

(2006) 09 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 110 of 2006

Uttamsingh Rambhau Chavan	Vs	APPELLANT
Ganesh Shivsingh Chavan and another		RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Constitution of India, 1950 — Article 243K, 324

Citation : (2006) 09 BOM CK 0019

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : K.S. Narwade, for the Appellant; R.L. Khapre for respondent no. 1, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this writ petition, the petitioner has challenged the judgment and order dated 23-12-2005, passed by the Civil Judge, Junior Division, Malkapur in Election Petition No. 2/2005. In the said Election Petition, filed u/s 15 of the Bombay Village Panchayat Act, 1958, the petitioner challenged the rejection his nomination paper by the respondent No. 2 and consequential Election of respondent No. 1 as un-opposed. The petition has been dismissed by the Lower Court, and this Court has issued Rule in the matter on 6-3-2006. The petitioner has thereafter moved Civil Application No. 5146/2006, for grant of early hearing, and by consent of parties, the petition has been heard finally, at that stage only because of the nature of controversy and short point involved.

2. The contention of petitioner is that it is not necessary for petitioner/candidate to supply caste certificate along with his nomination paper and rejection of his nomination paper by the respondent No. 2 is bad.

3. Facts in brief are that, the petitioner wanted to contest the elections of Gram Panchayat at village Datala in June, 2005. The petitioner belongs to Scheduled Tribe and his tribe is "Pardhi". Seat from ward No. 4 was reserved for Scheduled

Tribe candidate. The petitioner accordingly submitted his nomination paper from the said reserved category and he contends that along with the nomination paper he also supplied xerox copy of the caste certificate. At the time of scrutiny on 6-6-2005, when the petitioner was present along with all the originals, along with original of his caste certificate, though no body raised any objection to the nomination paper of the petitioner, the respondent No. 2 Returning Officer called upon the petitioner to show caste certificate, and thereafter at about 5.30 p.m., final voters list of validly nominated candidates was published by the respondent No. 2. Name of petitioner was not appearing in it and upon enquiry he came to know that his nomination paper is rejected. He thereafter collected copies of the order rejecting his nomination paper and found that it was only a cryptic order which mentioned that his nomination paper was rejected because despite granting opportunity petitioner did not produced caste certificate. He then approached the trial Court by filing election petition. The Court trying election petition framed issued and after placing reliance upon the notification issued by the State Election Commission on 21-12-1995, found that the nomination paper of petitioner was not accompanied by any caste certificate.

4. While assailing this order of lower Court, in election petition and also the order rejecting the nomination paper, Advocate Narwade, appearing for petitioner has contended that there is no requirement in law to file any caste certificate along with the nomination paper. He has invited attention to Rule 11(2) of the Bombay Village Panchayat Election Rules, 1959, and also to form of nomination paper prescribed, that only caste is required to be disclosed and caste certificate is not required to be enclosed. He states that the issue is not more res Integra and relies upon the Division Bench judgment of this Court reported at Anant Janardan Patil Vs. State of Maharashtra and Others, . He also relies upon the judgment of Hon'ble Apex Court reported at A.C. Jose Vs. Sivan Pillai and Others, , to contend that the circular issued by the State Election Commission is not at all relevant and cannot have a effect of amendment the provisions of Bombay Village Panchayat Act or the Election Rules. According to him, the State Election Commission could not have directed filing of any caste certificate along with the nomination form. He contends that the reliance upon the said direction of State Election Commission by the learned trial Court is totally erroneous and unsustainable.

5. Advocate Khapre, appearing for respondent No. 1 as also learned Assistant Government Pleader have supported the impugned order.

6. Advocate Khapre, contends that there is a finding of fact delivered by the Court below that the petitioner did not submit caste certificate along his nomination paper. He further invites attention to the provisions of Article 324 of Constitution of India to state that the superintendence of such elections is vested in Election Commission. He further invites attention to Article 243-K, to point out that the superintendence directions and control of all Elections of State is vested in State Election Commission. He further invites attention to the provisions of

section 10-A of the Bombay Village Panchayat Act, to contend that similar provisions entrusting superintendence to State Election Commission are also added by amendment to Bombay Village Panchayat Act. He further states that in view of sub-section (4), the election commission can issue special or general order, or issue directions which are inconsistent with the provisions of the Act for fair and free elections. He argues that by directing a candidate to submit his caste certificate along with the nomination form, the State Election Commission has not acted in any way inconsistent with the provisions of Bombay Village Panchayat Act or the Election rules, framed thereunder. He states that the judgment reported at A.C. Jose Vs. Sivan Pillai and Others, , on which the petitioner has placed reliance itself shows this aspect. He further invites attention to the judgment reported at Kanhiya Lal Omar Vs. R.K. Trivedi and Others, , to substantiate his contention.

7. Perusal of order passed by the trial court in election petition reveals that the petitioner did not submit any caste certificate along with his nomination form. This aspect and finding is not questioned by the petitioner while arguing the matter finally. As is apparent from the line of argument only the emphasis is to show that there is no such requirement under any provisions of Bombay Village Panchayat Act or Rules framed thereunder. Rule 8 of the Election Rules, deals with nomination of candidate and it nowhere expressly states that a candidate submitting nomination paper has to submit his caste certificate along with it, if he is contesting from any reserved constituency. Form A, which gives form of nomination paper only states that, if a candidate is contesting from reserved constituency, he has to state the name of caste or tribe. Again there is no requirement of filing of caste certificate along with nomination paper. The Division Bench judgment of this Court on which Advocate Narwade, has placed reliance does not however consider this situation. There the nomination paper submitted by the candidate i.e. the petitioner before this Court was accompanied by the xerox copy of caste certificate. The question was about format of that caste certificate. This Court has found that Rule 11(2A) of Election Rules in unequivocal terms provide that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial character. The Hon''ble Division Bench found that the defect in proforma of caste certificate was not fault of substantial character and hence the nomination paper of petitioner could not have been rejected. It is therefore, clear that this ruling is not clinching the issue, as is sought to be contended by the learned counsel.

