

(1970) 02 BOM CK 0045

Bombay High Court

Case No: Spl. C. Application No. 1243 of 1969 (with Spl. C. Application No. 1245 of 1969)

Bhika Poona Kanpate
and others

APPELLANT

Vs

Civil Judge, Junior
Division, Gondia and
others

RESPONDENT

Date of Decision: Feb. 27, 1970

Acts Referred:

- Bombay Village Panchayats Act, 1958 - Section 15

Citation: (1970) MhLj 648

Hon'ble Judges: D. B. Padhye, J; B. N. Deshmukh, J

Bench: Division Bench

Advocate: C. G. Madkholkar, for the Appellant;

Final Decision: Dismissed

Judgement

B. N. Deshmukh, J.

Both these petitions are being disposed of on a common question of law relating to limitation and hence this order will govern both.

2. In these two petitions, elections to Ward No. 1 and Ward No. 3 of village Ledada, tahsil Gondia, district Bhandara are being challenged. According to the election programme declared, the polling took place on 21-9-1960. The date for counting was 23-9-1969. After the voting took place as scheduled, the Returning Officer held counting at Gondia on 23-9-1969 and at the end of the counting declared the election results on the same day and in his office at Gondia. An attempt was made by the two petitioners to file a writ petition in this Court immediately after the declaration of the results. That petition was not entertained on the ground that an election petition was provided under the Act and when a specific and adequate remedy is provided by the Act, ordinarily this Court will not entertain a writ-petition. That writ-petition was then withdrawn. Thereafter, the two

petitioners filed two separate election petitions u/s 15 of the Bombay Village Panchayats Act, 1958 in the Court of the Civil Judge, Junior Division, Gondia on 20-11-1969. The learned Civil Judge felt that on the face of the record, the petitions are barred by limitation and hence he called upon the learned counsel for the petitioners to satisfy him that the petitions ought to be entertained. On that preliminary issue he heard the counsel and dismissed both the petitions on the ground (hat they are barred by limitation u/s 15 of the said Act. Being aggrieved, these petitions are now filed.

3. In these writ-petitions, the order of the learned Civil Judge who was acting as an Election Tribunal is challenged on the ground that his finding as to limitation is erroneous. There is also another ground urged against the validity of the elections as such viz., that voting papers were required to be signed by the voters at the instance of the polling officers in the two wards. That is a challenge against the election process but that challenge is not entertained and decided by the Civil Judge as an Election Tribunal. We are disposing of both these petitions only on the technical question of limitation and are not expressing any opinion whatsoever on the challenge held out by the petitioners on the ground of compulsion to voters to sign the voting papers.

4. Though notices were issued and served on the respondents in both these petitions, there is no appearance on their behalf. Mr. Madkholkar, appearing on behalf of the petitioners, argued that u/s 15 of the Bombay Village Panchayats Act, 1958, it is permissible for a voter of a Panchayat to call in question the validity of an election of a member of a Panchayat within fifteen days after the date of the declaration of the result of the election. When the result of an election could be said to have been declared, is, therefore, the question in dispute.

5. According to him, if the scheme of the rules relating to the village panchayat election is seen, and, more particularly, the rules 32 to 37 are taken into account, it will be apparent that the election results could be said to have been declared only when they are made known to the villagers by posting them at the Village Chavdi or at the Village Panchayat Office or such other public place, if any, appointed in that behalf by the Returning Officer under rule 36. Until this posting has taken place in the village at some place indicated in that rule, it could not be said that there was a valid declaration.

6. If the provisions of the rule are looked at, we find that after the polling is over, the counting of votes has to take place under the supervision of the Returning Officer with the assistance of such persons as he may appoint to assist in the counting of votes. A day, time and place for the purpose of counting has to be appointed under rule 7. On the day, time and place appointed for counting of votes the Returning Officer has to proceed in a certain manner in respect of all the ballot boxes. This part of the duty of the Returning Officer has been laid down in rule 32. He has to check and count the number of ballot boxes and when he is satisfied that all ballot boxes have come to him he is to permit the candidates, their election agents and counting agents to satisfy themselves that all the boxes are there with the seals intact. The Returning Officer also has to satisfy himself that

there is no tampering with the seals of any of the boxes. He has then to take up the counting of votes and from each box he has to separate the valid and invalid votes. The invalid or doubtful ballot papers are to be submitted to the Returning Officer for decision. Thereafter the bundle of valid voting papers is to be taken up for counting and the votes recorded in favour of each candidate have to be counted with the aid of the persons appointed to assist the counting of votes.

