

(1997) 05 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 177 of 1997

Smt. Varsha Kamble

APPELLANT

Vs

Shantabai Kamble and Others

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 243T
Maharashtra Municipal Councils and Nagar Panchayats (Election of President) Rules, 1981 — Rule 3
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 325(1), 51(2), 51(3A)

Citation : (1997) 4 ALLMR 345 : (1998) 2 BomCR 249 : (1997) 2 MhLj 847

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : A.H. Joshi, for the Appellant; A.B. Naik, for respondent No. 1, N.H. Patil, for respondent No. 2, P.M. Shah and S.V. Chillarge, Asst. Govt. Pleader for respondent Nos. 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard the learned Counsel representing the respective parties.

2. Rule made returnable forthwith with the consent of the parties.

3. The facts leading to the present petition briefly stated are as under :---

4. The elections to the Udgir Municipal Council were held on 1-12-1996 in respect of all the 29 Wards. The results were declared on 2-12-1996 and the said results were published on 5-12-1996. The present petitioner came to be elected from the ward reserved for Scheduled Castes Woman category. Same is the case of respondent No. 1. The post of President of the Udgir Municipal Council came to be reserved for Scheduled Castes Woman category as per notification issued by the State Government. The Collector at Latur issued notice dated 11-12-1996 u/s 51(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965 for convening a special meeting of the Councillors for election of the President and the said meeting was fixed on 17-12-1996, nomination forms were required to be submitted on 16-12-1996 between 10 a.m. to 12 noon. The said notice came to be served on 27 out of 29 Councillors prior to 16-12-1996 and the petitioner and another Councillor were not served with the said notice. As per the notice dated 11-12-1996 a meeting of the elected Councillors of Udgir Municipal Council was held on 17-12-1996 at 11.00 a.m. As the post of the President was reserved for the Scheduled Castes Woman category, only application received on 16-12-1996 within prescribed time was that of respondent No. 1 to contest the said post of President and as she was the only contesting candidate in the meeting held on 17-12-1996, the respondent No. 1 came to be declared as the President. Consequently the respondent No. 1 appointed respondent No. 2 as the Vice President of the Udgir Municipal Council.

5. It is the grievance of the petitioner that she being a Councillor elected from the ward reserved for Scheduled Castes Woman category, she was interested in contesting the election to the post of President which was reserved for the said category as per the Government Notification and the respondents in collusion with each other and more particularly respondent Nos. 3 and 4 did not serve the notice dated 11-12-1996 issued by the Collector on any date prior to 17-12-1996. The petitioner alleges mala-fides on the part of respondent Nos. 1, 2 and 3 and states that she was deliberately kept in dark regarding the elections to be held for the post of the President of the Udgir Municipal Council till 17-12-1996 that is the day of elections to the post of President. The petitioner further contends that for the first time she was served with the notice dated 11-12-1996 on 17-12-1996 at about 9.00 a.m. which was contrary to the provisions of section 51(3-A) of the Maharashtra Municipal Councils Act and Rule 3 of the Maharashtra Municipal Councils and Nagar Panchayats (President Election) Rules, 1981. The time limit for submission of nomination papers to the post of President was fixed between 10 a.m. and 12 noon on 16-12-1996 and in the absence of notice regarding the said election programme as issued by the Collector on 11-12-1996, the petitioner was not aware of the said elections till 9.00 a.m. on 17-12-1996 as contended by the petitioner. The petitioner has, therefore, approached this Court contending that her right to contest the elections to the post of President of Udgir Municipal Council, which was reserved for Scheduled Castes Woman category, has been infringed by the collusive and mala fide acts of respondent Nos. 1, 2, 3 and 4.

