

(2000) 10 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No's. 2697, 2698, 2702, 2780, 2901, 2910 and 3045 of 2000

Smt. Sarla

APPELLANT

Vs

State of Maharashtra and Others etc.

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Bombay General Clauses Act, 1904 — Section 21
Bombay Village Panchayats Act, 1958 — Section 15, 59
Bombay Village Panchayats Election Rules, 1959 — Rule 32(4), 34, 36, 37
Constitution of India, 1950 — Article 226

Citation : AIR 2001 Bom 159 : (2001) 2 BomCR 730 : (2001) 1 MhLj 453

Hon'ble Judges : S.D. Gundewar, J; J.N. Patel, J

Bench : Division Bench

Advocate : U.S. Dastane, A.P. Tathod, A.S. Mardikar, S.J. Khandalkar and Amol Mardikar, for the Appellant; T.R. Kankale and A.M. Deshpande, A.G.P., T.D. Khade and P.B. Patil, B.H. Dongre and D.B. Yengal, A.G.P., Anand Parchure, S.G. Loney, A.G.P., P.C. Madkholkar, S.J. Jichkar, A.G.P., V.G. Bhamburkar and A.V. Bhide, for the Respondent

Judgement

J.N. Patel, J.—This group of petitions involve a common question as to whether the Returning Officer is vested with any right to add to amend, vary or rescind the result of election after the same is declared by him under Rule 34 of the Bombay Village Panchayat Election Rules, 1959 (for short hereinafter referred to as the Rules of 1959) and, therefore, these petitions are disposed of by this common judgment.

2. Facts in W.P. No. 2697/2000 : The petitioner impugns the Corrigendum/order dated 10-6-2000 issued by the respondent-Returning Officer under which he modified the results of the election of the Gram Panchayat, Umali, Taluka Malkapur, District Buldhana, which were held on 9-6-2000. The petitioner contested the said election from Ward No. 1 which is multimember constituency comprising of three seats. Out of three seats, one is reserved for Other Backward

Class candidate, one for Woman General category and the remaining one was open. The petitioner contested the election from Woman General Category while the respondent No. 5 contested the election from General category. On 10-6-2000, in accordance with Rule 34(1) of the Rules of 1959, the Returning Officer declared the petitioner as elected from open/general category. But subsequently, by the impugned corrigendum, on the same day, modified the result and instead of the petitioner, declared the respondent No. 5-Gulab s/o Motiram Dhoran as elected from Open/General category, relying upon the notification No. RNA 1097/ PK 17197 dated 20th October. 1997, claiming to have exercised such a right under Clause 21 of the Bombay General Clauses Act, 1904, which is impugned in this petition.

Writ Petition No. 2698/2000 : The elections to the Gram Panchayat Belad, Tahsil Malkapur, District Akola were held on 9-6-2000. The petitioner contested the election from Ward No. 2 which is multimember constituency comprising of three seats; one seat reserved for Other Backward Class category, one for Woman General category and the remaining one is for open/general category. The petitioner contested election from Woman General category, while the respondent No. 5 contested the election from open/ general category. On 10-6-2000, the Returning Officer, in accordance with Rule 34(1) of the Rules of 1959, declared the petitioner as elected from the open/general category, but, subsequently, modified the result by issuing a corrigendum on the same day i.e. 10-6-2000 and declared the respondent No. 5-Eknath Vishwanath Sambre as elected in place of the petitioner, relying on (he same notification issued by the State Election Commission, and in exercise of the powers under Clause 21 of the Bombay General Clauses Act, 1904, which is impugned in this petition.

Writ Petition No. 2702/2000 : The elections to the Gram Panchayat, Aland, Taluka Malkapur. District Buldhana, were held on 9-6-2000. The petitioner contested the election from Ward No. 1, which is a multimember ward comprising of three seats; one reserved for Other Backward Class category, one reserved for Woman General category and the remaining one for open category. On 10-6-2000, the Returning Officer declared the the petitioner was elected from open/general category in accordance with Rule 34(1) of the Rules of 1959, but immediately thereafter, issued a corrigendum on 10-6-2000 itself, modified the result and declared respondent No. 5-Gopal Mitharam Warade, as having declared elected from the open/general category, instead of the petitioner relying on the same notification issued by the State Election Commission, and in exercise of powers u/s 21 of the Bombay General Clauses Act, 1904, which is impugned in this petition.