The Returning Officer is required to give reasonable opportunity to the candidates and their election and counting agents to inspect the ballot papers so as to enable them to raise objections about the validity or invalidity of votes. When objections are raised they are to be decided with brief reasoning on the ballot paper itself. There are instructions thereof to keep the counted valid papers in one bundle and the invalid papers into a separate bundle and the labels that are to be affixed to each of such bundles. Sub-rule (3) of rule 32 of the Bombay Village Panchayats Election Rules, calls upon the Returning Officer, as far as practicable, to proceed continuously with the counting of votes and if intervals become necessary there are directions regarding the precautions that must be taken during such intervals. Sub-rule (4) of rule 32 enjoins upon the Returning Officer to prepare a consolidated statement recording therein the total number of votes polled by each candidate, after the counting of the ballot papers contained in all boxes is over. Rule 33 of the Bombay Village Panchayats Election Rules, lays down the grounds on which ballot papers ought to be rejected. After this process of counting is gone through and the total number of votes recorded in favour of each candidate is ascertained and noted as required by sub-rule (4) of rule 32, the stage for discharging the duty under rule 34 arises. This is a controversial rule and Mr. Madkholkar argued that though the rule bears the designation "Returning Officer to declare result of election" what the Returning Officer does is not declaration at all. Before this approach is considered, the contents of this rule may be noted. Sub-rule (1) of rule 34 contemplates that on completion of the statement showing the number of votes recorded, the Returning Officer shall from amongst the candidates qualified to be chosen to fill a reserved seat, if any, declare subject to the provisions of rule 5 the candidate who has secured the largest number of votes to be elected to fill such reserved seat. The proviso to this rule lays down that if in the same ward there is a reservation of seats for women and for the Scheduled Castes and /or Scheduled Tribes, the result of the seat or seats reserved for Scheduled Castes or Scheduled Tribes shall be declared first and then the result of the seat or seats reserved for women. In other words, the result of the seat or seats reserved for Scheduled Castes or Scheduled Tribes shall be declared first by looking to the consolidated statement prepared under sub-rule (4) of rule 32. The Returning Officer has then to proceed to declare from among all other candidates, excluding those who have been declared elected to fill the reserved seats, if any, the candidate or candidates who have secured the largest number of votes to be elected to fill the unreserved seats. This is provided by sub-rule (2) of rule 34. In case there is equality of votes how a successful candidate is to be decided is a subject-matter of rule 34 (3). On a plain reading of rule 34 and its contents, it appears that the Returning Officer has to declare the complete result of the

election by first declaring the result relating to the reserved seats and then the result relating to the other or general seats. As soon as, however, this function is performed, it appears to us that the Returning Officer has declared the result of the election.

7. Rule 35 permits a candidate, or, in his absence his election agent to apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted, stating the grounds on which he demands such re-count. Such an application is permitted under rule 35, sub-rule (1). The Returning Officer will then decide that application and may allow the application in the whole or in part, or may reject it in toto if it appears to be frivolous or unreasonable. Every decision of the Returning Officer under Sub-rule (2) has got to be in writing together with reasons for the orders passed. Sub-rule (4) of rule 35 contemplates that where an application has been allowed partially or in the whole, a counting of the ballot papers has got to take place over again to the extent permitted under that order. If the re-count leads to a different figure of the total votes polled by certain candidates, an amendment has to be carried out in the consolidated statement prepared under sub-rule (4) of rule 34. Once such amendments are carried out under clause (c) of sub-rule (4) of rule 35, the Returning Officer has to announce the amendments so made and also declare the result of the election. It appears to us from the wording of sub-rule (1) of rule 35 that the re-count must be claimed there and then immediately after the election results are declared under rule 34, The provisions of sub-rule (3) of rule 32 seem to govern the process of re-counting also. He has to re-count the votes if permitted by him in the same meeting in a continuous manner and has to reach the stage of announcement of amendments and declare all results under clause (c) of sub-rule (4) of rule 35 in the same meeting. It is, therefore, obvious that in the case of village panchayat election not only the initial declaration of the election results but also the amended declaration on re-count has got to take place on the day and at the time and place declared under rule 7.

