
(2008) 12 BOM CK 0013

In the Bombay High Court

Case No : Letters Patent Appeal No. 391 of 2008 in Writ Petition No. 4960 of 2008

Sunil Ramchandra Kedia

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Maharashtra Agriculture Produce Marketing Committee (Development and Regulation) Act, 1963 — Section 51
Maharashtra Agriculture Produce Marketing Committee (Development and Regulation) Rules, 1963 — Rule 43, 45, 45(1), 48, 50

Citation : (2009) 3 BomCR 397

Hon'ble Judges : Varale Prasanna B., J;Deshmukh D.K., J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; J.B. Jaiswal A.G.P., for Respondent Nos. 1 to 3, Mohta, h/f., R.L. Khapre Advocate for Respondent No. 4, N.S. Adbe, for the Respondent

Judgement

Deshmukh D.K., J.—Admit. Heard finally by consent of the parties.

2. Controversy in the appeal relates to election to Agriculture Produce Market Committee, Khamgaon and to the traders' constituency. Admittedly, the appellant filed nomination paper as per election programme for the seat of Member of the Agriculture Produce Market Committee, Khamgaon from the traders' constituency. Respondent No. 5-Shekhar Purohit was one of the persons, who had also filed nomination paper. Neither respondent No. 5-Shekhar nor any other rival candidate raised any objection to the nomination paper of the appellant. The Returning Officer held scrutiny of the nomination papers as per the provisions of Rule 50 of the Rules framed under the Maharashtra Agriculture Produce Marketing Committee (Development and Regulation) Act, 1963 and found the nomination paper of the appellant in order and accepted the same. Respondent No. 5 filed an appeal before the Appellate Authority challenging the acceptance of the nomination paper of the appellant on some grounds. The

appeal was filed under Rule 51 of the aforesaid Rules. An objection was raised to the maintainability of the appeal on the ground that respondent No. 5, though he was one of the nominated candidates, had not raised any objections to the nomination paper of the appellant. That objection, it appears, was not decided by the Appellate Authority and the Appellate Authority allowed the appeal and set aside order of the Returning Officer accepting the nomination paper of the appellant.

3. That order of the Appellate Authority was challenged before the learned Single Judge of this Court in Writ Petition No. 4960/2008. There were many grounds urged challenging the order passed by the Appellate Authority but we propose to consider only one ground, which was raised before the learned Single Judge. It was contended before the learned Single Judge that as the appellant before the Appellate Authority i.e. respondent No. 5 did not raise any objection to the nomination paper of the appellant before the Returning Officer and the Returning Officer also did not raise any objection to the nomination paper of the appellant, respondent No. 5 could not have filed an appeal before the Appellate Authority. The learned Single Judge negated that argument relying on the words of Rule 51 of the Rules that any candidate can file an appeal. Respondent No. 5, according to the learned Single Judge, was admittedly a candidate at the election and, therefore, he was entitled to file an appeal against the order of the Returning Officer either accepting or rejecting the nomination paper.

4. We have heard learned Counsel for the appellant and the respondents. Learned Counsel for appellant submitted that the controversy raised before the learned Single Judge was really not res integra in view of judgment of Division Bench of this Court in Sheshrao v. Sub Divisional Officer, Buldhana Special Civil Application No. 531/1971 decided on 28.6.1973. The learned Counsel submitted that the Division Bench has considered similar situation and has held that even if a candidate raises an objection to nomination paper and that objection is rejected and nomination paper is accepted, in the appeal filed u/s 51, he cannot raise an additional ground in support of his appeal. Learned Counsel further submitted that the corollary is that a candidate, who has not raised an objection to the nomination paper, cannot file an appeal challenging the validity of the order of the Returning Officer.

5. Learned Counsel for respondent No. 5, on the other hand, relied on the Rules and the observations of the learned Single Judge in the impugned order. He also submitted that a grievance was made before the Appellate Authority that an opportunity to raise objection was not given by the Returning Officer to respondent No. 5.

6. Now, from the record, following emerge as admitted facts.

(i) The appellant and respondent No. 5 were candidates contesting for the seat from the traders' constituency of Agriculture Produce Market Committee, Khamgaon, And,

(ii) admittedly, respondent No. 5 did not raise any objection to the nomination paper of the appellant.

7. So far as the contention that opportunity to raise objection was denied is concerned, perusal of the provisions of Rule 50 of the Rules shows that all the candidate at the election are permitted to be present at the time of scrutiny. They are also permitted to examine the nomination paper and then they can raise objection to the nomination paper. The objection to be raised, obviously has to be in writing. It is nobody's case that respondent No. 5 handed over any objection in writing to the Returning Officer and the Returning Officer did not accept it. In our opinion, therefore, the contention of respondent No. 5 that he was not permitted to raise objection cannot be accepted. The learned Single Judge has also proceeded on the basis that the respondent No. 5 had not raised objection to the nomination paper of the appellant.

8. It emerges that respondent No. 5 did not raise any objection to the nomination paper of the appellant. The Returning Officer also has power to raise an objection to the nomination paper, while he is holding scrutiny of the nomination papers. In the present case, admittedly, the Returning Officer also did not raise any objection to the nomination paper of the appellant. On the contrary, he accepted it as valid. In the circumstances, therefore, we have to consider whether an appeal under Rule 51 of the Rules will be tenable at the instance of respondent No. 5, who admittedly was a candidate at the election but did not raise any objection to the nomination paper of the appellant. Rule 51, reads as under:

51. Appeal.

(1) Any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper, may present an appeal therefrom to the (Collector or the District Deputy Registrar, as the case may be) within a period of seven days from the date on which the notice containing the names of the candidates accepted by the Returning Officer is affixed on the notice board under sub-rule (8) of Rule 50 and shall ordinarily furnish on the same day to the Returning Officer a copy of the petition of appeal together with as many copies of the petition as there are candidates whose nomination papers have been accepted (excluding himself).

