(1967) 07 BOM CK 0015

Bombay High Court

Case No: Election Petition No. 9 of 1967

Shriram Haribhau Mankar		APPELLANT
	Vs	
Shri Madhusudan Atmaram Vairale		RESPONDENT

Date of Decision: July 21, 1967

Acts Referred:

- Constitution of India, 1950 - Article 163, 164, 166(3), 168, 177
- States Reorganisation Act, 1956 - Section 120

Citation: (1967) MhLj 954

Hon'ble Judges: N.L. Abhyankar, J

Bench: Single Bench

Advocate: V.R. Manohar, for the Appellant; C.S. Dharmadhikari, for the Respondent

Judgement

N.L. Abhyankar, J.

The petitioner Shri S. H. Mankar has challenged the election of the respondent as a member of the Maharashtra Legislative Assembly from 104 Balapur Assembly Constituency in Akola district, at the recent elections held in February 1967.

2. The petitioner was himself a candidate at such election. The petitioner had originally challenged the election of the respondent on two grounds. Firstly he contended that the respondent was holding an office of profit under the State of Maharashtra and was, therefore, disqualified from being nominated to or becoming a member of the Maharashtra Legislative Assembly under Article 191 of the Constitution. His second ground of attack was that the respondent had himself used his office and taken help of Government officials and vehicles to strengthen his election machinery.

3. Both these allegations were denied by the respondent in his written statement; but the petitioner made a statement before this Court on 24-6-1967 that he did not want to press the second ground of attack mentioned in paragraph 6 (ii) of the

petition. Thus, the only ground that survives for consideration and decision is whether the respondent was disqualified from filing nomination under Article 191 (1) (a) of the Constitution.

4. It is an admitted position that at all material times i. e. on the date the respondent filed his nomination paper and when he was elected, the respondent was holding the office of Deputy Minister of the State of Maharashtra.

5. The respondent resists the challenge to his election on this ground in two ways. Firstly it is contended that Article 191(2) of the Constitution in terms lifts the disqualification imposed under Article 191(1) in the case of a person, if he is a Minister for the State. The respondent''s contention is that as a Deputy Minister for the State of Maharashtra he is also protected under sub-Article (2) of Article 191 of the Constitution. His second contention is that by section 13 of the Bombay Ministers'' Salaries and Allowances Act, 1956 (Bombay Act No. 48 of 1956), a person shall not be disqualified for being chosen at or being a member of the Maharashtra Legislative Assembly merely by reason of the fact that he holds the office of a Deputy Minister. This express pro-vision of law, therefore, fully protects the respondent and his nomination or election which cannot be challenged on the ground that he was holding an office of profit.

6. The petitioner has attempted to meet these two defences on a variety of grounds which it is now necessary to consider. Article 191 of the Constitution is as follows:

191. Disqualification for membership. - (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent Court;

(c) if he is an undischarged insolvent;

(d) if be is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is disqualified by or under any law made by Parliament.

(2) For the purposes of this Article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

7. The contention of the petitioner is that sub-Article (2) of Article 191 protects only a ''Minister'' and not a Deputy Minister, that the word ''Minister'' does not include a Deputy Minister, there being no definition of ''Minister'' which would include a Deputy Minister. Referring to Article 163 of the Constitution it is urged that what the Constitution provides for is only a Council of Ministers with the Chief Minister at the head, and prima facie the Council of Ministers would not include a Deputy Minister. Neither Article 163 nor Article 164 of the Constitution which speak of Minister or either Minister or Chief Minister, make any reference to Deputy Minister. The learned counsel also referred to original Second Schedule to the Constitution of India, which in paragraph 6 in Part B thereof made a provision for payment of salaries to Ministers of any State specified in Part A or Part B of the First Schedule, and pointed out that there also there is no reference to a Deputy Minister of a State. Under Article 166 (3) of the Constitution the Governor of a State is empowered to make rules for transaction of the business of the Government of the State and for allocation of the State business among Ministers. Rules have been made for this State and are known as Maharashtra Government Rules of Business. Rule 6 of the rules in terms provides for power in the Chief Minister and the Minister in consultation with the Chief Minister to allot to Deputy Minister any matter appertaining any Department. The petitioner says that under rule 5 Governor is entitled on the advice of the Chief Minister to allot the business of the Government by assigning one or more departments to the charge of a Minister but not to a Deputy Minister, and from this provision it is argued that a Deputy Minister does not appear to be a member of the Council of Ministers to whom Government business may be allotted by the Governor.