6. There is no dispute that notice dated 11-12-1996 was served on the petitioner for the first time on 17-12-1996 and she could not, therefore, submit her nomination form to contest the election of the President within prescribed time schedule on 16-12-1996. In the affidavit-in-reply filed by respondent No. 3 it is stated that from 13-12-1996 to 16-12-1996 Shri G.R. Kapale, Octroi Superintendent of Municipal Council, tried to serve on the petitioner the notice dated 11-12-1996 alongwith the agenda. But the same could not be served as the petitioner was out of station and finally the notice was served on the

petitioner by Shri Y.S. Jalnapurkar on 17-12-1996. The said affidavit further alleges that the petitioner had disappeared from the scene and had deliberately gone in exile as a strategy. In his affidavit Shri G.R. Kapale states that he tried to contact the petitioner on number of occasions between 13-12-1996 and 16-12-1996 on several times and despite his serious and desperate efforts the agenda of the meeting could not be served on the petitioner personally during the said period as the house of the petitioner was found to be locked and finally the agenda was served by him on the petitioner at 7.30 a.m. on 17-12-1996. The affidavit of Shri Kapale is totally silent on the issue as to whether he had taken any steps for resorting to alternative mode of service or he pasted a copy of the notice dated 11-12-1996 on the door of the petitioner's house when he had seen the same to be locked during all his visits from 13-12-1996 to 16-12-1996. Contrary to the said affidavit of Shri Kapale, the report of Shri Y.S. Jalnapurkar, who is a clerk in the Municipal Council, (the report is at Exhibit "C" to the petition) states that Shri Kapale went to Jalnapurkar's house at about 9.00 p.m. on 16-12-1996 and handed over a copy of the notice to be issued to the petitioner and informed him that the said notice should be served by 8 a.m. on 17-12-1996. The said report further states that Shri Jalnapurkar went to the petitioner's house at about 9.15 p.m. on 16-12-1996 and he could not meet the petitioner and the agenda and notice was served on the petitioner by him on 17-12-1996 at about 7.30 a.m. It is pertinent to note that the report of Shri Jalnapurkar does not say that when he went to the petitioner's house at 9.15 p.m. on 16-12-1996 the house of the petitioner was locked or he was informed that the petitioner was out of station. The report categorically states that Shri Jalnapurkar could not meet the petitioner on 16-12-1996 at 9.15 p.m. and he served the notice and agenda on the petitioner on 17-12-1996 at 7.30 a.m. This report regarding service of the notice alongwith agenda on the petitioner at 7.30 a.m. on 17-12-1996 by Shri Jalnapurkar is also corroborated by the affidavit of respondent No. 3. Therefore, the claim of Shri Kapale that he served the notice and agenda on the petitioner on 17-12-1996 in the morning has to be rejected and, in such circumstances, the affidavit of Shri Kapale is not worthy of being relied upon.

7. Section 325(1) of the Maharashtra Municipal Councils Act, which pertains to the service of notices, etc. addressed to individuals, reads as under :

"325. Service of notices, etc. addressed to individuals:

(1) When any notice is required by or under this Act to be served upon issued or presented to, any person, such service, issue or presentation shall, in all cases not otherwise provided for in this Act, be effected ---

(a) by giving or tendering the notice to the person to whom it is addressed; or

(b) if such person is not found, by giving or tendering it to some adult member or servant of his family found at his usual place of residence or at his last known place of abode;

(c) if none of the means aforesaid be available, or if the person to whom such notice is given or tendered refuses to accept it then by causing the notice to be affixed on some conspicuous part of the building or land, if any, to which the notice relates."

The affidavits filed on record by the respondent No. 3 as well as other employees of the Municipal Council, Udgir, clearly suggest that no action was taken to serve the notice dated 11-12-1996 on the petitioner by following the provisions of section 325(1) of the Act even if it is presumed that the petitioner was not available in her house between 13-12-1996 and 16-12-1996. The affidavit of one Pandurang Shankar Shinde, who is working as a peon in the Udgir Municipal Council, makes a striking revelation in paragraph 5 which reads as under :

"I further say and submit that on 12-12-96 the Chief Officer, Municipal Council, Udgir had handed over the copies of the agenda to me for effecting service on the newly elected councillors. The agenda was relating to the meeting for electing the President of the Municipal Council, Udgir. In the bunch of agenda, so given to me, there was no notice for effecting service on the elected Councillor from Ward No. 20 i.e. the petitioner. I had effected services of the agenda on all other Councillors except petitioner."

