

(2011) 12 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 11209 of 2011

Shri Mahesh V. Javkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Maharashtra Municipal Councils and Nagar Panchayats (Election of President) Rules, 1981 — Rule 4
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 51(4)

Citation : (2012) 1 ALLMR 891 : (2012) 4 BomCR 228 : (2012) 2 MhLj 116

Hon'ble Judges : G.S. Godbole, J

Bench : Single Bench

Advocate : A.V. Anturkar with Mr. Shreekant Gavand, for the Appellant; R.M. Patne, AGP for Respondent Nos. 1, 4 and 5 and Mr. P.S. Dani with Mr. S.M. Sabrad, for the Respondent

Judgement

G.S. Godbole, J.

Not on board. Upon production, taken on board.

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

2 The learned AGP waives service on behalf of Respondent Nos. 1,4 and 5. Mr. Sabrad waives service on behalf of Respondent No.6. Service of rule on Respondent Nos.2 and 3 is dispensed with.

3. It is an admitted position that Respondent No.6 has not raised objection to the nomination of the Petitioner before the Returning Officer/Presiding Officer. It is an admitted position that the objection which was raised before the Returning Officer/ Presiding Officer was only in respect of the word "independent" and that objection was turned down and the Petitioner was declared as validly nominated candidate. Respondent No.6 filed an Appeal u/s 51(4) which appeal has been allowed by the Commissioner in his capacity as Regional Director of Municipal

Administration by holding that the Petitioner has not complied with the mandatory requirement of the Maharashtra Municipal Councils and Nagar Panchayats (Election of President) Rules, 1981 as amended on 10th June, 2009. The nomination paper which is available on record shows that it was not submitted by the Petitioner but was submitted by the Proposer of the Petitioner. Rule 4 of the aforesaid Rules contemplates that the nomination paper can be submitted either by the candidate or by the authorized representative of the candidate. The Commissioner has recorded a finding of the fact that the proposer was not an authorized representative of the Petitioner. That finding of fact cannot be held to be perverse.

4. Mr. Anturkar, learned Advocate for the Petitioner advances following four submissions:

(i) The appeal filed by Respondent No.6 was not maintainable because Respondent No.6 cannot be a person aggrieved, because according to Mr. Anturkar, only a person who has raised the objection to the nomination can be held to be aggrieved.

(ii) The second submission/ground is that a completely new ground cannot be raised for the first time in appeal and a factual controversy cannot be raised before the Appellate Authority.

(iii) The third submission is that there is in fact compliance since evidence was produced to show that the proposer was an authorized person.

(iv) The forth submission is that though Rule 4 is amended, form 1 was not amended and, hence, a proposer is recognized as authorized representative of the candidate, even by the rule making authority.

5. In support of his submission, Mr. Anturkar relied upon the observations made in paragraphs 37 to 39 of the Judgment in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, a and the Judgment of the Supreme Court in the case of Thammanna Vs. K. Veera Reddy and Others, .

6. On the other hand, Mr. Dani, learned Advocate for the Respondent No.6 submits that Section 51(4) of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 uses the word " any Councilor" and it does not restrict the right of being an Appellant only to that Councilor who has raised an objection to a particular nomination paper. Relying on the wording of Rule 4 of the 1981 Rules, he submits that the rule was mandatory and deviation was not permitted. He submitted that though a new ground of fact was raised before the Appellate Authority, the Petitioner did not show the fact that any authorization was given to the proposer. Mr. Dani relied upon the Judgment of the Supreme Court in the case of Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, c and another Judgment in the case of Sau. Laxmi Verma Vs. State of Maharashtra and Others, . He submitted that if an obligation was created by the statute to perform a particular act in a particular

manner, that act is to be performed in that particular manner along and none else.

7. I have considered the rival submissions. In so far as the locus standi to file an appeal u/s 51(4) is concerned, the Section does not lay down any restriction that only a Councilor who has raised objection to a particular nomination can be said to be a Councilor aggrieved. When the legislature in its wisdom, has not limited the class of persons who can be Appellants by incorporating any restriction about the locus standi of Councilor under the Section, by interpretative the process, it will not be open to hold that only a Councilor who has actually raised an objection to the nomination of particular candidate can alone file an Appeal. Hence, the first submission of Mr. Anturkar cannot be accepted.

8. In so far as the second submission of Mr. Anturkar is concerned, he submitted that a completely new ground cannot be raised in an appeal. However, in the facts and circumstances of this case, it was open to the Petitioner to show that the proposer was in fact his duly authorized representative. No such proof was shown even before the Appellate Authority nor was it shown that factually proposer was a duly authorized representative of the Petitioner.

9. The third submission of Mr. Anturkar is that compliance was otherwise made cannot be accepted since no material is placed on record in support of the third submission.

10. In so far as forth submission is concerned, Mr. Dani was justified in drawing my attention to the notice dated 14th December, 2011 issued by District Collector, Sindhudurg which specifically drew attention of all Councilors that the nomination paper had to be submitted either by the candidate in person or through his authorized representative. This notice is annexed at Exhibit "A" to the Petition. The notice specifically refers to the amended rules which are amended in the year 2009. In view of this, the forth submission does not have any merit. Merely because the old form was not amended, it is difficult to hold that the Rule making authority acknowledged the proposer as an authorized representative.

11. It is now necessary to consider whether rule 4 is mandatory or directory. Since the earlier rule permitted either the candidate or the proposer of the candidate to submit the nomination it was amended in the year 2006, and it was provided that only a candidate can alone submit the nomination form. 2009 amendment provided that either a candidate or an authorized representative of the candidate can submit the nomination form. If the argument of Mr. Anturkar to the effect that the Rule 4 is only directory is to be accepted then the amendments of the year 2006 and 2009 will become redundant. Thus it is difficult to accept the contents of Rule 4 as amended in the year 2009 are only directory.

12. Unfortunately for the Petitioner, there is nothing on record to indicate that the proposer has submitted his nomination paper as his authorized

representative. It is an unfortunate case. However, considerations of equity cannot change the decision of the Court particularly when the rule is very clear. It was an obligation of the Returning Officer/ Presiding Officer to verify whether Rule 4 had been complied with or not and merely because the Returning Officer/ Presiding Officer has failed in his duty to do so, that cannot confer any specific right in favour of the Petitioner.

13 As an outcome of the aforesaid discussion, in my opinion, though case of the Petitioner is unfortunate, it is difficult to grant any relief to the Petitioner.

14 Hence, I pass the following order:

Rule is discharged with no order as to costs.