
(2003) 06 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3720 of 2001

Suresh Balkrishna Pogale

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 30(4)

Citation : (2004) 1 BomCR 821 : (2003) 3 MhLj 782

Hon'ble Judges : S.T. Kharche, J;R.J. Kochar, J

Bench : Division Bench

Advocate : M.V. Samarth, for the Appellant; Bharti Dangre, Assistant Government Pleader for respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Rule. Heard forthwith by consent of parties.

2. The short question that arises for consideration in this writ petition is, whether a male person can be allowed to fill in the nomination form for the purpose of election to the post of Sarpanch by de-reservation of the post which is reserved for the women of the general category by virtue of Section 30(4)(c) of the Bombay Village Panchayats Act, 1938 (for short the Act) read with Rule 2A of The Bombay Village Panchayats (Sarpanch and Up-sarpanch) Election Rules 1964 (for short the Rules).

3. Brief facts are as under:

The petitioner is an elected member of the Gram Panchayat Pawana. The elections for the post of Sarpanch and Up-sarpanch were held on 8-9-2000. The respondent No. 4, Tahsildar, came to be appointed as Presiding/Returning Officer for the aforesaid elections. However, respondent No. 3 Additional District Collector held the elections for the post of Sarpanch and Up-sarpanch of the Gram Panchayat. The petitioner was elected as Up-sarpanch and he had filled in the nomination form for the purpose of election to the post of Sarpanch. The

post of Sarpanch of the Gram Panchayat Pawana is reserved for a woman belonging to the general category.

4. In all seven members of the Gram Panchayat were elected in the election. Two woman members belonging to general category were also elected as the members of the Gram Panchayat. Both the lady members were not willing to contest the election for the post of Sarpanch and they did not fill in the nomination form and, therefore, the woman member belonging to the general category was not available to contest the election of Sarpanch. In the circumstances, the petitioner had filled in the nomination form for the post of Sarpanch and his name was proposed by Bandu Dudharam Vidhate. Another elected member Wasudeo Tanbaji Vidhate also filled in the nomination form for the post of Sarpanch but since his name was riot proposed by Bandu Dudharam Vidhate, his nomination form was rejected.

5. All the seven elected members of the Grain Panchayat were present on 8-9-2000 for the purpose of election to the posts of Sarpanch and Up-Sarpanch, but the respondent No. 4 rejected the nomination form of the petitioner filled in for the post of Sarpanch on the ground that the post is exclusively reserved for woman belonging to general category. Being aggrieved by the rejection of his nomination form by respondent No. 4, the petitioner challenged the same by filing a dispute bearing No. 5/A-69/2000-2001 before the Additional Collector, Bhandara, which was rejected by respondent No. 3 on 31-3-2001. Thereafter, the petitioner also challenged the order passed by respondent No. 3 Additional Collector before respondent No. 2 - Additional Commissioner, Nagpur, by filing Appeal No. V-PA-70/2000-2001 and consequently the Additional Commissioner also confirmed the earlier orders vide his order dated 18-9-2001. These orders are under challenge in this writ petition.

6. The contention of the learned counsel for the petitioner is two fold. Firstly, he contended that as per Sub-section (1) of Section 30 of the Act every Panchayat shall be presided over by a Sarpanch who shall be elected by and from amongst the members thereof and, as such, the post of Sarpanch cannot be kept vacant. The second contention of the learned counsel for the petitioner is that though the post of Sarpanch of the Gram Panchayat Pawana is reserved for woman from general category in absence of any candidate from female members of general category, the male members would be entitled to contest for the said post of Sarpanch. He contended that as per the proviso to sub-rule 4A of the Rules if the office of Sarpanch is reserved for woman belonging to Scheduled Castes, or the Scheduled Tribes or, as the case may be, the category of Backward Classes of citizens, including Vimukta Jatis and Nomadic Tribes, and no elected member belonging to such Castes or Tribes is available then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of Sarpanch may be reserved u/s 30 of the Act. He contended that as per Sub-section (4) of Section 30 of the Act, it was incumbent on the part of respondent No. 4, being Presiding/Returning Officer, to allot the post reserved for

women of general category by draw of lots, especially when only one nomination form was filled in for the post of Sarpanch and that too by the petitioner which was valid, and consequently respondent No. 4 ought to have accepted the nomination form. He contended that the impugned orders passed by the respondents are not sustainable in law in view of the provisions under the Act and the Rules and deserve to be set aside.

7. The learned A. G. P. contended that as per the notification issued by the Government of Maharashtra dated 16-12-1998, the post of Sarpanch is reserved for the women of general category and not for other Backward castes women. She contended that the provisions of the aforesaid notification are not applicable to the male persons of general category. She contended that the petitioner cannot be allowed to contest the election to the post of Sarpanch in view of the provisions of Section 30(4)(c) of the Act read with Rule 2A of the Election Rules by dereserving the post of Sarpanch which would be in violation of the aforesaid provisions of law and, therefore, the impugned orders passed by the respondents are perfectly legal and valid.