Under these circumstances the only plausible conclusion that required to be drawn is that the notice dated ---11-12-1996 was not served on the petitioner till at least 7.30 a.m. on 17-12-1996 and no steps, as prescribed, were taken by the respondent No. 3 to serve the said notice on the petitioner in person or by any alternative mode of service. The petitioner was, therefore, prevented from filing her nomination form to contest the election of the President within the prescribed time limit on 16-12-1996 and hence she could not be a candidate to contest the said election. The allegation of the petitioner that her right to contest the election to the post of the President, which was reserved for the Scheduled Castes woman category, was infringed by the acts of respondent Nos. 3 to 6.

8. The petitioner has alleged collusion and mala fides on the part of respondent Nos. 1, 2 and 3 in keeping her away from contesting the elections to the post of President. Respondent No. 3, who is a Government servant, in his affidavit, inter-alia, states as under :

"I further say and submit that as the rival candidate had already mustered the support from the majority of newly elected Municipal Councillors, possibly the petitioner herein had disappeared from the scene. There is a justifying reason to state that the petitioner had deliberately gone in exile as a strategy. The petitioner could not have got elected in the meeting dt. 17-12-1996 by facing democracy. Hence, the petitioner is trying to secure the said verdict through the Court instead of from the elected Councillors."

It is further stated in the affidavit thus :

"In view of such compliance by the petitioner, I was instructed to serve the

agenda of the meeting on the petitioner. I say that Shri Tekale specifically told me that the petitioner was informed by him about the details connected with the meeting called for the purposes of electing the President from amongst the newly elected Councillors. Shri. Tekale also told me that he has already appraised the petitioner about the entire programme of election i.e. the date and time of filing the nominations, the date of scrutiny and the date and time of the meeting etc. I was further told that petitioner would be reaching Udgir on the same date to accept the agenda."

Shri Tekale is admittedly the Assistant Director of Municipal Administration, Collectorate at Latur and the respondent No. 3 by the above statements is making out a case that the notice of the elections was intimated to the petitioner by Shri Tekale. The respondent No. 3 is a Government officer, who has been entrusted/delegated by the Collector to perform the statutory duty and he is not expected to take sides or make any statement on oath taking sides under political considerations. The respondent No. 2 has been the President of the Municipal Council, Udgir prior to the elections held on 1-12-1996 and the respondent No. 4 has been the Chief Officer of the said Municipal Council for about 4 years prior to the said elections. The respondent No. 2 has contested the election from the open category and he could not contest the elections to the post of the President again because the said post was reserved for Scheduled Castes Woman category candidates. The petitioner's allegation that the respondent No. 2 was interested in getting the respondent No. 1 elected as the President for his own gains by ensuring that the petitioner was kept away from contesting the said elections cannot be rejected as the respondent No. 1 was the only candidate, who had filed her nomination to the post of President, who was declared elected as President under Rule 6(1) of the Maharashtra Municipal Councils and Nagar Panchayats (President Election) Rules, 1981 and under the provisions of said section 51-A of the Act she had no alternative but to appoint the respondent No. 2 as the Vice President. The scheme of the Act and the Rules was known to the respondent Nos. 2 and 3 and there is much weightage to the allegations of the petitioner that the respondent Nos. 1 to 4 colluded with each other deliberately to prevent her from contesting the said elections, by not serving the notice of the elections as well as the agenda on the petitioner till 17-12-1996.

