
(1998) 12 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 1818 of 1998

Tulshiram Dhongade and others

APPELLANT

Vs

Govind Rao Chitale and others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 — Rule 60, 88(3)
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13
Representation of the People Act, 1951 — Section 100

Citation : (1999) 2 ALLMR 618 : (1999) 2 BomCR 629 : (1999) 2 MhLj 440

Hon'ble Judges : N.P. Chapalgaonker, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : V.D. Salunke, for the Appellant; R.R. Mantri and V.B. Ghatge, A.G.P., for the Respondent

Judgement

N.P. Chapalgaonker, J.—This is a petition filed by three members of the Agricultural Produce Market Committee, Nanded, whose election has been set aside in an appeal by the Additional Commissioner, Aurangabad. Elections to Agricultural Produce Market Committee, Nanded were announced by an Election Programme Published on 12-5-1997. The representative of the agriculturists residing in the Market Area were to be elected and out of them three were to be elected by the members of the Village Panchayat functioning in the Market Area. Out of these three members, one was to be a member belonging to the Scheduled Castes or Scheduled Tribes. Petitioner Nos. 1 to 3 were declared elected from this constituency. Petitioner No. 1 was elected as a person belonging to reserved categories for which the seat was reserved. The petitioner No. 2 and 3 were elected on the open seats.

2. The election came to be challenged by the respondent No. 1 before the Collector, Nanded, under Rule 88 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967. The Collector, Nanded was pleased to reject

the application vide his order dt. 30th July 1997. This order was challenged in an appeal before the Commissioner under sub-rule (3) of Rule 88 and the Additional Commissioner, who heard the matter was pleased to allow the appeal setting aside the judgment and order of the Collector and set aside the entire process of the election of Agricultural Produce Market Committee, Nanded and directed that fresh election programme and election be declared. This order of the Additional Commissioner in Appeal No. 97/ELN/ PNT/57 dt. 16th March, 1998 has been challenged in this writ petition. The ground on which the election was set aside by the Additional Commissioner is that there was no identifying distinction on the ballot paper which would distinguish the candidates belonging to Scheduled Castes or Scheduled Tribes and the candidates who do not belong to these categories. The Additional Commissioner found that the candidates were not classified into open and reserved categories and the voters were asked to give two votes to the candidates from open seats and one for the candidates contesting for the reserved seat, even when they were totally unaware about the fact as to which candidate is contesting for which seat.

3. Mr. V.D. Salunke, learned Counsel for petitioner contended that the election can be set aside only if there is corrupt practice or the candidate was not qualified or when there is infraction of the rule which has materially affected the result of the election. He, therefore, contended that there is no material in the pleading nor there is any convincing proof to conclude that the election was materially affected because of the irregularity alleged. He also submitted that the ballot papers printed were in conformity with the Form 11 appended to the Rules 1967, which was the only requirement of Rule 60 and if this requirement is complied with, no alleged inconvenience to voters will entitle the authorities acting under the Rule 88 to set aside the election. We have heard Mr. R.R. Mantri, learned Counsel for respondent No. 1 and Shri V.B. Ghatge, learned A.O.P. for respondent 2 to 5, who supported the order of the Additional Commissioner.

4. A true copy of the ballot paper has been presented before us which shows that the names of all the candidates contesting the three seats (including the one reserved) were arranged alphabetically and there was no mark on the ballot paper indicating anything as to who were the contesting candidates for the seat reserved for Scheduled Castes or Scheduled Tribes. According to Mr. Salunke, this was perfectly in order and in compliance with the Form-11 prescribed under Rule 60. However, a foot note to the ballot paper directed that every voter has two votes for the general seats and one vote for reserved seat, as such, total three votes. They were also further directed not to put more than one cross mark against any of the candidate and not to mark more than three cross marks in the whole ballot paper. Form-11 does not contain any such foot note. The Collector's order rejecting the election application mentions that as many as 136 votes were declared invalid, but they were for different reasons. All the invalid votes were not merely because all the votes were in favour of the candidates belonging to the unreserved category. Learned Counsel for petitioner contended that

Additional Commissioner seems to have swayed away with the comments that 136 votes were declared invalid, but unless it is proved that those votes were declared invalid because of absence of any distinction as to who were the candidates for the reserved seats and who were contesting for unreserved seats, it cannot be concluded that the result was materially affected.

