

(1968) 09 BOM CK 0016

Bombay High Court

Case No: Special Application No. 1457 of 1968

Girdharilal Ramlal Gulati

APPELLANT

Vs

Santumal Gangumal Ahuja

RESPONDENT

Date of Decision: Sept. 21, 1968

Acts Referred:

- Representation of the People Act, 1951 - Section 101, 117, 118, 97

Citation: (1969) 71 BOMLR 281 : (1969) MhLj 472

Hon'ble Judges: Wagle, J; Patel, J

Bench: Division Bench

Judgement

Patel, J.

By this application the petitioner seeks to challenge the order made by the Extra Assistant Judge, Ahmednagar, in an election petition preventing him from inspecting the ballot papers in respect of votes acquired by respondent No. 1 at the local election. The short facts giving rise to this petition are as follows: Election to Shrirampur Municipal Ward No. 4 was held on June 3, 1967, under the Maharashtra Municipalities Act (XL of 1965) (hereinafter referred to as the said Act). At this election 576 votes were cast. The counting was completed on June 4, 1967. The petitioner and respondents Nos. 1 to 4 were the candidates from Ward No. 4. At this election, the petitioner was declared elected by the Returning Officer. Respondent No. 1 made an application to the Returning Officer for recounting of the votes which the Returning Officer, by virtue of the powers vested in him, rejected as frivolous. Thereafter, respondent No. 1 made an application to the District Court at Ahmednagar for setting aside the election of the petitioner and declaring that he is validly elected. According to the declared results the petitioner had obtained 269 votes and respondent No. 1 had obtained 268 votes. Respondent No. 1 contended that valid votes cast in his favour were wrongly rejected and invalid votes east in favour of the petitioner were improperly considered as valid. He, therefore, prayed that the ballot papers should be re scrutinised by the Court and he should be

declared as elected. The petitioner resisted this application denying the allegations made by respondent No. 1. He, on his part, contended that invalid votes were wrongly considered to be valid votes cast in favour of respondent No. 1 and that some of the votes held as valid in his favour be declared as invalid.

2. Thereafter at the request of respondent No. 1 a Commissioner was appointed with powers to scrutinize all the voting papers, to make different bundles of undisputed votes in favour of each of the candidates and also to make different bundles in respect of objected votes. This the Commissioner did and submitted his report thereafter Respondent No. 1 then filed his objections and so did the petitioner. Respondent No. 1 then applied for inspection of the voting papers as much time had elapsed. His application was granted by the learned Judge. In his turn, the petitioner also made an application for inspection of the voting papers to which respondent No. 1 raised an objection. The learned Judge after having heard the arguments came to the conclusion that as there is no provision for recrimination by an elected candidate against the candidate who makes an application for setting aside the former's election and asking that he be declared as elected, the petitioner had no right to challenge any of the votes in favour of respondent No. 1 and consequently would have no right even to inspect the voting papers. By this petition the petitioner seeks to challenge this order.

3. The reasoning of the learned Judge, is based on the provisions of the Representation of the People Act, 1951 (hereinafter referred to as the Act of 1951) as modified from time to time. Section 97 of the said Act gives the returned candidate a right to give evidence to prove that the election of the petitioning candidate would have been void if he had been a returned candidate, This, however, is conditioned by the proviso that the returned candidate gives notice within fourteen days from the date of commencement of the trial, to the High Court, of his intention to give such evidence and also furnishes security as referred to in Sections 117 and 118 of the said Act. If he does not do so, the proviso disentitles him to lead any such evidence. Section 101 of the said Act enables the High Court, if it is of opinion that the petitioning candidate or any other candidate has received a majority of valid votes, to declare such candidate as duly elected. The provisions of the Act of 1951 were considered by the Supreme Court in [Jabar Singh Vs. Genda Lal](#), and their Lordships have held that where the returned candidate had not filed a recrimination in terms of Section 97 he would be disentitled from leading any evidence to invalidate the election of any candidate, in whose favour relief is claimed, and in such a case they said that the votes which had been accepted as valid votes by the Returning Officer would be presumed to be valid under the provisions of Section 101(a) of the said Act.