8. The Returning Officer has then to cause the names of elected candidates to be posted at the village Chavdi or at the village panchayat office or at such other public place, appointed in that behalf by him and he is also required to report the same names immediately to the Collector. This is the duty enjoined upon the Returning Officer under rule 36. The title of that rule is "posting of result of election by Returning Officer". Then follows a publication of the result under rule 37 by the Collector. The Collector for wards the names of the elected persons to the Standing Committee and if the number of persons elected is less than the total number of members for the panchayat, the Collector shall call upon the Standing Committee to make appointments to the remaining seats under sub-section (3) of section 10 of the Act. The Collector has then to publish the names of the elected members as reported by the Returning Officer by causing a list of such members to be posted up at his office, the Village Chavdi and at the Village Panchayat Office. The Collector has also to publish the names of persons appointed under sub section (3) of section 10 of the Act, after their appointments are made by the Standing Committee. The elective process relating to the election of the members of the

panchayat seems to end here,

9. Mr. Madkholkar argued that the Returning Officer in this case held the counting of votes in his office at Gondia which may be the taluka Head Quarters. The villagers of Ledada can have no information about the final results arrived at by the Returning Officer and the first and the only opportunity they get to know the results is the posting of the results of the election in the village under rule 36. No doubt that the Legislature have used the words "declaration of results" for the purpose of limitation for an election petition u/s 15 of the Act. It may be that the same words "declaration of results" or "declare the results of the elections" are used in rule 34 and rule 35 of the Bombay Village Panchayats Election Rules, However, since it is open to any voter in a constituency to challenge the election, it would be legitimate to assume that the Legislature desired that the voter be apprised of the results of the election so that he may be in a position to exercise the right of challenging the validity of the election u/s 15 of the Act. That, according to Mr. Madkholkar, appears to be rationale of framing rule 36. He says that the publication of the results in the village takes place on two different occasions. The first occasion is provided by rule 36 when the Returning Officer is required to post the results in the village and the second occasion is provided when the Collector publishes those results under rule 37. It is the first occasion under rule 36 which must be deemed to be the declaration of the results for the purpose of enabling the voter to resort to the remedy u/s 15 of the Act.

10. In order to justify this interpretation of the rules, Mr. Madkholkar first compared the provisions of the Bombay Village Panchayats Election Rules, 1959 with those of the Maharashtra Zilla Parishads Election Rules, 1962. Counting of votes is provided under rule 61 of the Maharashtra Zilla Parishads Election Rules, 1962, and rule 62 directs that the counting as far as possible has got to be a continuous process. Re-count is then provided by rule 64. Under rule 64 after counting is complete the Returning Officer has to make entries in a result sheet in Form No. XI provided by those rules. If the re-count leads to some variations of the results, they are to be carried in the same sheet in Form No. XI As and when counting is complete, the Return-Officer is required not only to fill in the result in Form No. XI but announce the particulars of that voting. It is that announcement in respect of a particular candidate that gives a right for claiming re-count and when re-count is permitted and carried out, an amendment if any, in Form No. XI is to be carried out under rule 64. We may slip over the intervening stages provided under rule 64 and proceed to rule 65 which is the declaration of results. The Returning Officer shall then subject to the provisions of section 26, if and so far as they apply to a particular case and if he has been so empowered by the Collector thereunder declare to be elected the candidate to whom the highest number of valid votes has been given, complete and certify the return of election in Form No. XII and send signed copies thereof to the Collector as soon as possible. The Collector is then called upon to publish the names of the Councillors under rule 66. Mr. Madkholkar referred us to these provisions for the purpose of pointing out that the declaration contemplated by rule 65 of the Maharashtra Zilla Parishads Election Rules, 1962, is a written declaration in Form No. XII. When Form

No. XII is duly certified and signed the election results are deemed to have been declared. No such form is provided by rule 34 of the Bombay Village Panchayats Election Rules. It would, therefore, be logical according to him, to infer that the posting of results under rule 36 which must necessarily be in writing, is a substitute for Form No. XII conceived of by the Maharashtra Zilla Parishads Election Rules, 1962.

11. We are not much impressed by this argument. It cannot be said that the rules relating to elections of the different bodies must be similar or identical. It is upto the Legislature or its delegate, if law permits, to frame such rules as would be convenient in the interest of speedy and proper election of the particular body concerned. Simply because a form is provided in the case of Zilla Parishads, it is not necessary that we must assume that there is a form provided for declaring the results under the Bombay Village Panchayats Election Rules, 1959 also. Apart from this approach, it appears to us that the interpretation which Mr. Madkholkar put on the Maharashtra Zilla Parishads Election Rules, 1962 for the purpose of drawing assistance does not appear to be quite accurate. Rules 61 and 65 of the Maharashtra Zilla Parishads Election Rules, 1962, merely conceive of two different stages in the election process. The first process is the counting of individual votes and making a record thereof candidate by candidate. For that, Form No. XI has been provided. When a consolidated statement is to be prepared from which the election is to be declared, entries in Form No. XII are provided. However, the language of rule 65 of the Maharashtra Zilla Parishads Election Rules, 1962, which is worth noting. It says that where the Returning Officer is empowered by the Collector he will declare to be elected the candidate to whom the highest number of valid votes has been given. This clause which is an independent clause authorises the Returning Officer to declare the results of the election and for this declaration no writing is needed. He has also to discharge his duties by completing and certifying the return of the election in Form No. XII and sending the copies thereof to the Collector. So the declaration of the results is one thing and merely completing the return of the election in a certain form and sending copies to the Collector is quite another.