8. The judgment of Hon''ble Apex Court reported at A.C. Jose Vs. Sivan Pillai and Others, , on which the learned counsel for petitioner has placed reliance shows that the Commission cannot override the Act or Rules, and pass order in direct disobedience thereto. Observations in para No. 25 are important and those observations are as under:-

"25. To sum up, therefore, the legal and constitutional position is as follows:

(a) when there is no Parliamentary legislation or rule made under the said

legislation, the Commission is free to pass any orders, in respect of conduct of election.

(b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both Statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.

(c) where the Act or the Rules are silent the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election, and

(d) where a particular direction by the Commission is submitted to the Government for approval as required by the Rules, it is not open to the Commission to go ahead with implementation of it, as its own sweet will even if the approval of the Government is not given."

9. Perusal of Article 243-K of the Constitution of India, clearly reveals that the State Election Commission is in-charge of elections of Panchayat in State of Maharashtra. The provisions of Bombay Village Panchayat Act, have also been amended accordingly in 1994 and section 10-A, thereof reads as under :

"10-A. State Election Commission - (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats shall vest in the State Election Commissioner.

(2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the Commission or any officer of the State Government not below the rank of Tahsildar.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of panchayats under this Act or the rules, shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act, and the rules, the Commission may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections."

Sub-section (4) of section 10-A, clearly shows that it authorises State Election Commission to issue special or general orders or directions which are not inconsistent with the provisions of the Act for free and fair elections. This position is recognized even in the judgment of Hon'ble Apex Court reported at A.C. Jose Vs. Sivan Pillai and Others, , and perusal of para No. 25(c), clearly shows that when the Act or rules are silent, the Commission has plenary powers to give directions in respect of the conduct of election. The Hon'ble Apex Court has interpreted provisions of Article 324 to confer such plenary powers upon the

Commission. The same interpretation will apply to section 10-A of the Bombay Village Panchayat Act. It is therefore, apparent that when there is no provision in the Act or Rules, the State Election Commission can issue appropriate order or directions in this respect. The only requirement is that such direction has to be for fair and free elections.

10. Other judgment on which Advocate Khapre, has placed reliance is Kanhiya Lal Omar Vs. R.K. Trivedi and Others, , again considers provisions of Article 324 only to declare that the Election Commission is competent to issue orders in this respect. Union of India (UOI) Vs. Association for Democratic Reforms and Another, , again considers the provisions of Article 324 and in paragraph No. 56 scope of jurisdiction available to Election Commission in this respect has been reproduced. Conclusion No. 1 in para No. 56, states that the Election Commission has all powers necessary for smooth conduct of elections, and it is only required to act in conformity with the provisions of law made by the Parliament or State Legislature. It has been observed that the Constitution of India has taken care of scope of exercise of residuary powers by Election Commission in its own right. It has been observed that the word "election" includes the entire process of election which consists of several stages and it embraces many steps. It has been further mentioned that the Election Commission may take necessary steps to maintain purity of elections and in particular bring a transparency in the process of election.

11. As already observed above, there is no provision either in the Act or in the rules, which requires a candidate contesting from reserved category to submit along with his nomination paper, caste certificate in support of his contention that he belongs to particular reserved caste or tribe. It is therefore, clear that the order issued by the State Election Commission on 3-3-1995, is not in violation of any provisions of the Bombay Village Panchayat Act, or rules made therein. Perusal of the said order clearly reveals that after realising this situation the State Election Commission has also found that certain contesting candidates claiming to be belonging to such reserved caste or tribes got elected thereby affecting the purity of the election and such election cannot be said to be free and fair election. The Election Commission therefore, thought it proper to make appropriate provision in that regard to seek production of proof of such caste or tribe of such candidate, and therefore, the requirement of submitting such caste certificate has been added. This has been done in exercise of powers under Article 243-K and 243-AZ of the Constitution of India, and section 10-A of the Bombay Village Panchayat Act. The very preamble of this order or circular clearly reveals that it is issued in public interest and to see that the elections are free and fair and a candidate not really belonging to scheduled caste or scheduled tribe is not successful in getting himself elected against the reserved seat. It is well known fact that trial of election petition also takes several years and if such person who gets elected by practising fraud continues for several years, the spirit of democracy is definitely violated. The direction or order of State Election Commission is therefore, perfectly in consonance with the scheme of Constitution

of India and also section 10-A of the Bombay Village Panchayat Act.

12. It cannot be therefore be said that the rejection of nomination paper of petitioner on the ground that it was not accompanied by caste certificate, is invalid. The respondent No. 2 Returning Officer has expressly observed that though opportunity was given to the petitioner to produce his caste certificate, he could not produce it and hence his nomination paper was rejected. The Court below has dismissed the election petition of present petitioner on this ground. I therefore find that no case is made out for interference in exercise of writ jurisdiction. Writ petition is thus dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.