8. In my judgment, none of these considerations can lead to the conclusion that the office of the Deputy Minister is not included for protection under sub-Article (2) of Article 191 of the Constitution. It is true that the Constitution itself makes only mention of a Minister and the Chief Minister so far as the State Government is concerned, and the Prime Minister and Ministers so far as the Union Government is concerned. But the office of Deputy Minister has been created in the State almost from the inception. The argument based on Second Schedule of the Constitution merely providing for continuing of salaries of Ministers does not advance the case of the petitioner where the question "what is intended to be covered by the word ''Minister'"" requires interpretation. By Legislative Act and Parliamentary practice in this country, members of the party called upon to form Government have been chosen and appointed as Deputy Ministers to run the business of the Government. The Business Rules in terms provide for allotment of business and departments to Deputy Ministers. Their salaries and allowances are provided for in legislation which has been undertaken in exercise of the power under Entry No. 40 of List II in the Seventh Schedule of the Constitution. In this State the Bombay Ministers'' Salaries and Allowances Act, 1956 (Bombay Act No. 48 of 1956), provides for salaries payable to Ministers and Deputy Ministers. Under Article 177 of the Constitution every

Minister has a right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State, or in the case of a State having a Legislative Council, both houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member. It is well-known that Deputy Ministers have exercised this right and taken part in the proceedings of a House of Legislature of which he may be a named member. This would show that Deputy Ministers are included among the Ministers as they perform similar functions, are under similar obligations, and must, therefore, be treated as included in the class of Ministers.

9. When the first Ministries came to be formed under the new Constitution in 1952, the then Prime Minister at the Centre had a Council of Ministers having three-fold distinctions; one category was members of the Cabinet, or Ministers of the Cabinet rank; the other was Ministers of Cabinet rank but not members of the Cabinet; and the third category was that of Deputy Ministers. Though the composition of the Ministry at the Centre had varied in number of Ministers of one category or the other, it hardly appears to have been disputed that all these appointees come under the general category of Ministers. In my opinion, the same must follow in the case of Deputy Ministers appointed for the State in every State. It must therefore be held that the respondent who was holding the office of the Deputy Minister of the State did not incur any disqualification by reason thereof from being nominated or becoming a member for the Assembly under Article 191 (1) (a) of the Constitution.

10. Even assuming, however, that the Deputy Minister is not included in the word ''Minister'' in Article 191 (2) of the Constitution, in my opinion, the office of the Deputy Minister is fully protected from challenge on this ground by reason of this office of the Deputy Minister being declared by the Legislation of the State not to be an office of profit. This legislation is Bombay Act No. 48 of 1966. Section 13 of that Act is as follows:

13. For the avoidance of doubt, it is hereby declared that a person shall not be disqualified for being chosen as, or for being, a member of the Maharashtra Legislative Assembly or the Maharashtra Legislative Council merely by reason of the fact that he holds the office of a Deputy Minister.

11. Under Article 191 (1) (a) of the Constitution power is given to Legislature of a State to declare by law any office of profit under the Government not to constitute a disqualifying office and not to disqualify the holder of such office if law BO provides. When the State of Maharashtra came to be formed under the second States Reorganisation Act in 1960, the Bombay Reorganisation Act empowers the Government u/s 88 by order to make such adaptations and modifications of any law for facilitating the application of such law in relation to the State of Maharashtra, and the power of adaptation is extended even to the making of a repeal or amendment of the law as may be necessary or expedient. The Government of Maharashtra exercised this power by making an order called Maharashtra

Adaptation of Laws (States and Concurrent Subjects) Order, 1960, and has adapted the Bombay Ministers'' Salaries and Allowances Act, 1956 (Bombay Act No. 48 of 1956), by making suitable adaptations, and in particular, in sections 12 and 13 of the original Act, and for the words "Bombay Legislative Assembly" and "Bombay Legislative Council" the words "Maharashtra Legislative Assembly" and "Maharashtra Legislative Council" were substituted. Prima facie therefore, it would appear that this Act was in force when the respondent filed his nomination paper, and although he was holding an office of Deputy Minister for the State of Maharashtra, that by itself did not disqualify him from being nominated for election as a member of the Maharashtra Legislative Assembly.