Writ Petition No. 2780/2000 : The elections to the Gram Panchayat Malegaon were held on 9-6-2000. The petitioner contested the election from Ward No. 4, which is a multimember constituency comprising of three seats; one seat reserved for Woman belonging to S.T. category, one reserved for Other Backward Class category and third one seat was for general category. The Returning Officer

declared the result on 10-6-2000, in accordance with Rule 34(1) of the Rules of 1959, and declared the petitioner as elected, but after about one month, the Returning Officer again issued another declaration on 5-7-2000 and thereby declared the respondent No. 3-Gajanan Narayan Sareskar as elected candidate in place of the petitioner, which is impugned in this petition.

Writ Petition No. 2901/2000 : On 9-6-2000, elections to the Gram Panchayat Hiwarkhed took place. On 10-6-2000, the results were declared. The petitioner contested the election from Ward No. 2 which was multimember constituency of three seats; one seat was reserved for Other Backward Class candidate and two were for open/ general category. The petitioner filed his nomination form from reserved category and the respondent No. 4 filed his nomination from open category. On declaration of result, one Shyam Bhopale was declared as elected to the post from open category. Election Petition No. 2 of 2000 came to be filed by the respondent No. 4 on 25-6-2000. Thereafter, during the pendency of the said election petition, the Returning Officer amended the results on 10th August, 2000 and declared the respondent No. 4-Dulekha Ibadullakha as elected, which declaration is impugned in this petition.

Writ Petition No. 2910/2000 : This petition is filed by eight candidates, who contested the elections to various Gram Panchayats which were held on 9th June, 2000 and were declared elected on 10th June, 2000 by the respondent-Returning Officer, but subsequently, the results came to be modified and the respondent Nos. 5 to 13 were declared to be elected by the corrigendum issued on the same day. This relates to the elections of Gram Panchayat Barshitakli for Ward No. 2, Gram Panchayat Sukli, Tahsil Barshitakli from Ward No. 2, Gram Panchayat Dongargaon, Tahsil Akola, from Ward No. 3, Gram Panchayat Aalegaon, Tahsil Patur, from Ward No. 3 Gram Panchayat Sasti, Tahsil Patur from Ward No. 2, Gram Panchayat Hatgaon, Tahsil Murtizapur, from Ward No. 2, Gram Panchayat Jamathi Tahsil Murtizapur, from Ward No. 2. Gram Panchayat Chikhali, Tahsil Murtizapur, from Ward No. 1, which is impugned in this writ petition.

Writ Petition No. 3045/2000 : This petition particularly questions the interpretation of Rule 34 (2) of the Rules of 1959, and that of Section 10(7) of the Bombay Village Panchayat Act. It is the contention of the petitioner that the Returning Officer ought to have declared the petitioner as elected from Ward No. 1 of Village Aalegaon, which is also a multimember constituency having three seats: two seats were for open and one seat was reserved. According to the petitioner, after Sau. Taibai Thole was declared as elected from reserved category, the case of the petitioner ought to have been considered for election in general category she having secured 120 votes, but the Returning Officer declared respondent No. 4 Moreshwar Pandurang Pawar as elected, who had scored 116 votes i.e. 4 votes less than the petitioner, This is contrary to Rule 34 of the Rules of 1959. A reliance has been placed on the case of Shobha Ashok Patil v. Mahananda Rajaram Nikam 1997 (3) MLJ 353 : 1997 AIHC 4272. Insofar as this petition is concerned, we have no hesitation to hold that the petitioner, if

aggrieved by the declaration of such result, could have very well filed Election Petition before the Civil Judge of competent jurisdiction, for determining the validity of the election as contemplated u/s 59 of the Bombay Village Panchayat Act, 1958. We are informed that such petition is filed by other persons and is pending and, therefore, we do not think it proper to interfere in this matter in exercise of our extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

