

(2013) 11 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 9099 of 2013

Smita Ravindra Wagh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-11-2013

Acts Referred:

Citation : (2014) 1 ABR 67 : (2014) 1 ALLMR 285 : (2014) 1 BomCR 856 :
(2014) 2 MhLj 260

Hon'ble Judges : Ravindra V. Ghuge, J;A.H. Joshi, J

Bench : Division Bench

Advocate : N.L. Choudhari, for the Appellant; S.K. Tambe, AGP for Respondents 1 and 2, Shri Alok Sharma, ASGI. for Respondent No. 3, Shri U.S. Malte for Respondent 4 and Shri D.S. Bagul for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Rule. By consent, Rule is made returnable forthwith and the petition is heard finally. The petition pertains to the petitioner's claim for inclusion of her name in the voters list for the purpose of Elections of Zilla Parishad and Panchayat Samiti, District Dhule.

2. Present writ petition and few more petitions espousing similar cause were heard on 13.11.2013 till 6.00 p.m. However, thereafter, the judgment was reserved.

3. Today, We have taken up this writ petition to deliver our judgment, first in sequence and taking the case on supplementary board at 2.30 p.m. since the last date fixed for nomination of candidates for elections of Dhule Zilla Parishad is 16.11.2013 and 15.11.2013 was declared as holiday and the declaration reached us only after court rose.

4. The petitioner claims that:-

[a] She is a resident of Sindkheda.

[b] She has applied for inclusion of her name in the voters list on 31st August, 2013.

[c] As per the programme regulating elections declared by the State Election Commission for the purpose of preparation of voters list, the voters had to raise objection to voters list till 28.10.2013.

[d] The petitioner was admitted in Hospital for her maternity on 20th October, 2013. She had delivered a baby on 21st October, 2013. She remained in Hospital till 23rd October, 2013.

[e] She found that though she had applied, her name was not included in the voters list. Therefore, she submitted a letter of objection on 30.10.2013.

[f] Her application was delayed by two days and has not been considered.

[g] As per the election programme, the last date fixed for nominations is 16th November, 2013.

[h] Since the petitioner's name is not included in the voters list, she is unable to avail the opportunity and right for nomination as a candidate.

[i] Hence, the petitioner is before this court and prays for a direction to respondent No. 1 to include her name in the voters list of Sindkheda constituency, District Dhule.

5. The petitioner's submissions made before us are summarized as follows:-

[a] Voters list for the proposes of elections to Zilla Parishad and Panchayat Samitis is a matter governed by Section 13 of the Representation of the People Act, 1950.

[b] Section 13(1) thereof, provides that the voters list of Assembly Elections, as in existence and prepared under the provisions of the Representation of the People Act, 1950 shall be the basis for the Panchayat Samiti elections.

[c] Reference to words, "Representation of People Act, 1950" in Section 13(1) of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1956 results in bodily incorporation of the entire scheme for preparation of the voters list, commencing from Sections 21 to 27, both inclusive; and also the Registration of Electors Rules, 1960 (hereinafter referred to as, "the Rules of 1960").

[d] As the petitioner's request for inclusion was declined erroneously, and petitioner's objection is not heard, petitioner is entitled for the relief sought.

[e] Though programme for election has begun, a direction for inclusion can be given, and bar under Article 243ZG has no application.

6. The writ petition is opposed on the following ground:-

[a] The voters list to be used for elections of Panchayat Samitis is the voters list as in vogue for the Assembly, as revised from time to time, under the scheme of

the Representation of People Act, 1950 and Registration of Electoral Rules of 1960.

[b] The scheme and model as provided under the Representation of People Act, 1950 and Rules of 1960 is not made applicable in so far as inclusion, amendment etc. for the purpose of local self government i.e. the elections to the Municipal Councils and Zilla Parishads are concerned.

[c] The updation of voters list as is being done as an ongoing procedure by Electoral Registration Officer, for purposes of Assembly Electoral rolls is independent of the elections of Panchayats.

[d] If and when the petitioner applies and if her name is included in the supplementary voters list, the petitioner's name may eventually be included in the voters list even for Panchayat Samiti. However, petitioner does not have a legal right under any law to claim that her name must be included before a date fixed for nomination.

[e] Therefore, a direction to include petitioner's name on or before 16th November, 2013 cannot be done as petitioner's claim is not supported by any legal right for that purpose.

[f] The election programme has already commenced.

7. Respondents have placed reliance on a reported judgment in the case of AIR 1996 Bombay 343, as followed by this court in "Ramdas Nana Andhale Vs. Electoral Officer and others" in W.P. No. 8720 of 2013 (Coram: B.P. Dharmadhikari and Ravindra V. Ghuge, JJ), dated 23rd October. 2013.

8. We have examined the respective submissions. The question which arises for consideration formulated by us is as under:-

Does the petitioner have a right for issue of a direction in the nature of a Writ of Mandamus for inclusion of her name in the voters list and/or for consideration her objection as regards non inclusion of her name in voters list ?

9. The petitioner's contention suggests that:-

[a] Assembly electoral rolls as last revised has to be the basic roll.

[b] The preparation of list of voters for Panchayat samiti has to be independently carried out.

[c] For the purpose of updation of/preparation of list of voters for Panchayats and Zilla Parishads is to be under the rule book as laid down under the Representation of People Act, and said Registration of Electors Rules of 1960.

10. The Division Bench of the Bombay High Court at Goa had an occasion to deal with a similar request in connection with Goa Municipalities Act (Act No. 7 of 1969), in the case of Shri Savio O. Fernandes and another Vs. State Election Commissioner and others, . Advertance to this judgment reveals that:-

[a] There were four writ petitions in relation to the election of Panaji Municipal Council. The State Election Commission had published a calendar of events of the election programme in which the last date for filing nominations for elections was fixed as February 3, 1996.

