

Smt. Shobha Ashok Patil Vs Smt. Mahananda Rajaram Nikam and others

Court: Bombay High Court

Date of Decision: July 16, 1997

Acts Referred: Bombay Village Panchayats Election Rules, 1959 " Rule 34
Representation of the People Act, 1951 " Section 33(2), 54(4), 63

Citation: (1998) 1 BomCR 700 : (1997) 3 MhLj 353

Hon'ble Judges: F.I. Rebello, J

Bench: Single Bench

Advocate: A.A. Kumbhakoni, for the Appellant; T.E. Mane, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

F.I. Rebello, J.

The petitioner in this petition impugns the order dated 23rd June 1995 whereby the 2nd Joint Civil Judge, Junior Division

at Madha dismissed the election petition being Election Petition No. 2 of 1995 filed by the petitioner herein.

2. The elections were held to the Grampanchayat of village Ujani (Tahsil) Madha on 20th April 1995. The petitioner contested from Ward No. 3

which was a multi seats ward. There were three candidates to be elected of which one seat was reserved for woman. The petitioner had filed her

nomination alongwith opponent No. 1 for the reserved seat meant for woman.

3. At the elections held the votes secured by the candidates is as under :-

Name No. of votes.

Sharad Digambar Vaste (Resp. 3) 134

Smt. Mahananda Rajaram Nikam (Resp. 1) 119

Shobha Ashok Patil (Petitioner) 118

Haibatrao Nivruti Nikam (Resp. 2) 115

Navnath Bhanudas Lokhare (Resp. 5) 112

Abhiman Baliram Lokhare (Resp. 4) 92

Laxman Namdeo Lokhare (Resp. 6) 74

The Returning Officer declared Smt. Mahananda Rajaram Nikam, The respondent No. 1 elected for the reserved seat for woman on the ground

that she had secured the highest number of votes amongst the woman candidates. Thereafter the Returning Officer proceeded to declare elected

the respondent No. 3 who had secured 134 votes and the last candidate from the said Ward elected was respondent No. 2 Haibatrao Nivruti

Nikam securing 115 votes.

4. Election petition was filed on the ground that the petitioner having secured 118 votes ought to have been declared elected for the third seat and

not respondent No. 2 Haibatrao Nivruti Nikam. The 2nd Joint Civil Judge. Junior Division, Madha however held that the Returning Officer was

justified in holding Respondent No. 2 as the winner as the petitioner had contested for reserved seat for woman and as respondent No. 1 had been

declared elected to the reserved seat for woman the petitioner was disentitled to be considered for the general seat and consequently dismissed the

petition. Some other reasons have been advanced which have nothing to do with the decision of an election petition.

5. Mr. Kumbhakoni, learned Counsel for the petitioner ton tends that the order of the Returning Officer as also the judgment of the Civil Judge.

Junior Division is clearly contrary to the Rule 34 of the Bombay Village Panchayat Election Rules, 1959. In terms of the said rules after elections

have been notified for a ward a candidate seeking to file the nomination has to file the same in term of Rule 10 alongwith an amount of Rs. 50/- in

cash. However in a Ward in which a seat or seats is or are reserved for a woman, Scheduled Castes or Scheduled Tribes the sum to be deposited

by or on behalf of a candidate who is a woman or a member of a Scheduled Castes or Scheduled Tribes shall be Rs. 10/-. There is no separate

provision whereby a candidate who contests a reserved seat in order to contest the general seat from the same ward has to deposit another set of

fees. Thereafter in terms of Rule 34 the Returning Officer has to declare the candidate who has secured the largest number of votes as elected to

till such reserved seat. There is a proviso which sets out that if there is a reservation of seat for woman and for Scheduled Castes and/or Scheduled

Tribes the result of seat or seats reserved for Scheduled Castes shall be declared first and then result of the seat or seats reserved for woman. In

other words in a ward where there is also a reserved seat the Returning Officer has to first declare as elected a member of the Scheduled Castes

or Scheduled Tribes thereafter declare the result of the seat reserved for woman. After that has been complied with the Returning Officer shall then

declare amongst all other candidates excluding those who have been declared elected to fill the reserved seat from amongst candidates who have

secured the largest number of votes to be elected to fill the reserved seat. On a perusal of sub-rule (1) and (2), there is no manner of doubt that

what is contemplated by the rule is that in the first instance when there is a seat reserved for Scheduled Castes or Scheduled Tribes the result

therein shall be first declared after that is declared, thereafter the result of the seat reserved for woman should be declared and only thereafter from

the candidate who are left in the field, the candidate securing highest number of votes has to be declared elected for the remaining seat or seats.

