted clause (g) which provides that the person must have experience of not less than 5 years as an Office Bearer of a non-Government Organization registered under the Bombay Public Trusts Act, 1950, engaged in social, welfare activities, working within the area of municipal Council. As stated above, 3 certificates were produced by the sixth respondent. The certificates have been issued by Maharshi Vivekanand Samajkalyan Sanstha, Akkalkot, Solapur, Shri Phatesinha Shikshan Sanstha, Akkalkot and Seva Sanstha (Social Educational, Economical & Environmental Welfare Association) Kurnoor, Taluka Akkalkot, District Solapur. All the three certificates record that the sixth respondent is working as a Member of the said institutions. None of the three certificates record that the sixth respondent has experience of not less than 5 years as an Office Bearer of the said organizations. Clause (g) makes a distinction between a person who is a member of non-Government Organizations and an Office Bearer of such organizations. The qualification provided in clause (g) is that the Applicant should have an has experience of not less than 5 years as "Office Bearer" in a Non-Government Organization. Therefore, even taking the case made out by the sixth respondent as correct, he does not satisfy the test laid down by clause (g). Therefore, he was not qualified for being nominated as a candidate for the office of the nominated Councilor.

10. Another question is whether the Non-Government Organization should be

working within the area of municipal Council to which the person has applied for being nominated as a candidate for the office of the nominated Councillor. The contention of the sixth respondent is that the candidate or the Non-Government Organization should have worked in the area of any municipal Council and not the particular municipal Council to which application is made. The phraseology used by clause (g) is "within the area of a Municipal Corporation or a Council". Thus, clause (g) requires that the candidate should have experience of working as an Officer Bearer of Non-Government Organization within the area of concerned Municipal Council to which the candidate has applied for being nominated. The legislature has not chosen to use the words "area of any municipal Council". In the present case, these certificates produced by the sixth respondent do not record that the three Non-Government Organizations are working within the area of the said Municipal Council.

11. In any event, even on first two grounds as held in paragraphs 8 and 9 above, the sixth respondent was ineligible for being nominated as a candidate for the office of nominated Councillor of the said Municipal Council.

12. Now, we turn to the objection raised by the sixth respondent to the locus of the petitioner. In paragraph 1 of the petition, the petitioner has stated that he is a resident of the town Maindargi and he is a registered voter in the said Municipal Council. This factual statement has not been disputed by the sixth respondent in his reply. Section 21 of the said Act of 1965 provides for a remedy of a filing a dispute in respect of election or nomination of the Councillor. Sub-section 1 of section 21 of the said Act reads thus:

21(1) No election or nomination of a Councillor may be called in question, except by 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 under Sections 19 or 20, as the case may be

13. Nominated Councillor is to be elected/nominated by the Municipal Council which consists of elected Councillors in the General Body Elections. The petitioner was not entitled to vote at the election/nomination of the nominated Councillors, as the petitioner is admittedly not an elected Councillor. He had not filed nomination. Thus, the remedy u/s 21 is not available to the petitioner to challenge the nomination of the nominated Councillor.

14. Even bar created by clause (b) of Article 243(2G) of the Constitution of India will not apply as the petitioner has not challenged the election but the petitioner has challenged the nomination of the sixth respondent. If the petitioner had challenged an election of an elected Councillor in the General Ward Elections, the said constitutional bar would have certainly applied.

15. A contention has been raised by the sixth respondent that remedy under sub-section 2 of section 42 is available to the petitioner and in fact, the petitioner by addressing letters dated 9th August 2013 and 15th August 2013 has invoked the

said remedy. Sub-section 2 of section 42 confers power on the State Government to remove any Councillor from office if such Councillor has in the opinion of the State Government become incapable of performing his duties as a Councillor. In the facts of the present case, obviously the State Government cannot exercise powers under sub-section 2 of section 42 of the said Act.

16. The petitioner is admittedly residing within the limits of the said Municipal Council and he is a registered voter within the limits of the said Municipal Council. The petitioner is entitled to vote at General Ward Election for electing the Councillors. The elected Councillors are entitled to nominate/appoint nominated Councillor. The petitioner as a voter and as a citizen residing within the limits of concerned Municipal Council has a right to ensure that only the qualified and eligible persons are appointed as the nominated Councillors. Therefore, the petitioner has certainly a locus to challenge the nomination of the sixth respondent by filing present Writ Petition under Article 226 of the Constitution of India. We cannot ignore that by accepting nomination of the sixth respondent who was ineligible, the provision of subsection (1) of section 9 of the said Act of 1965 is set at nought. The object is to have a benefit of presence of a person who has a special knowledge or experience in municipal administration having one of the qualifications provided in Rule 9. Thus, the basic object of nominating a Councillor is completely frustrated in the case of the sixth respondent.

17. Thus, the only conclusion which can be drawn is that the sixth respondent was not eligible for being nominated as a candidate for the office of the nominated Councillor. Therefore, the petition must succeed.

18. Hence, we pass the following order:

(I) Petition is allowed in terms of prayer clauses (a) and (b)

(II) There will be no order as to costs.