8. We have carefully considered the contentions canvassed by the learned counsel for the parties. In order to appreciate the rival contentions, it is necessary to reproduce relevant portion from Section 30(1) of the Act which contemplates -

"Every Panchayat shall be presided over by a Sarpanch, who shall be elected by, and from amongst, the elected members thereof."

It is not disputed that the election to the post of Sarpanch of Gram Panchayat Pawana is exclusively reserved for women of general category. It is true that every Panchayat is supposed to be presided over by a Sarpanch who gets himself elected by and from amongst the elected members thereof. In the present case, the petitioner contested the election for the post of Sarpanch as well as Up-sarpanch and he has already been elected as Up-sarpanch and it is a fact that he is officiating as a Sarpanch of the said Gram Panchayat. Therefore, it is clear that till a woman candidate from the general category is available, the petitioner being Up-sarpanch is looking after the duties of the Sarpanch. In such a situation, it cannot be said that the post of Sarpanch reserved for a woman of general category cannot be kept vacant till a woman candidate from the general category to be elected for the post of Sarpanch is available. In such circumstances, we do not find force in the 1st contention of the learned counsel for the petitioner and the same is rejected.

8A. The bone of contention of the learned counsel for the petitioner is that as per the second proviso to Rule 4A of the Rules if the office of the Sarpanch is reserved originally for a woman belonging to the Backward class of citizens, then the office of the Sarpanch for the same tenure can be de-reserved and the office of the Sarpanch can be allowed to the Backward Class of citizens including male and female members. On this analogy, the learned counsel for the petitioner

contended that in the present case, the office of the Sarpanch is reserved for a woman from general category and no candidate is available from the women members of general category to be appointed to the office of Sarpanch, therefore the petitioner can be allowed to contest the election to the post of Sarpanch and his nomination form ought to have been accepted because there is no other contesting candidate available either from the general category or from the reserved category. This contention of the learned counsel for the petitioner is devoid of any merit. In this context, it is necessary to reproduce Rules 4 and 4A of the Rules which read as under :

"(4) The collector shall allot the offices of Sarpanchas in the district to be reserved for women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) by drawing lots according to the instructions given by the State Government from time to time :

Provided that, the lots in respect of the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens shall be drawn only among the offices of Sarpanchas reserved for such Castes, Tribes or as the case may be, for the category of Backward Class of Citizens :

Provided further that, while rotating such officers in the subsequent elections, the Panchayats where such offices were already reserved in earlier elections for women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) shall be excluded until in all such Panchayats reservation of offices is given, by rotation.

(4A) Notwithstanding anything contained in these rules, if the office of the Sarpanch is reserved for the Scheduled Castes, or the Scheduled Tribes or, as the case may be, the category of backward Class of citizens (including Vimukta Jatis and Nomadic Tribes), and no elected member belonging to such Castes, Tribes or as the case may be, the category of Backward Class of citizens is available, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved u/s 30 of the Act:

Provided that, in case where there is only one elected member belonging to a particular category for which such office has been . reserved and has filed the nomination form, then such office shall be declared for such member and if there are one or more elected members of such category and none of them have filed the nomination form, then such office for the same tenure shall be allotted by draw of lots to any of the categories for which the office of the Sarpanch may be reserved u/s 30 of the Act.

Provided further that, in a case where the office of the Sarpanch is reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or, as the case may be, the category of Backward Class of citizens (including Vimukta Jatis and Nomadic Tribes), and no elected women members belonging to such Castes

or Tribes or as the case may be, the category of Backward Class of Citizens, is available then the office of the Sarpanch, for the same tenure, shall be treated as (i) if originally reserved for women belonging to the Scheduled Castes, then for Scheduled Castes, (ii) if originally reserved for women belonging to the Scheduled Tribes, then for the Scheduled Tribes and (iii) if originally reserved for women belonging to the Backward Class of citizens, then for the Backward Class of citizens, (*italics supplied for emphasis*).

9. On plain reading of the second proviso, it would reveal that the case of the petitioner is not covered by this proviso because in the present case the office of the Sarpanch is reserved for women belonging to the general category and though the women candidate belonging to the general category is not available for the allotment of the office of the Sarpanch for the same tenure, it cannot be said that any other male candidate belonging to the general category or Scheduled Castes or Scheduled Tribes or Backward Class of citizens is entitled for such allotment of the same post. In fact, the Rules do not make any provision for such a contingency and it is not possible to accept the contention of the learned counsel for the petitioner that by virtue of Rule 4A of the Rules the petitioner can be allotted the post of Sarpanch or that the post of Sarpanch can be filled in by drawing lots. If such contention is allowed that would amount to de-reservation of the post of Sarpanch which can only be done by the legislature because the post of Sarpanch of Gram Panchayat Pawana has been admittedly reserved for women belonging to general category and, therefore, there is no merit in the second contention of the learned counsel for the petitioner because de-reservation of the post of Sarpanch would frustrate the very intention of the legislature and thus in such a situation, we are of the considered view that the impugned orders passed by the respondents directing to keep the post of Sarpanch vacant for the tenure for which it is reserved for women from general category are perfectly legal and valid. We do not find any merit in the present petition and the same stands dismissed. Rule discharged.