3. On behalf of the petitioners, it has been submitted that the impugned action on the part of the Returning Officer to have issued corrigendum resulting in modification of the election results declared earlier, is without any jurisdiction vested in him under the law and, therefore, once Election Officer had declared the result, rightly or wrongly, he cannot have issued corrigendum pursuant to the directions of the State Election Commission, and by placing reliance on Section 10(7) of the Bombay Village Panchayat Act. It is submitted that after declaring the results of the elections by the Returning Officer, it is only the Collector who has powers under Rule 37 of the Rules of 1959, to correct, before the publication of the names of the elected and appointed members, any mistakes, if any, in the names of the elected and appointed members and but for this, the Returning Officer or the Collector have no powers to interfere with the results of elections once declared and the only remedy left with the person aggrieved by such declaration of the result, is to file an election petition as contemplated u/s 15 of the Bombay Village Panchayat Act, 1958.

4. Second limb of argument is that the procedure adopted by the Returning Officer to modify the result by issuing the corrigendum on the directions/guidelines of the State Election Commission dated 20th October, 1997 and 10th August, 2000, is contrary to law and particularly the directions/guidelines issued by the State Election Commission relating to the interpretation of Rule 34(2) of the Rules of 1959, are also erroneous in view of the decision rendered by the learned single Judge of this Court in the case of Shobha Ashok Patil v. Mahananda Rajaram Nikam (cited supra) and that the results declared earlier were in consonance with Rule 34(2) of the Rules of 1959 and, therefore, on this ground also, the Court should quash and set aside the impugned corrigendum altering/modifying the election results declared by the respondent-Returning Officer.

5. On behalf of the respondents, it is submitted that this Court cannot interfere in the matter of election in exercise of its extra ordinary jurisdiction and if at all the petitioners were aggrieved by the decision of the Returning Officer, they have a remedy by way of election petition u/s 15 of the Bombay Village Panchayat Act, 1958. A reliance was placed on the case of Jyoti Basu and Others Vs. Debi Ghosal and Others, , and particularly with reference to para 8 in which the Apex Court held as under (at page 986-987) :

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and

simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An 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 must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on consideration of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes. Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute what does the Act say."

It is, therefore, submitted that remedy for the petitioners lies in filing election petition rather than agitating the matter before this Court.

6. It is also submitted by the learned counsel for the respondents that the Returning Officer was justified in modifying the results in accordance with the instructions/guidelines issued by the Election Commission from time to time as such powers vest with the State Election Commission, so also the Returning Officer, by virtue of Section 21 of the Bombay General Clauses Act, 1904. A reliance was sought to be placed on the case of Janata Dal (Samajwadi) Vs. Election Commission of India, , in which said power has been accepted to vest with the Election Commission. It was also argued before us that the interpretation of Rule 34(2) of the Rules of 1959, in case of Shobha Ashok Patil (cited supra) is not consistent with the concept of reservation and does not lay down the correct law, whereas that adopted by the State Election Commission in their instructions and guidelines which are impugned before this Court is the correct approach insofar as contest from multi-member ward or constituency is concerned. Therefore, it is submitted that even on this ground, the Returning

Officer was justified in modifying the results which were earlier declared contrary to the instructions/guidelines issued by the State Election Commission, by the Returning Officer and, therefore, it was well within the jurisdiction of the Returning Officer to have corrected the same.

7. Much arguments were advanced across the bar on the true and correct interpretation of Rule 34(2) of the Rules of 1959. Our attention was also drawn to the case of *Saraswati Devi Vs. Smt. Shanti Devi and Others*, , a decision rendered by two Judges of the Apex Court, which came to be overruled by larger bench of the apex Court in the case of *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others*, . It was sought to be canvassed before us that it appears to reason and is in consonance with Rule that a candidate contesting election in a multi-member constituency, where seats are reserved for certain categories of persons as well as there are seats for open/general category candidates, is expected to file his nomination for a particular seat as a reserved candidate or as a candidate contesting either from reserved category or from open/general category and, therefore, when he offers himself as a candidate and contests the election by filing specific nomination and when he is not returned by the electorates for the said seat, then he cannot claim himself to be considered for the election from the other category.