[b] The date of taking the poll was fixed as February 25, 1996. The Chief Electoral Officer had allowed the petitioners appeal vide order dated January 25, 1996 and had directed the inclusion of their names in the list of supplement of 1996 for Panaji Assembly Constituency.

[c] Consequent thereupon, the petitioners approached the Returning Officer i.e. Mamalatdar of Tiswadi for inclusion of their names in the voters list in the relevant wards.

[d] The Returning Officer stated that it was not possible to include the petitioners' names in the voters' list.

[e] Since the petitioners wanted to contest the Panaji Municipal Council elections, to be held on February 25, 1996, they sought an order from the Court to permit them to contest and vote in the said elections.

[f] After considering the law on the said issue and after considering the rival contentions of the parties, who had placed reliance upon several judgments of the Honourable Apex Court and various High Courts, the Division Bench of this Court dismissed the said writ petitions.

11. In the case of Savio (supra) this Court has considered the view of the Honourable Apex Court in the case of Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, . The law as laid down by the Honourable Apex Court from paragraph Nos. 16 to 20 has been reproduced in the said judgment. The conclusion of the Honourable Apex Court in the said judgment is found in paragraph No. 20, which is as under:-

20. As a result of this discussion, it must follow that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

(emphasis supplied)

12. Thus, while considering the objections, which are filed in accordance with law, the Honourable Apex Court concluded that the failure to finally dispose off claims and objections cannot arrest the process of election to Legislature and that the election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

13. This Court had yet another occasion to deal with the issue based on similar set of facts in the case of Shri Ramdas Nana Andhale Vs. The Electoral Registration Officer and others in Writ Petition No. 8720 of 2013. The

Aurangabad Bench of the Bombay High Court vide its order dated 23.10.2013 to which one of us (Ravindra V. Ghuge, J.) is a party has considered a similar challenge in respect of voters' list for election of Ahmednagar and Dhule Municipal Corporations. In paragraph No. 7 of the said order, the Division bench of this Court has concluded as under:-

7. We find that very same challenge has been gone into by the Division Bench of this Court at Goa. In fact, in said matter, there was challenge to constitutionality of Section 11 of the Goa Municipalities Act on the ground that it does not permit correction in voters list for the purposes of Municipal elections. That challenge has been turned down. Hence, impugned order dated 17.10.2013 does not call for any interference

14. It is seen that the scheme of the Maharashtra Zilla Parishads and Panchayat Samitis Act is contained in Section 13 only. It contains a mandate that voters list of Assembly is to be used.

15. Any scheme and mechanism for preparation of a separate voters list for Zilla Parishad election is not provided. Even the machinery acting under Representation of People Act, 1950 and Registration of Elector's Rules, 1960 have not been fastened with any obligation under Representation of People Act 1950 and Registration of Electors Rules, 1960, independently or when read with Maharashtra Zilla Parishads and Panchayat Samitis Act to revise the list and do additions or amendments in the list of voters specially for the purpose of Zilla Parishad elections.

16. The availability of petitioner's right is dependent upon existence of a statutory provision in favour of such a claim.

17. These contentions of petitioner need to have a foundation in the legislative enactment. For such foundation there has to be some direct or indirect mandate in the scheme of legislation i.e. Maharashtra Zilla Parishads and Panchayat Samitis Act. Any such mandate is totally absent.

18. The list of voters in vogue in relation to Assembly elections, is to be the basis for Panchayat Samit elections, the list whatever and as it is, will have to be acted upon. For any individual, the claim for being included or to raise an objection as regards inclusion, non-inclusion, will have to be in relation to assembly elections only. The fact that the provisions of Representation of People Act and Rules of 1960, have not been made applicable expressly, and all that is provided by Section 13 is only use of list of voters in existence for Assembly Elections as a voters list. However, it shall not imply that the provisions of the Representation of People Act and Rules of 1960, stand bodily incorporated.

19. The scheme of Section 13 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, as it stands, will have to be read as a conscious legislative act of the State Legislature. If it is to be held that Sections 21 to 27 of the Representation of People Act, are bodily incorporated and read in Section 13 of the Zilla

Parishads and Panchayat Samitis Act, such a scheme has to expressly exist. Existence has to be seen obvious and distinct from a desire, expectation and a demand. Petitioner could suggest a direct or indirect mandate of law that such bodily incorporation is the legislative mandate. No such mandate is apparent, even when Section 13 is read and seen from any angle.

Considering the judicial dictum as noted in the two cases above named, we see no justification to uphold the plea and call it an exercise of judicial legislation.

20. The conscious omission of not providing a separate scheme and mechanism appears to have been done by the State legislature while drafting and even while amending Section 13 of the Zilla Parishads and Panchayat Samitis Act. This conscious omission will have to be respected as it stands.

21. In the case at hand, the petitioner has raised objections after:-

[a] a delay of two days, and

[b] her address on her Election Identity Card at page 12 of the petition is "Hadapsar, Pune.

Having caused the delay in raising objections, cannot entitle the petitioner to contend that her objections have not been considered and that the respondents-election authorities have failed in their duties. Based on these contentions, the petitioner cannot seek a direction in exercise of the extra-ordinary jurisdiction of this Court. Similar challenges having been considered by the Division Benches of the Bombay High Court at Goa and Aurangabad respectively, put to rest, the challenge put forth by the petitioner.

22. Therefore, in the light of foregoing discussion and since the Court has already taken a view in two similar cases, we find no distinguishing factor so as to take a different view in the case on hand. In the result, the petition fails and is dismissed accordingly. Rule is discharged. No order as to costs.