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Date : 24/08/2025

Anandrao Tohluji Bagade Vs Namdeorao Lalwanji Sontakkey

Court: Bombay High Court

Date of Decision: Feb. 27, 1978

Acts Referred: Constitution of India, 1950 â€" Article 226, 227, 341, 342

Citation: (1978) 80 BOMLR 462 : (1978) MhLj 371

Hon'ble Judges: Gadgil, J; Dharmadhikari, J

Bench: Division Bench

Judgement

Dharmadhikari, J.
This writ petition is filed by the returned candidate Anandrao against the decision of the district Judge, Nagpur in

Election Petition No. 2 of 1974 whereby his election as a Municipal Councillor of Saoner Municipal Council has been declared as null and void

and the respondent Namdeo was declared as elected from Ward 18. It is not disputed before us that the petitioner as well as the respondents

Nos. 1 to 4 are the residents of Saoner, District Nagpur. The elections to the Municipal Council, Saoner were held on November 17, 1974. The

last date for filing nomination papers was October 21, 1974.

2. It is the case of the petitioner Anandrao that he filed his nomination paper on or before October 1.7, 1974. It appears that apart from the

petitioner Anandrao, the respondents Nos. 2 to 4 also filed their nomination papers for the same constituency. It is also an admitted position that

Ward No. 18 from which the elections took place was a Reserved seat for the persons belonging to the Scheduled Caste.

3. On October 22 and 23, 1974 the scrutiny of the nomination papers took place. During the course of this scrutiny no objection was raised by

any of the candidates to the nomination or candidature of the petitioner Anandrao. With the nomination paper itself the petitioner Anandrao has

filed his declaration and a certificate from the competent authority indicating that he is a person who belongs to the scheduled caste being a Mahar.

The polling took place on November 17, 1974 whereas votes were counted on November 18, 1974. The following was the result of the counting:

1. Anandrao Tolhu Bagade .. 97 votes.

2. Namdeorao Lalwanji Sontakke .. 74 votes.

3. Keshaorao Damodar Bagade .. 65 votes.

4. Arun Motiram Bagade .. 45 votes.

5. Barikrao Nathuji .. 27 votes.

Thus the petitioner was declared elected. His election was then published in the official gazette dated November 25, 1974.

4. Thereafter the respondent No. 1 Namdeorao filed an election petition before the District Judge, Nagpur u/s 21 of the Maharashtra

Municipalities Act, 1965. In this election petition the respondent Namdeorao sought declaration to the effect that the election of the petitioner

Anandrao is null and void and he further sought a declaration that he himself should be declared as a duly elected candidate from the said

constituency. The main contention raised in this election petition was that the petitioner Anandrao was not Mahar on the date he filed his

nomination paper, nor he was a Mahar on the date when polling took place, nor did he belong to sub-caste Mahar when the counting took place

or his election was notified in the official gazette. According to Namdeorao, the petitioner Anandrao was a Boudh by religion and, therefore, did

not belong to a scheduled caste as notified under Article 342 of the Constitution of India. It was the case of the election-petitioner Namdeorao that

Anandrao, the returned candidate, has all along been professing Buddha Religion and, therefore, was a Boudh and not a Hindu. Hence he was not

qualified to contest the election for the reserved constituency which was wholly reserved for the persons belonging to the scheduled caste.

5. This election petition was resisted on behalf of the petitioner Anandrao, the returned candidate. According to him he was a Mahar and,

therefore, belonged to the scheduled caste on the date of his filing of the nomination paper as well as the date of declaration of the results of the

election. He specifically denied that he at any time professed Buddha religion or was a Boudh. Various details given in the election petition

indicating that the returned candidate Anandrao was professing Buddha religion were denied by him. He denied that he was converted to Buddha

religion on October 14, 1956 when the mass conversion took place in the presence of late Dr. Babasaheb Ambedkar. He further denied that at

any time he had filed declarations before the education authorities when his sons were admitted in the Primary Schools. According to him, he had

entrusted all the responsibility regarding the welfare and education of his children to his brother and he did not know as to how the said declaration

came to be filed or made. Initially he denied his signatures upon these declarations. He also denied that even otherwise the election-petitioner

Namdeorao was entitled to be declared as elected from the said Constituency.