8. We do not propose to examine as to whether guidelines/Instructions issued by the Election Commission as regards the interpretation of Sub-rule (2) of Rule 34 of the Rules of 1959, are correct or not, for the simple reason that the main challenge before us is in respect of the jurisdiction or the power vested in the Returning Officer to add to, amend, vary or rescind the results of election once they are declared by him and, therefore, we leave this question open. Let us take up the issue as to whether this Court can interfere in election matters under its extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India, by entertaining the petition. In a recent decision rendered by the Apex Court in the case of *Election Commission of India Through Secretary Vs. Ashok Kumar and Others*, , the Apex Court, after considering the catena of decisions on the point, held as under (at page 2986-2987 of AIR) :

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :-- 1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the

election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decision of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an interior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

The underlying principle which has persuaded the Court to exercise its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is that "Purity of election process has to be preserved" and, therefore, if in a given situation, the very nature of things such as in the matters at hand, what we find is a strong case which calls for intervention. The main emphasis on the part of the respondents in justifying the authority of the Returning Officer to modify the results of the elected candidates is by placing reliance on Section 21 of the Bombay General Clauses Act 1904, which has been so referred to in the impugned notifications. In an identical situation, this Court had an occasion to examine the issue while dealing with the general elections held on 9-6-2000 to Vangani Gram Panchayat in an unreported decision in the case of Anil Sudam Patil v. Returning Officer, v. Angani GP (Writ Petition No. 4516 of 2000) decided on 7-9-2000, wherein the Bombay Bench of this Court held as under :

"3. After hearing the learned counsel for the parties, we are of the opinion that the impugned order passed by the 1st respondent cannot be sustained in law. It is an admitted position that the result was declared on 10-6-2000 whereby the respondent No. 1 declared Ghanshyam Dangre as elected in seat reserved for OBC and as far as the present petitioner is concerned he was declared elected as

against open category. Once the results are declared respondent No. 1 had no power to modify or alter the result of the election. It is well settled that the returning officer becomes functus officio after the results are declared and thereafter he cannot alter or modify the results of election. Section 15-A of the Village Panchayat Act provides in clear terms that election of any panchayat cannot be called in question except in accordance with the provisions of Section 15 of the Act i.e. by way of filing of election petition. Thus the impugned order passed by the respondent No. 1 is wholly illegal and without jurisdiction. The impugned order is therefore quashed and set aside. Rule is made absolute in terms of prayer Clause (a) (1)."

We concur with the view taken by the Division Bench of this Court as cited above and would like to add that under the scheme of the Bombay Village Panchayat Act, 1958 and that of the Bombay Village Panchayat Election Rules, 1959, once Returning Officer declares the results of elections under Rule 34 of the Rules of 1959, next step can be that the candidate, or, in his absence, his election agent may apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds taken and as contemplated under Rule 35 of the Rules of 1959, and if the Returning Officer decides to allow such an application, then he shall count the ballot papers again in accordance with his decision and amend the statement showing the number of votes recorded, referred to in Sub-rule (4) of Rule 32 to the extent necessary after such recount and announce the amendments so made by him and the result of the election. It is only in this contingency that the Returning Officer is vested with powers to amend the results of the elections and under Rule 36, he shall cause the names of elected candidates to be posted at Village Chavdi or at the village panchayat office or at such other public place, if any, appointed in that behalf by him and shall report such names immediately to the Collector. It is thereafter that the Collector would cause publication of results of elections under Rule 37 of the Rules of 1959. The Collector also is vested with a limited jurisdiction before the publication of the names of the elected and appointed members i.e. to the extent of correcting any mistake in the names of the elected and appointed members. Therefore, in the whole process, commencing from declaration of results of the elections to its publication, the Rules do not permit or vest with the Returning Officer or the Collector, any power to add to, amend, vary or rescind the declaration of results of elections, and, therefore, to borrow such powers from Section 21 of the Bombay General Clauses Act 1904, would be nothing but acting beyond the jurisdiction vested by the Act and Rules. Therefore, the Returning Officer having once exercised his power of declaring the results of elections, cannot exercise it again unless statute provides for or vests with him the right to do so. Section 21 of the Bombay General Clauses Act, 1904 cannot be used by the Returning Officer to put a person who has been declared by him as elected (rightly or wrongly), to change the result of the election and place the person in an advantageous position over the other side and drive the other side to seek redress by taking recourse to election petition. It is rightly