(2) The decision of the (Collector or the District Deputy Registrar, as the case may be) on appeal under this Rule and subject only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of candidate shall be final and conclusive.

9. From bare perusal of Rule 51, quoted above, it is apparent that any candidate aggrieved by decision of the Returning Officer either accepting or rejecting nomination paper can file appeal under the provisions of Rule 51. But the provisions of Rule 51 cannot be read and understood in isolation. It will have to be understood in the scheme of the Rules in which it appears. Therefore, in our

opinion, Rule 50 becomes relevant. Rule 50 of the Rules reads as under:

50. Scrutiny of nominations.

(1) On the date appointed for the scrutiny of nominations under Rule 43, the candidates, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at the time and place appointed in this behalf under Rule 43 and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by sub-rule (1) of Rule 45.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, any may either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, that is to say:

(a) that the candidate is disqualified for being chosen to fill the seat under these Rules:

(b) that the proposer is disqualified from subscribing a nomination paper:

(c) that there has been a failure to comply with any of the provisions of Rule 45 or 48:

(d) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in Clause (c) or (d) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The Returning Officer shall hold the scrutiny appointed in this behalf under Clause (b) of Rule 43 and shall not allow any adjournment of the proceedings excepts when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control.

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than the next day, and the Returning Officer shall record his decision of the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purpose of this rule, the production of a certified copy of an entry made in the list of voters of the relevant constituency shall be conclusive evidence of the right of any voter named in that entry to stand for election, unless it is proved that the candidate is disqualified.

(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall, subject to the provisions of Rule 51, prepare a list of candidates whose nominations have been accepted. Immediately after the scrutiny is over, the Returning Officer shall affix the list on his notice-board and shall record the date on which, and the time at which the list was so affixed.

10. Perusal of the provisions of Rule 50 shows that it contains an elaborate procedure for scrutiny of the nomination papers. Every candidate, who has filed his nomination paper is entitled to inspect nomination paper of the other candidates. He is also entitled to raise objections. Those objections, obviously are to be in writing. Those objections once raised are to be decided by the Returning Officer after giving opportunity to the candidates, whose nomination paper has been objected, to meet the objections. If Returning Officer raises an objection on his own, there is provision made in the Rules for giving an opportunity to the candidates, if necessary, by adjourning the proceedings to the next date. It is in the scheme of Rule 50 that the candidate, whose nomination paper is objected to, either by rival candidate or by the Returning Officer, is entitled to meet the objection before the Returning Officer. If no objections are raised to the nomination paper either by the candidates or by the Returning officer and if an appeal is permitted to be filed against the order of the Returning Officer accepting nomination paper, the candidate will be denied opportunity to contest objection before the Returning Officer.

11. In any case, we are not required to consider this position in detail because of judgment of the Division Bench referred to above in Special Civil Application No. 531/1971. In that case, nomination paper was filed by the candidate for election to the Agriculture Produce Market committee. No objection was raised by any candidate before the Returning Officer. Nomination paper was accepted. For proving that the candidate was an agriculturist, which was an essential qualification for being a candidate, Certificate of Talathi was produced. The Returning Officer accepted that certificate and accepted the nomination paper. An appeal was filed by the rival candidate under Rule 51 of the Rules and the Appellate Authority allowed the appeal and rejected the nomination paper of the candidate. That order was challenged before this Court. This Court examined the order of the Appellate Authority on merits and found that the Appellate Authority was not justified in disturbing conclusion of the Returning Officer that the petitioner before the High Court was an agriculturist. Thereafter, the Court considered the tenability of the appeal and observed thus:

No doubt an appeal is provided against the order accepting or rejecting a nomination paper, but since no objections were taken before the Returning

Officer and acting on the basis of the certificate issued by the patwari the Returning Officer has accepted the nomination paper, it was not really open to the respondent No. 2 to challenge such an acceptance on an absolutely new ground which was not taken before the Returning Officer and the appellate Court also, for the first time, could not go into that question which was not raised before the Returning Officer.

12. The observations made above put it beyond any pale of doubt that an appeal u/s 51 cannot be filed challenging acceptance of the nomination paper on the ground, which was not raised before the Returning Officer. In other words, if candidate has not raised any objection to the nomination paper of the candidate an appeal challenging acceptance of the nomination paper is not tenable. The judgment of the Division Bench, referred to above, was binding on the learned Single Judge. The view taken by the learned Single Judge of the provisions of Rule 51 is contrary to the view taken by the Division Bench in the aforesaid judgment. Obviously, therefore, the judgment of the leaned Single Judge cannot be sustained. The appeal filed by respondent No. 5 before the Appellate Authority was not tenable and the Appellate Authority could not have entertained that appeal.

13. In that view of the matter, in our opinion, following order would meet the ends of justice:

(i) Order of the learned Single Judge dismissing the writ petition is quashed and set aside.

(ii) Rule in writ petition is made absolute in terms of prayer Clause (A) with no order as to costs.

(iii) Duly authenticated steno copy of this order be given to the learned Counsel for the parties.