12. But what is contended in respect of this position is that this law, namely, Bombay Act No. 48 of 1956, as adapted, cannot be called a law made by the Legislature of the State i. e. Legislature of the State of Maharashtra. The adaptation made being by the Government in exercise of the power of adaptation u/s 88 of the Bombay Reorganisation Act, the argument runs, the law as adopted cannot be construed to be a legislation by the State of Maharashtra, and, therefore, is ineffective to the extent it gives protection to a Deputy Minister.

13. In my judgment, this argument is fallacious. The power of adaptation given to various authorities is a well-known form and device provided in legislation, which results in re-aligning, or re-grouping, or re-formation of territories. In our Constitution this power is enshrined in Article 372. It is well-known that when territories forming part of one State or one area came to be transferred to and became part of territories under another State, provision had necessarily to be made for continuance of laws in force in the territory so transferred and for adaptation of laws to bring them in conformity with the new situation. Under the Constitution this power was invested in the President. Under the first States Reorganisation Act i. e. Act No. 37 of 1956, this power vested in the appropriate Government u/s 120 of the Act. Similarly, under the Bombay Reorganisation Act this power has been given to appropriate Government u/s 88. When Article 191 of the Constitution speaks of a Legislature of a State, what is meant is authority having the Legislative function to perform or in whom the power to legislate, for the time being is deposited. Moreover, a Legislature of a State under Article 168 of the Constitution consists of the Governor and both the Houses of Legislature, namely, Legislative Assembly and the Legislative Council. Article 3 of the Constitution underwent a vital change when it was amended by the Constitution (Fifth Amendment) Act, 1955, and the amended Article empowered the Parliament by law to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory of a part of any State, and under Article 4 of the Constitution any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as the Parliament may deem

necessary. Thus, the Constitution itself has given express power to Parliament to make law to make provision for consequential amendments, if any, for adaptations, if any, in respect of the laws in force in any part of a State which after reorganisation may form part of another territory. This power, in my opinion, in terms authorises the Parliament to make a provision like section 120 of the first States Reorganisation Act or section 88 of the Bombay Reorganisation Act which includes the power of adaptation to be exercised by Government to facilitate the continuance of the law in force in an appropriate manner.

14. It will be a strange consequence if the petitioner''s argument were to be accepted to hold that whereas in the Maharashtra State when it was a part of the bigger Bilingual Bombay State the office of the Deputy Minister was not an office of profit which would disqualify a person, it suddenly became an office of profit and the person who held the office of Deputy Minister ceased to enjoy protection by reason of the reorganisation of the State when it became territory of Maharashtra after separation of certain areas which formed the State of Gujarat. It is difficult toehold that any such consequence was countenanced. It must, therefore, be held that section 13 of the Bombay Ministers'' Salaries and Allowances Act is an express provision of law made by the Legislature of the State which exempts the office of the Deputy Minister for the State from being considered as an office of profit. Both the contentions of the petitioner have no substance and must be rejected.

15. The petitioner had challenged the virus of section 13 of the Bombay Ministers'' Salaries and Allowances Act and therefore a notice was issued to the Advocate-General. The State of Maharashtra had also applied to be represented and the learned Government Pleader appeared for the State. No arguments were however addressed in support of this contention that section 13 was ultra virus. However, as the contention was raised, a notice had to be issued to the Advocate-General. The Advocate-General is entitled to his costs.

16. I therefore hold that the petitioner has failed to prove that the respondent was disqualified from being nominated and elected to the Legislative Assembly of the Maharashtra State because he held the office of Deputy Minister for the State. The petition is accordingly dismissed.

17. As regards costs I direct that the respondent shall be entitled to costs at the rate of Rs. 400 per day for the hearings on 13-6-1967, 24-6.1967, 14-7-1967 and 21-7-1967. The costs of the Advocate-General shall be Rs. 400 for one hearing. In addition, the respondent will be entitled to the other costs as per rules.