12. So far as the provisions of the Bombay Village Panchayats Election Rules, 1959, are concerned, it appears to us that instead of prescribing a form, sub-rule (4) of rule 32 directs the Returning Officer to prepare a consolidated statement recording therein the total number of votes polled by each candidate. This would be analogous to Form No. XI provided in rule 61 of the Maharashtra Zilla Parishads Election Rules, 1962. We have looked at the Form No. XI which is prescribed and it is a very simple form. The first column, with serial numbers 1, 2 and 3, is meant for writing the name of the candidate and opposite the name of the candidate is entered the number of votes polled by the said candidate. The directions contained in rule 32 (4) are identical in terms. The only difference is whereas the Maharashtra Zilla Parishads Election Rules, 1962 provide a readymade form, the Returning Officer under the Bombay Village Panchayats Election Rules, 1959 is required to make a consolidated statement on a piece of paper himself. The provision of a form does not therefore seem to indicate either a difference in the two

approaches or some special provisions implying the necessity of a writing for declaring the results. As under rule 65 of the Maharashtra Zilla Parishads Election Rules, 1962, the Returning Officer of a village panchayat election is required to declare the election result under rule 34 and thereafter post the names of the elected candidates in the village under rule 36 and send a copy thereof for publication to the Collector. This writing is nothing but Form No. XII conceived of by Zilla Parishad. We do not think therefore that by taking an analogy from the provisions of the Zilla Parishads Election Rules, any particular assistance is rendered in the interpretation of rules 32 to 35 of the Village Panchayats Election Rules.

13. Mr. Madkholkar then referred us to a judgment of a Division Bench of this Court in *Bhimaji Laxman v C. N. Gite* 1969 Mh. L J 759. According to him the question of limitation for an election petition u/s 15 of the Bombay Village Panchayats Act ("No. 3 of 1959) has been concluded by this judgment. With respect we may point out that the facts and circumstances which led to the decision referred to above are entirely different. We have carefully gone through that judgment and it is obvious to us that the question of limitation u/s 15 of the Bombay Village Panchayats Act and the form in which that question arises before us never arose before the learned Judges who were deciding that case. It may be noted that certain nomination papers were rejected in the case of the election of the Village Panchayat of Khirwire of Akola Taluq of Ahemadnagar District. The election thereafter took place and before the stage of declaring results under rule 34 was reached, persons who were dissatisfied with the earlier order filed a writ petition in the High Court. The High Court issued an interim injunction on March 20, 1967 prohibiting the Returning Officer from declaring the results of the election. What the Returning Officer, therefore, did was, to go through the entire process of the election upto the count of votes preparing the tabular form and then stopped at that stage in terms of the injunction of the High Court not to announce the results of the election. When the writ-petition came up for hearing it was discovered that there was certain disputed question of fact which the High Court could not decide. The petition was in the circumstances permitted to be withdrawn and the interim injunction stood dissolved on January 22, 1968. The facts reported in the judgment show that the Returning Officer thereafter passed an order dated 2-5-1968 in his office declaring the result of the election. He then caused a copy of that result to be published in the village on 9-5-1968. It also appears from these facts which are admitted before that Division Bench that the copy of the result of the election was received in the Village Panchayat Office on 7-5-1968 and was publicly exhibited on the board on 9-5-1968. As soon as this happened an election petition was filed on May 22, 1968. The learned Civil Judge before whom this petition came to be filed u/s 15 of the Village Panchayat Act, rejected it on the preliminary ground that it was barred by limitation. The declaration of the result was perhaps on the 2nd of May 1968 when some office order was passed by the Returning Officer after the dissolution of the injunction order by the High Court. Since the petition filed on May 22, 1968 was beyond 15 days from 2-5-1968 he rejected it. It is against that order that a writ-petition came to be filed in the High Court which was entertained and disposed of by the judgment cited above. We have already

pointed out earlier that the entire election process, beginning with the counting of votes under rule 32 to the declaration of results under rule 34 as also amended results under rule 35 is all a continuous process and must be over in one sitting as far as possible. Whether it is one sitting or two sittings but it must be on the same day, and at the same time and place. It is always a continuous process. So far as that part of the procedure was concerned in the case of Khirwire Village Panchayat, the Returning Officer was prohibited by the High Court from declaring the results. He, therefore, counted the votes, kept a chart ready and deferred the announcement of the result subject to the decision of the High Court. In other words, the continuity of the process was broken by an order of the High Court and the day, time and place fixed under rule 7 passed by without the final stage of declaring; the results being reached because of the High Court's injunction.