6. In support of his case, the respondent No. 1 Namdeorao examined as many as seven witnesses, namely, Sukhlal Dayaram Dhundale,

Sudarshan Kelkar, Balkrishna Laxmanrao, Bhaurao Sarode, Shamrao Dhok, Khema Bagade and himself. Apart from this oral evidence on record

in the election petition, Namdeorao relied upon the various documents and particularly upon exh. 29 which relates to the admission of Kewalram

the son of the petitioner Anandrao in Palia Hindi Primary School in the year 1962, exh. 33 which is another declaration dated July 6, 1974 in

respect of the admission of his sons Rahul and Ujwalkumar in Subhash Prathmik Shala at Saoner. He relied upon a third declaration which was of

the year 1972 as well as certain printed hand-bills which indicated that the petitioner Anandrao had participated in certain ceremonies which were

performed according to the Buddhist rites. In support of his case the petitioner Anandrao also examined himself and denied the various allegations

made in the petition as well as the evidence of the various witnesses. He also examined two witnesses in support.

7. After appreciating all the evidence on record, the learned District Judge accepted the evidence adduced on behalf of the election-petitioner

Namdeo and came to the conclusion that on the date of the filing of the nomination paper and even thereafter the petitioner Anandrao was

professing Boudh religion and was not a Hindu. He further came to the conclusion that in view of this he did not belong to any of the scheduled

castes enumerated in the notification issued under Article 342 of the Constitution of India and was, therefore, not eligible to contest the election

from this reserved constituency. After having recorded this finding, the learned District Judge further declared that the respondent Namdeo has

been validly elected for the said ward from the reserved constituency. As observed, it is this finding and the declaration which is challenged in this

writ petition.

8. Shri Madkholkar, learned Counsel appearing for the petitioner contended before us that the learned District Judge committed an error apparent

on the face of the record in coming to the conclusion that on the date of filing of the nomination paper as well as on the date of election the

petitioner Anandrao was not a Mahar, but was professing Boudh religion. According to the learned Counsel, this finding of fact recorded by the

learned District Judge is not based on any evidence on record and is, therefore, obviously illegal and perverse. In the alternative, he further

contended that in any case having regard to the scheme of the Maharashtra Municipalities Act, the respondent Namdeo was not entitled to a

declaration that he was duly elected as councillor from the said reserved constituency. According to Shri Madkholkar, the learned District Judge

has not properly appreciated the true scope of the provisions of Section 21(10) of the Maharashtra Municipalities Act.

9. On the other hand, it is contended by Shri Belekar learned Counsel appearing for the respondent Namdeo that the learned District Judge after

appreciating all the evidence on record had correctly recorded a finding of fact that the petitioner Anandrao has ceased to be a Hindu long back

and was, therefore, not qualified to contest the election from the reserved constituency which was solely reserved for the persons belonging to the

scheduled caste. He further contended that in any case only because another view of the evidence on record could be taken, it cannot be said that

the finding of fact recorded by the District Judge is in any way illegal or perverse. In a writ petition under Article 226 or 227 of the Constitution,

this Court cannot reappreciate the whole of the evidence on record and come to a different conclusion. Therefore, according to Shri Belekar, this

finding of fact recorded by the learned District Judge is not liable to be interfered with in this writ jurisdiction of this Court. So far as the second

part of the submissions made by Shri Madkholkar is concerned, it is contended by Shri Belekar that the respondent No. 1 Namdeo having

secured the highest number of votes, he was entitled to be declared as elected in view of the provisions of Section 21(10) of the Maharashtra

Municipalities Act.

10. Therefore, the main question which requires consideration in this writ petition is to find out as to whether there is material on record to establish

the fact that at the relevant time the petitioner Anandrao was professing a religion other than the Hindu religion. According to Shri Madkholkar, the

burden to prove this fact was wholly upon the election-petitioner Namdeo. Shri Madkholkar further contended that he has failed to discharge the

said burden. In support of his contention Shri Madkholkar has relied upon the various decisions of the Supreme Court.

11. The first such decisions on which reliance is placed by Mr. Madkholkar is Punjabrao v. D.P. Meshram [1965] Mh. L.J. 162 : S.C. Bom. L.R.

812 S.C of the said decision, the Supreme Court had an occasion to consider the scope of Clause 3 of the Constitution (Scheduled Castes)

Order, 1950. In this context, the Supreme Court observed as under (p. 168):

What Clause (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a

Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier

decision in Narayan Waktu Karwadi Vs. Panjabrao Hukam Shambharkar and Another, , has said that the meaning of the phrase "professes a

religion" in the aforementioned provision is "to enter publicly into a religious state" and that for this purpose a mere declaration by a person that he

has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been

given thus in Webster"s New World Dictionary, "to avow publicly; to make an open declaration of...to declare one"s belief in: as, to profess

Christ. To accept into a religious order". The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the

meaning "to declare one"s belief in: as to profess Christ is one which we have to bear in mind while construing the aforesaid Order because it is this

which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one"s belief

must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made

by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In

the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word

"profess"" in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the

Sikh) religion. Where, therefore, a person says, on the contrary, that he has ceased to be a Hindu he cannot derive any benefit from that Order.