5. Right to take part in election is a part of electoral right and this will have to be enjoyed as per the dictates of the statute. Unless a statute or the statutory rule gives a right to challenge the election, challenge to the election is not maintainable. Similarly, if the election can be challenged on specified ground, then, challenge can only be on those grounds and not on other grounds. Section 100 of the Representation of Peoples Act, 1951 gives ground on which election can be challenged and if the High Court is of the opinion that any of those grounds listed in section 100 is duly proved, the election shall be set aside. Legislature has every right to specify the grounds on which a particular election can be challenged. But if no grounds are specified then the authority before whom the election petition shall lie has a wide discretion to set aside the election as per his discretion and he is not circumscribed by the grounds specified in section 100 of the Representation of Peoples Act if the election is not governed by that Act. It is true that to set aside an election, which is a choice indicated by the people should not be done lightly. An authority who is enquiring into the validity of the election has a duty to see whether the election is required to be set aside and the reasons would be well founded. Which ground shall be sufficient to set aside the election is a matter to be decided by the authority in law.

6. Shri Salunke, learned Counsel vehemently urged before us that there is no proof to hold that the defeated candidate i.e. respondent No. 1 could have been elected in place of the petitioner No. 1 or any other respondent could have dislodged the petitioner Nos. 1, 2 and 3, if the ballot papers would have indicated which of the candidate is contesting for reserved seat and which of the candidate is contesting for an unreserved seat and unless result is shown to have been materially affected, even assuming that such a distinction was necessary, there was no jurisdiction for the Additional Commissioner to set aside the election.

7. There are two kinds of grounds on which election can be set aside. The first is absolute grounds, the existence of any of which is sufficient to set of aside the election. Second kind of grounds include such ground, existence of which alone will not be sufficient for holding election void and it will have to be also shown that infraction has materially affected the result of the case. The Representation of Peoples Act, 1951 lists the grounds belonging to both these categories. Rule 88 of the Rules of 1967 does not specify as to on what grounds election of a member of Agricultural Produce Market Committee could be set aside. Therefore, it is not proper to restrict the discretion vested in the authority determining the validity of the election of a Member of the Agricultural Produce Market Committee and read in the rule which actually is not there. An election to High Court Bar

Association at Chandigarh was challenged before the Punjab and Haryana High Court Bhoop Singh Vs. Bar Council of Punjab and Haryana and Others, and the Full Bench, hearing the opined that when the statute does not require that election petitioner should show that the result is materially affected, it is not necessary to prove such an allegation for succeeding in the petition. Referring to Rule 34 of the Rules applicable to the election challenged, the Full Bench observed :

"Reference to the Rule 34, which virtually is exhaustive as regards disputes as to the validity of elections, would show that the framers of these rules did not choose to incorporate in identical terms that an election is not to be set aside on the ground of infraction of a statutory rule unless the result thereof has been materially affected. If this argument of the respondents were to be accepted, the end result would be that qua statutes which in express terms make a provision that the election is not to be set aside unless the result is to be materially affected in contradistinction to those where no such provision is made, the legal consequence would, in effect, be the same. This on the face of it seems incongruous. It would make the provision where the same is positively made as virtually tautologous. On the other hand, to induct bodily into a set of statutory provisions where it is not so made would be an attempt to read something into the provisions which the rule makers themselves had not chosen to provide. It is a settled canon of construction that a casus omissus cannot and should not be readily supplied by means of judicial interpretation."

The learned Judge, delivering the first judgment, quoted Maxwell's authoritative work "On Interpretation of Statutes" :

"It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express. It is a strong thing to read into an Act of Parliament words which are not there"

Similarly is the case of the elections in dispute before us. Rule 88 does not circumscribe the discretion of the tribunal hearing the challenge to the election, restricting the tribunal from setting aside an election, unless it is shown that the result is materially affected, In view of this, we would not be in a position to read these requirements. If there is a wide discretion given to the authorities to set aside an election and the grounds have not been specified, High Court under Article 227 will only have to see whether the discretion has been soundly exercised on sound proof. The whole dispute appears to have arisen because of failure of the Government to update the rules. Section 13 of the Maharashtra Agricultural Produce Market Committee (Regulation) Act, 1963 speaks about the constitution of the market committee. By an amendment inserted by Maharashtra Act No. 27 of 1987, out of three seats, to be filled in by the representatives elected by the members of the Village Panchayat, one seat was reserved for candidates belonging to the Scheduled Castes or Scheduled Tribes.