4. The provisions under the Bombay Act of 1965 are entirely different though in some respect parallel to the Act of 1951. Section 21 of the Act of 1965 which relates to the settlement of election disputes gives the District Court the jurisdiction to

decide election petitions. Sub-section (2) relates to the requirements of such a petition. Sub-section (3) enables the petitioner to claim three kinds of declarations viz., that the election of the returned candidate is void and that the election of all or any of the returned candidates is void and that he himself or any other candidate has been duly elected. Sub-section (4) relates to parties to such a petition. Sub-sections (5) and (6) need not detain us. Sub-section (7) gives the Judge all the powers of a civil Court including the powers specifically mentioned therein. Sub-section (8) provides that the Judge shall not permit withdrawal or compromise of any application or amendment or alteration of any pleading- unless he is satisfied that the same is bona fide and not collusive. Sub-sections (9) and (10), which are really material in "this case, are as follows:

(9) The Judge, after such inquiry as he deems necessary, may pass suitable order and his order shall be conclusive.

(10) If the petitioner has, in addition to calling in question the election of the returned candidate, claimed a declaration that he; himself or any other candidate has been duly elected and t-ho Judge is satisfied that-

(a) the petitioner or such other candidate received sufficient number of valid votes to have been elected ; or

(b) but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a sufficient number of valid votes to haw been elected,

the Judge may, after declaring the election of the returned candidate void, declare the petitioner or such other candidate to have been duly elected :

Provided that-

(i) for the purpose of such computation, no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person known or unknown in giving or obtaining it ;

(ii) after such computation, if any equality of vote is found to exist between any candidates and the addition of one vote would entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been recorder! in favour of the candidate, or candidates, as the "case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine.

The rest of the provisions arc not relevant. In the provisions of g. 21 of Said Act there is no provision laying down any restrictions on the right of the Judge in considering the evidence that is led before him while deciding the question of election of the petitioning candidate or any other candidate after declaring the election of the returned candidate void. Without laying down any such condition the Legislature

thought it fit, having regard to the local conditions in all such inquiries, that in order that the petitioner or any other candidate should obtain a declaration that he is validly elected, the Judge has to be satisfied that the petitioner or any other candidate has received sufficient number of valid votes to have been elected, and that such votes are not obtained by corrupt practice. In order that any such declaration should be made under this provision the Judge must be satisfied and the satisfaction cannot be there unless the Judge applies his mind to the facts of the case as are brought, before him by either party and examine the entire evidence led before him. It would also appear that it is in the fitness of things that a comparatively sophisticated scheme of contesting the elections contained in the Act of 1951 could not be required in the case of elections to small municipal bodies and it is for this reason that the same strict rules of pleading as obtaining under the Act of 1951 are not prescribed under the said Act of 1965. From these provisions, therefore, it would be abundantly clear that even without filing recrimination the returned candidate would be entitled to lead evidence to show that the petitioner or any other candidate in whose favour the order is asked for is not entitled to be declared elected, either because of invalidity of votes or because of corrupt practice.

5. Mr. Gursahani, for respondent No. 1, referred us to Rules 53 and 57 of the Maharashtra Municipalities Election Rules, 1966. There is nothing in either of these Rules which prohibits such an inquiry and it would be doubtful if in the face of the legislative enactment any such Rule could validly prevent the Court from making proper inquiry. Rule 53 deals with the question of scrutiny and rejection of ballot papers. Under the said Rule, ballot papers; have to be scrutinized in the presence of either candidates or their agents and the Returning Officer is required to give a reasonable opportunity to them to inspect the ballot papers but he is not required to note down the objection raised by the candidates or their agents to any of the ballot papers. Rule 57 relates to recount of votes and it enables the Returning Officer to reject any application made for recount of ballot papers if it appears to him to be frivolous or unreasonable. In our view, therefore, the provisions of the Act of 1951 and the decision of the Supreme Court in Jabar Singh's case, have no application to the election petitions under the Act of 1965. Even "if it be said that some objection should be raised by the returned candidate in such a case in respect of the votes cast in favour of the applicant or any other candidate in whose favour he seeks an order, the petitioner has sufficiently raised the dispute in his written statement. There is not even an element of surprise in the present case.

6. In the result, we make the rule absolute, set aside the order made by, the learned Extra Assistant Judge and direct that the petitioner be furnished an opportunity of inspecting the ballot papers. Thereafter, the learned Judge will dispose of the application within one month from the date of inspection. The petitioner will get his costs from respondent" No. 1. We further direct that respondent No. 1. will pay the costs of respondent No. 9.