A similar view was taken by the Supreme Court in Ganpat Vs. Returning Officer and Others, . Shri Madkholkar sought assistance from this

decision even in regard to the appreciation of evidence on record. According to Shri Madkholkar only from the declarations made by the

petitioner before the education authorities coupled with other surrounding circumstances brought on record an inference cannot be drawn that at

the relevant time the petitioner Anandrao was professing a Buddha religion and was not a Hindu. According to him, there is no material on record

to show that at any time the petitioner Anandrao was converted to Buddha religion and has ceased to be a Hindu. Unless such an evidence is

adduced on behalf of the election-petitioner, no finding could be recorded that the petitioner Anandrao has ceased to be a Hindu and, therefore,

does not belong to the scheduled caste.

12. Obviously there cannot be any dispute so far as the law on the question is concerned. The burden is upon the election-petitioner to show that

the returned candidate was professing a religion other than Hindu religion and was converted to Buddhism and in the absence of such a proof,

obviously the person will continue to be the member of the scheduled caste and his election to the reserved seat cannot be questioned. So far as

the decisions on the credibility of the witness are concerned, obviously such decisions are of no assistance. In this context a reference could

usefully be made to the decision of the Supreme Court in Rahim Khan Vs. Khurshid Ahmed and Others, in para. 20 of the said judgment following

are the pertinent observations (p. 298):

...Precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be identical

with those in another and judgment of Courts on when and why a certain witness has been accepted or rejected can hardly serve as binding

decisions. Little assistance can therefore be derived from case law on credibility. There are no legal litmus tests to discover the honest conscience

of a human being and the canons of truthfulness of oral evidence sans commonsense, are but misleading dogmas. The golden rule is, as George

Bernard Shaw tells us, that there are no golden rules. For this reason we are not referring to the many rulings cited before us. But we certainly

inform ourselves with the general touch-stones of reliability. The fact that we are not ready to act on the testimony of a person does not mean that

he is a perjurer. It merely means that on such testimony it is not safe to conclude in a quasi-criminal proceeding that the ''corrupt practice'' has been

proved beyond reasonable doubt. The whole constituency is silently present before us-it must be remembered See observations of Dua, J. in ILR

(1969) P&H. 625.

13. Keeping in view all these observations of the Supreme Court, we will have to scrutinise the finding of fact recorded by the learned District

Judge in this case and then we will have to decide as to whether the election petitioner has succeeded in proving as a fact that at the relevant time

the petitioner Anandrao was professing Buddha religion and was not, therefore, member of the scheduled caste. The fact that at some time the

petitioner had succeeded in obtaining certain certificates from the authorities on the basis of representations made by him will not mean that no

conversion ceremony in fact took place. These certificates were obtained to take advantage of the privileges which were being offered to the

members of scheduled caste or to contest the election for reserved seat. No general rule can be laid down in this behalf and obviously it must

depend on the facts and circumstances of each case.

14. With the assistance of Shri Madkholkar and Shri Belekar, we have gone through the whole evidence on record. Initially we have on record the

evidence of P.W. 5 Shyamrao Thok who is a distant relative of the petitioner Anandrao. According to this witness, on October 14, 1956

Anandrao took an oath and was initiated to Buddha religion at the function held at the Diksha Bhumi at Nagpur in the presence of late Dr.

Babasaheb Ambedkar. Though it was suggested to him in the cross-examination that there are two groups in the Republican Party at Saoner and

the witness belongs to the Gaikwad Group, whereas the petitioner Anandrao belongs to Khobragade Group, there is nothing on record to indicate

as to why this distant relative of the petitioner Anandrao should go to the extent of telling lies against him. This witness has further stated that the

petitioner Anandrao is a known political and social worker in the town. According to this witness, the petitioner Anandrao is carrying on the work

of Boudh Samaj. According to this witness, he was present when the conversion took place at the Diksha Bhumi at Nagpur on October 14, 1956

and petitioner Anandrao was also present in this ceremony of conversion. In our opinion, having regard to the facts and circumstances of the

present case, the learned District Judge was right in accepting the testimony of this witness and then coming to the conclusion that the petitioner

Anandrao was present in the conversion ceremony held on October 14, 1956 wherein various persons including Anandrao were converted to

Buddhism in presence of late Dr. Babasaheb Ambedkar. This is more so when the petitioner Anandrao himself has admitted in his written-

statement that he was associated with the activities of Dr. Babasaheb Ambedkar and was his staunch follower and active worker.