This in turn may possibly result in all seats being filled by candidate belonging to a particular category to say Scheduled Castes or Scheduled Tribes

or Woman.

6. The question is whether the reasoning adopted by the Returning Officer and the Civil Judge, Junior Division, holding that once a candidate is

declared elected from a reserved seat then other candidates who had contested the reserved seat are barred from being considered for the seat or

seats which are left is right ? The answer according to me is no, as the Issue is no longer res Integra considering the judgments of this Court.

7. The Apex Court while interpreting a similar provision under the Representation of Peoples Act in the case of Double Member Constituency in

the case of Shri V.V. Giri Vs. Dippala Suri Dora and Others, interpreted section 33(2), section 54(4), section 63 and other sections and held that

even in the case of Double Member Constituency wherein one seat is reserved for a Scheduled Castes if both the candidates who secured highest

number of votes after the result of the Scheduled Caste candidates is declared is also a Scheduled Caste then such candidate shall be declared to

be elected. The argument that if a candidate has not opted to contest the general seat while giving the declaration for the reserved seat and is -----

ineligible to contest the general seat was also rejected.

8. Earlier a Division Bench of this Court in the case of Digambar Rao Bindu v. Dev Rao Kamble and others, reported in 15 E.L.R. 187 had taken

the same view. The Division Bench had further observed therein that no separate nomination is necessary for the general seat and a member of the

Scheduled Caste is qualified by his filing a nomination to the reserved seat to contest the seat and it could not be said that if such a candidate had

not filled in his nomination for the general seat his case ought not to be considered.

9. The matter thereafter has also arisen before another Division Bench of this Court in the case of Manjuli Vs. Civil Judge, Senior Division,

Wardha and Others, . In that petition also similarly one seat was reserved for a woman. After the counting of result the woman securing the highest

number of votes was declared elected. Thereafter from the other candidates another woman topped the list from amongst the remaining candidates

and she was declared to be elected by the Returning Officer. This was a subject matter of an election petition. The election petition against the

declaration of result by Returning Officer was dismissed and that is how the petition came before this Court. Before this Court a challenge was also

made to Rule 34 of the Bombay Village Panchayat Election Rules on the ground that if such interpretation was possible the same would be

unreasonable. The Division Bench after considering the matter was pleased to dismiss the petition. The Division Bench relied on another

unreported judgment in the Special Civil Application No. 127 of 1963 dated 14th September 1964 Mah. wherein one of the question was where

one of the woman candidates had made an endorsement on a nomination paper that she was a candidate for a general seat. It had been held that

this would not disqualify such a candidate from contesting the reserved seat. The Division Bench pointed out that the provisions of the Bombay

Village Panchayat Election Rules seems to be copied from the Representation of Peoples Act, 1951. The Division Bench noticed the interpretation

given by the Apex Court in the case of Shri V.V. Giri Vs. Dippala Suri Dora and Others, in the case of multi candidates constituency. The Division

Bench has thereafter observed as under :-

We may point out that the reservation of seats for women and of the Scheduled Castes and Scheduled Tribes is in the nature of a facility given to

them or a concession made to a weaker section of the society in order to offer them reasonable opportunity of being represented in the

administration as such. The plea, therefore, is to see that minimum number of seats as contemplated by the legislature are filled in. There is no

objection if more members from these weaker sections are elected to the Village Panchayat or other elected bodies. This result of guaranteeing

minimum seats as required by the statute is properly carried out by the provisions of Rule 34. We might take up the instance of the present

disputed Ward No. 2 and examine how Rule 34 is, in fact, beneficial and not obstructive of affording proper representation to women. This rule,

according to us, fulfils two requirements. It ensures one seat from that ward being allotted to the woman candidate for which class a seat has been

declared reserved in this ward. At the same time, it fulfils another important requirement of the democratic set up of the institution viz. those

candidates who are favoured by the electorate and in whose favour highest number of votes are cast must represent the constituency.

I have therefore no hesitation to hold that the order of the Civil Judge, Junior Division dated 23rd June 1995 has to be set aside.

10. In the result, order dated 23rd June 1995 passed by the Joint Civil Judge, Junior Division, Madha, in Election Petition No. 2 of 1995 is

quashed and set aside and the petitioner herein is declared elected from Ward No. 3 in the place of respondent No. 2 Haibatrao Nivruti Nikam.

The Returning Officer to make the necessary changes as required by the provisions of the Bombay Village Panchayat Act and the Bombay Village

Panchayat Election Rules forthwith.

11. Rule made absolute in terms aforesaid. In the circumstances of the case there shall be no order as to costs.

12. Petition allowed.