9. The respondent Nos. 1, 2 and 3 have filed affidavits-in-reply and opposed the petition on the grounds that :

- (a) In the meeting held on 17-12-1996, the petitioner did not raise any objections to the elections for the post of President,
- (b) The petitioner has exhausted the remedy available u/s 51(3-A) as well as section 51(5) of the Maharashtra Municipal Councils Act, 1965,
- (c) The petitioner has the remedy to file an election petition; and,
- (d) When an alternative remedy is provided in the special statute namely the

Maharashtra Municipal Councils Act, a writ petition is not maintainable.

10. The contention that the petitioner did not take any objections and did not submit any written representation regarding her grievance to the Returning Officer in the meeting held on 17-12-1996 is totally false and baseless. The letter addressed by the respondent No. 3 to the petitioner on 7-1-1997 is annexed to the petition at Exhibit "E" forwarding the copies of letters to the petitioner in pursuance of her application dated 4-1-1997 and at Serial No. 7 in the said letter, the petitioner's application dated 17-12-1996 is listed. We called for the original file maintained by the respondent No. 3 and we have perused the petitioner's letter dated 17-12-1996 and observed that she had raised objections and she had registered her representation before the Returning Officer on 17-12-1996. By reading the provisions of sub-section (3-A) of section 51 of the Act it is clear that the remedy set out therein is available to any Councillor aggrieved by any decision of the Collector accepting or rejecting any nomination paper, and, if the Collector gives a decision, an appeal lies to the Regional Director of Municipal Administration. In the instant case there was no occasion for the Collector to take a decision and the objections submitted by the petitioner on 17-12-1996, in any case, were not decided till the petitioner approached this Court on 10-1-1997. The petitioner was desirous to be a contesting candidate by submitting her nomination paper for the post of President, but as the notice dated 11-12-1996 regarding the said elections was not served to her till 17-12-1996 she could not be a candidate contesting the elections. In such a situation it is difficult to accept that the petitioner had alternative remedy under the Maharashtra Municipal Councils Act, 1965 specially when the petitioner could not be a contesting candidate due to the failures on the part of respondent No. 3 to serve the election notice dated 11-12-1996. In the instant case, the judgment of the Supreme Court in the case of Gujarat University Vs. N.U. Rajguru and Others, as relied upon by the said respondents is not applicable in view of the fact that the petitioner could not be a contesting candidate. The last date for filing nominations 16-12-1996 and the time in that regard was also fixed. The petitioner came to know about the election programme only when she was served with the notice on 17-12-1996 at about 7.30 a.m. In view of all these facts, the petition cannot be rejected on the ground that the petitioner had alternative remedy. When the petitioner could not be a contesting candidate, it is difficult to accept that she had the remedy of filing an election petition to challenge the election of the respondent No. 1, who came to be declared elected unopposed without any voting in view of the provision of Rule 6(1) of the Maharashtra Municipal Councils and Nagar Panchayats (President Election) Rules, 1981.

11. For the reasons detailed above we are of the considered view that the respondent No. 1 came to occupy the office of the President as having been declared elected as unopposed when the petitioner was illegally and with mala-fide acts prevented from contesting the elections to the post of President and hence the respondent No. 1 is required to vacate the office of the President. The

respondent No. 2 is the appointee of respondent No. 1 and it is the prerogative of the newly elected President to appoint any Councillor as the Vice President u/s 51-A of the Maharashtra Municipal Councils Act 1965.

12. In the result, we hereby direct the respondent Nos. 1 and 2 to vacate the offices of the President and the Vice President of the Municipal Council, Udgir forthwith and direct the Collector, Latur to hold fresh elections to the post of the President of the Municipal Council, Udgir which is reserved for the Scheduled Castes Woman category within a period of three weeks from the receipt of a copy of this order. We further direct that the respondent No. 4 shall not be, in any way, associated with the fresh election programme to be announced by the Collector for the post of the President. Rule made absolute accordingly with no order as to costs.