15. Apart from this evidence, P.W. 6 Khema Bagde has stated on oath that when the petitioner Anandrao''s father died four years back,

Anandrao performed the obsequies of his father according to the Buddha rites. According to this witness, photo of Buddha was fixed at the head

side of the body, candles were lighted and Boudh prayers were enchanted. In the cross-examination even Anandrao had admitted that the dead

body of his father was buried and was not cremated as is done in Hindus. It was the case of the petitioner Anandrao that as he was a follower of

the Pir, the body was buried according to the Muslim rites. However, he had to admit in his cross-examination that the dead body of his father was

not buried in the cremation ground reserved for the Muslims but the burial took place at the cremation ground which was reserved for Mahars,

Boudh and Mangs. The evidence of this witness was also accepted by the learned District Judge and in our opinion, it cannot be said that the

District Judge committed any error in relying upon the testimony of this witness, also.

16. Apart from this evidence, we have other documentary evidence on record which conclusively established that at the relevant time the petitioner

Anandrao was professing Boudh Religion. Prosecution witness 1 Sukhlal Dayaram Dhundale and P.W. 2 Sudarshan Kelkar had proved the

document bearing Entry No. 1429 which is a declaration made by the petitioner when his son namely Kewelram, was admitted in the Palia Hindi

Primary School, Saoner in the year 1962. According to P.W. 2 Sudarshan Kelkar, petitioner Anandrao had made this declaration in his presence.

He has made his signature on the said declaration in the presence of this witness. The witness further stated that he knew him personally. In the

Court also the witness identified Anandrao as a person who had made and signed the said declaration in his presence. It is an admitted position

that this declaration related to the son of the petitioner Anandrao and in this declaration he has stated that his son belongs to the Boudh religion.

The petitioner Anandrao has tried to deny this declaration, but the stand taken by him in this behalf initially in the written-statement and thereafter in

the witness-box is wholly inconsistent. Prosecution witness 1 Sukhlal and P.W. 2 Sudarshan are the teachers of the primary schools and they had

no axe to grind against the petitioner Anandrao. They have deposed before the Court on the basis of the entries made in the register which is

maintained in the official course of their duties.

17. Apart from this declaration, there are two other declarations produced before the Court which are also made and signed by the petitioner

Anandrao. One such declaration is of the year 1972 and another is of the year 1974. These declarations also relate to the sons of the petitioner

Anandrao. He has specifically stated in those declarations that their caste and religion is Buddha. These declarations are duly proved by P.W. 3

Balkrishna, the Headmaster of Subhash Prathmik Shala. The witness has deposed to those declarations on the basis of the entries made in the

registers which are maintained in the official course of his duties. According to this witness, those declarations were made and signed in his

presence by the petitioner Anandrao, Unfortunately the stand taken by the petitioner Anandrao in the written-statement as well as in his oral

evidence regarding these declarations also is wholly inconsistent. Initially he has gone to the extent of denying his signatures on these declarations

but ultimately he had to admit his signatures on these declarations in his cross-examination. If these declarations which were made in the years

1962, 1972 and 1974 are read with the other oral evidence on record, then in our opinion, the learned District Judge was right in coming to the

conclusion that the petitioner Anandrao was converted to Buddha religion and was, therefore, not a Hindu at the relevant time. In any case if the

cumulative view of the whole evidence is taken, it will have to be held that the petitioner Anandrao was publicly professing that he belonged to

Buddha religion. Admittedly Buddha is not a caste specified in the list notified under Article 341 of the Constitution of India and, therefore, a

person who does not profess the Hindu religion, but professes a Buddha religion was not obviously eligible or qualified to stand as a candidate for

a seat which was apparently reserved for the persons belonging to the scheduled caste. Having scrutinised the whole evidence on record, we

generally agree with the appreciation of the evidence as well as the finding of fact recorded by the learned District Judge in this behalf. Therefore,

having regard to the oral and documentary evidence on record, in our opinion, the learned District Judge was right in coming to the conclusion that

the petitioner Anandrao was not a person belonging to the scheduled caste at the time of election which took place on November 17, 1974. We,

therefore, confirm the said finding of fact recorded by the learned District Judge.