Consequently, amendment in the rules should have been carried out, but it appears that the Government lost sight of this requirement. Rule 60 and Form No. 11 were not amended, in view of the amendment. If the Statute as amended in 1987 requires that one seat should be filled in by the candidates belonging to the reserved categories i.e. Scheduled Castes or Scheduled Tribes, then, his choice to be made by the voters will have to be from amongst the candidates who have offered themselves for the election. The ballot paper to be a valid one was to be prepared in such a manner which would give an opportunity to the voters to indicate their choices as required by the Statute. If the Form is appended and the rule has become redundant or in-operable. In view of the amendment in the Act, under which rules are framed, then the Form will have to be suitably amended to give true effect to the Act. It is the duty of the authority implementing the Act that the Rules and the Forms are not permitted to override the express amended statutory provision. Admittedly, the caste of a person cannot be identified by name or the surname. Therefore, there would have been two separate ballot papers or two separate categories or separation on the same ballot paper of the candidates contesting for the reserved seat and candidates contesting for open seats. Such a distinction was admittedly not there. It was argued before us that the Returning Officer had no choice but to print the ballot paper. We note that the Returning Officer has taken a note of the fact that the ballot paper in Form No. 11 by itself will not be sufficient and has put certain notes giving directions to the voters which do not form the part of the Form No. 11 prescribed under the rules. If he has chosen to add those instructions on the ballot paper, nothing prevented him from indicating in the third column whether the candidate is contesting for a reserved seat or for a general seat. This was necessary particularly in view of the fact that the candidates and voters both were from different villages and it cannot be presumed that everybody is knowing which candidates are contesting for reserved seat. This would defeat the electoral right which is given by section 13 r/w Rule 60 and other rules. In view of this, we find that the ballot paper was not really serving the purpose for which it was meant. On a reference, Full Bench of this Court, in the case of Dattatraya Narhar Pitale Vs. Prabhakar Dinkar Gokhale and Another, held that there is nothing in section 21 specifically limiting the grounds on which an election, co-option or nomination of a Councillor can be challenged and therefore, the said election, co-option or nomination can be challenged on any ground other than the corrupt practice. The provisions of sub-section (10) or (12) of section 21 of the Municipalities Act do not restrict the grounds of a challenge to mere corrupt practices. In the absence of such limitation, the election, co-option or nomination of any Councillor can be challenged on any ground. Therefore, in the present case, we are of the opinion that the Collector and the Commissioner had jurisdiction to set aside an election on any ground if they are satisfied that any of the statutory requirements in spirit was not observed or true will of the voters could not be expressed because of some omissions.

8. Mr. Salunke, further contended that the Presiding Officer of the Election

Tribunal will have to apply his own mind and arrive at conclusion and he cannot base his judgment on opinion supplied to him by some other authority. In this respect, he read over to us a portion of judgment of the Commissioner, which reads as under :

"In this regard, Jt. Registrar, Co-operative Societies, Aurangabad, was requested to clarify legal position regarding printing of ballot papers for the Village Panchayat constituency. The Joint Registrar, Co-operatives has clarified vide his letter dt. 16-2-98 that the Returning Officer ought to have either printed separate ballot papers for open and reserve seats, or should have shown the two categories separately on the same ballot paper."

It is true that the Additional Commissioner admits that he requested to clarify the legal position regarding printing of ballot papers for the Village Panchayat constituency but we do not find that the whole conclusion reached by the Additional Commissioner rest merely on the opinion given by the Joint Registrar, Co-operative Societies. In the later portion of the judgment, the Additional Commissioner has recorded that he has gone through the report, heard the arguments and also perused the ballot papers and recorded findings, as under :

"On perusal of the ballot paper, it is quite clear that the candidates were not classified into open and reserved categories. It was left entirely to the voter to vote for two open and one reserved seat, even when the voters were completely unaware about the category of the contesting candidates. Thus, the voters were unable to exercise their franchise properly due to the ambiguity in the ballot paper."

This is the precise reason for which the Additional Commissioner thought it fit to set aside the election. We do not agree with the submission made that the Additional Commissioner has not applied his mind.

9. Though we are confirming the judgment of the Additional Commissioner holding to set aside the election result, we do not approve the part of operative order passed by the learned Additional Commissioner. What he found was the ballot paper was improperly printed and there is no other infirmity in the election. He should have directed the authorities to print the ballot paper, distinguishing the seat reserved for Scheduled Castes or Scheduled Tribes, either by printing two separate ballot papers or separating them in two groups on the same ballot paper and should have ordered that the election should continue from that stage for the concerned constituency. There was absolutely no reason to order re-election in its entirety.

10. In view of this, we set aside that part of the order passed by the Additional Commissioner, Aurangabad and direct that the Collector shall reprint the ballot papers for the constituency of agriculturists only to the extent of three candidates to be elected by the members of the Village Panchayat and the election process shall continue with the same candidates. He shall also fix the date of polling within a period of three weeks from today and complete the

election process and declare the result. Writ Petition is partly allowed and rule is made absolute to that extent only. No order as to the costs.

At this stage, Mr. Salunke, learned Counsel for petitioner prays for suspension of the order of the Additional Commissioner for a period of two weeks. We direct the Collector to fix the date of the voting after two weeks but the rest of the process should continue.

11. Writ petition allowed partly.