contended by the learned counsel appearing for the respondents that the remedy available to a person aggrieved by the declaration of the result of election is only through filing an election petition as contemplated u/s 15 of the Bombay Village Panchayat Act. The Karnataka High Court, while dealing with a similar situation in the case of *The Tahsildar and Returning Officer, Agricultural Produce Market Committee, Bhalki v. Shivaji Rao* AIR 1976 Kar 233, observed in para 4 of the judgment as under (at page 234) :

"4. The general principle of law is that once the process of election is started, the same cannot be interrupted except by an order of Court. The result of the action of the appellant Tahasildar is to interrupt the process of election after the nominations had been filed and accepted. If the principle of Section 21 of the General Clauses Act can be availed of by Returning Officers, then it is likely to be seriously abused whenever the persons in authority find that their candidates are not likely to win or their nominations are not valid. As at present advised we are of the opinion that unless there is an express power conferred by the Statute, the Tahsildar has no power to cancel the notification once he has issued a calendar of events and pursuant to the same, nominations have been filed and accepted."

In another case, Patna High Court, while dealing with Section 21 of the General Clauses Act (1897), in the case of *Bakshi S.B.P. Sinha and Others Vs. The Bihar State Bar Council and Another*, , held as under :

"The Bihar State Bar Council has no power to cancel its entire election and to give direction to the Returning Officer to hold fresh election. Thus where some obstructions and disturbances took place, at certain polling booths and polling had also slopped for some time but ultimately the poll had been completed, and the counting and recounting of votes also took place, the State Bar Council could not at such stage pass a resolution cancelling the entire election and directing fresh election. The resolution of the State Bar Council could not be saved under implied powers u/s 21 of the General Clauses Act, because the resolution did not amount to postponement or alteration of the election programme but amounted to cancellation of election already held. If at all any irregularities were committed at the election, the proper remedy was to file election petition before the Election Tribunal constituted under Rule 47 of the State Bar Council Rules. Till the result of the election was declared, it could not be challenged by filing election petition and therefore the Bar Council was directed to declare the result."

Therefore, we have no hesitation to hold that the impugned action on the part of the respondent-Returning Officer in issuing the corrigendum and unsettling the results of the election earlier declared, on the basis of the instructions/guidelines, was without jurisdiction and deserves to be quashed and set aside.

9. For the above stated reasons, Writ Petition Nos. 2697/2000, 2698/2000, 2702/ 2000, 2780/2000, 2901/2000, 2910/2000 and 2910/2000 are allowed and the impugned corrigendum issued on the instructions of the State Election

Commission, D/-20-10-1997 and 10-8-2000, are quashed and set aside. As a result of this, the earlier order passed by the Election Officer declaring the petitioner as elected under Rule 34(2) of the Rules of 1959, is restored. Rule made absolute in the above terms.

10. So far as the Writ Petition No. 3045 of 2000 is concerned, same is dismissed. Rule stands discharged.

11. We make it clear that having quashed and set aside the impugned corrigendum, the cause of action for filing the Election Petition u/s 15 of the Bombay Village Panchayat Act, 1958, to the aggrieved party would arise from the date of our decision and period of limitation prescribed under the said provisions is to be construed accordingly.

12. We further make it clear that concerned Civil Judge before whom petition for determination of validity of election is filed or will be filed, will decide the same without being influenced by any observation of this Court made while deciding these petitions and the same shall be decided on its own merits and in accordance with law.

13. Steno copy of the operative order, duly authenticated by the Court Sheristedar, be supplied to the parties to act upon.