18. However, so far as the second part of the argument of Shri Madkholkar is concerned, in our opinion, there is much substance in this

contention. Even if it is held that the petitioner Anandrao was not qualified to contest the election for the reserved seat and, therefore, his

nomination paper was wrongfully accepted, it does not automatically follow from this that petitioner Namdeo who got the next highest number of

votes was entitled to be declared elected for the said seat. This is a case where in all five candidates were in the election arena. The constituency

was a single-member of constituency. When the votes were counted after polling, the returned candidate, namely, Anandrao got 97 votes, whereas

the respondent Namdeorao secured 74 votes. Apart from respondent Namdeo, three more candidates were in the field, namely, Keshaorao, Arun

and Barikrao who secured 65, 45 and 27 votes respectively. No material has been placed on record to indicate that if Anandrao, the petitioner,

was not in the field, then the votes secured by him would have gone to the respondent Namdeo alone and none else. To say the least, in this case

even an effort is not made by the election-petitioner to indicate as to what could have been the voting pattern in case the nomination paper filed by

Anandrao was rejected at the threshold itself.

19. In this context, Shri Belekar had relied upon a decision of the Supreme Court in Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani and

Others, and particularly upon the observations of the Supreme Court in para. 45 of the said judgment. However, in our opinion, the said decision

of the Supreme Court is obviously distinguishable on facts. In that case, there were only two candidates in the field and the election of one was set

aside by the tribunal. In this context, it was held by the Supreme Court that when the election of one of such candidates is set aside then the other

automatically gets returned without resort to the polls. Where there is only one valid nomination, then that nominee gets elected for want of contest.

Such is not the position in the present case. In the case before us, there were in all five candidates in the arena. Even if the petitioner Anandrao was

excluded from the contest, there were in all four other candidates in the field and, therefore, the holding of polls would have been necessary. Once

it is held that the holding of poll was necessary, then obviously it is not possible to hold unless there is some evidence on record that the election-

petitioner-respondent No. 1 Namdeorao has secured the highest number of valid votes and was, therefore, entitled to be elected.

20. It was not disputed by Shri Belekar, learned Counsel appearing for the respondent No. 1 that in the present case, there is no evidence on

record to indicate that in the absence of petitioner Anandrao, respondent No. 1 Namdeorao could have secured the majority of the valid votes.

However, it is contended by Shri Belekar that the votes secured by the petitioner Anandrao, who is found at the trial to be disqualified to contest

the election, should be treated as "thrown away" or "wasted" votes and, therefore, should be wholly excluded from consideration while deciding

the question as to whether election petitioner Namdeo has obtained majority of the valid votes. It is not possible for us to accept this contention. In

this context reference could usefully be made to the observations of the Supreme Court in Konappa Rudrappa Nadgouda Vs. Vishwanath Reddy

and Another, While dealing with somewhat similar question in para. 12 of the said judgment, the Supreme Court observed as under (p. 608):

...When there are only two contesting candidates, and one of them is tinder a statutory disqualification, votes cast in favour of the disqualified

candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to

say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the

votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case,

question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified

candidate.

In our opinion, those observations of the Supreme Court aptly apply to the present case. It is quite obvious to us that in this case there was no

material on record on the basis of which the District Judge could reach to the conclusion that the election-petitioner Namdeorao had received

sufficient number of valid votes and was therefore entitled to the declaration that he was duly elected for the said constituency.

21. In the present case also, no material is placed on record to indicate that the voters were aware of the disqualification of the petitioner

Anandrao and have knowingly voted for the disqualified candidate. It is pertinent to note in this case that even the election-petitioner Namdeo had

not raised any objection during the course of scrutiny of the nomination papers in this behalf. This clearly indicates that the voters were not aware

of the disqualification of the returned candidate.

22. In the result, therefore, the special civil application is partly allowed and second part of the declaration granted by the learned District Judge,

namely, declaring the respondent Namdeo Lalwanji Sontakke as elected from Ward No. 18 of the Saoner Municipal Council for the reserved

seat, is set aside. However, the declaration granted by the learned District Judge declaring the election of the petitioner Anandrao Bagade is null

and void is upheld. As a necessary consequence of this, a re-election will have to be held for the said constituency in accordance with law. In the

circumstances of the case, there will be no order as to costs.