14. In the special circumstances of that case, the learned Judges themselves point out that the facts before them were peculiar as the sequence of events was interrupted. Earlier they point out how a villager would know the date of declaration of the results and would be in a position to resort to such remedies as he wants against the election results. For instance in paragraph 5 of the judgment this is what they point out: -

"In this case, on March 20, 1967, this Court granted an injunction in Special Civil Application No. 604/1967 prohibiting the declaration of result of the election. The said injunction was dissolved on January 22, 1968. It is only then that the Returning Officer became free to declare the results of the election. Normally, when a notification fixing the respective dates of election and counting of votes is issued, the candidates know that under rule 34 on completion of the statement showing the number of votes recorded, the Returning Officer shall declare the results and that he would subsequently have the results posted in accordance with rule 36. In that case, they anticipate the event and remain on the look out and in case they wish to challenge the elections, they see to it that they file an election petition within time. In the peculiar facts of this case, the sequence of events was interrupted."

It will be, therefore, obvious that the judgment relied upon by Mr. Madkholkar does not deal with a normal case when the entire election programme is gone through according to the schedule notified under rule 7. The above quotation also shows that the declaration of results under the normal election programme is the one under rule 34. The reference to the candidates being on the look out for the purpose of challenging the election is to this declaration and in that case, the limitation is one prescribed u/s 15, namely, 15 days from the date of declaration of the results. It is also important to note that the declaration under rule 34 is at the same sitting when the counting is continuing. Because of the interruption caused by the High Court order it was not possible in that case to visualise a declaration under rule 34 in the very same meeting where the counting took place. When under the normal circumstances election result is declared those interested have sufficient notice of the day, time and place of the possible declaration. Under special circumstances after the High Court's injunction order is withdrawn, the Returning Officer becomes free to declare the result. He could not resort to the provisions of rule 34 at all. What the Officer did was

to declare the result in his office ex parte without the knowledge of the others, the candidate or the voters from the village concerned and notified that result to the village by posting it under rule 36. In the peculiar circumstances of that case, the learned Judges point out that the posting of results in the village under rule 36 would be considered the starting point of limitation for the purpose of challenging the election u/s 15 of the Bombay Village Panchayats Act, 1958. No occasion arose before the learned Judge to decide how limitation will operate when the election programme has been carried out in a normal manner under all the rules relevant in that behalf. When the occasion itself did not arise, we do not think that the judgment could be said to decide the question of limitation under the normal circumstances as it arises before us for decision.

15. We are also not impressed by the argument of Shri Madkholkar that the very purpose and function of rule 36 is to declare the results to the villagers. He said that the place of counting fixed in the election programme was the Tahsildar's Office at Gondia. The voters in village Ledada had therefore no means of knowing when the election results were declared and what precisely were those results. We do not think that such a functional approach to the provisions of rule 34 is either necessary or permissible. When the language of the rules is very clear and that language seems to be borrowed from the substantive provisions of section 15 of the Bombay Village Panchayats Act, 1958, we must attribute the same meaning to the same expression used in the Rules and Act. The starting point of limitation indicated u/s 15 of the Act is the "declaration of results". That declaration of results is contemplated by rules 34 and 35. The posting of results in the village is a very different process than declaration of results. If the question of knowledge of villagers has any relevance, that is already answered by an earlier judgment of this Court in the quotation quoted above. When the election programme is being worked out according to the schedule notified under rule 7 all interested in the election know, not only the date of voting but the date of counting and declaration of results under rule 34. It is upto the aggrieved persons to be vigilant and to resort to the remedies available at law. By prescribing a very short period of limitation u/s 15, the intention of the Legislature is obvious. It is expected that in the matter of election the disputes should be raised immediately and disposed of as early as possible. On a plain reading of section 15 and rules 32 to 36 we are satisfied that the starting point of limitation prescribed by section 15 of the Act is the declaration of results under rule 34. So far as the present petitions are concerned, the election programme was carried out according to schedule and was not interrupted at all. On 23-9-1969 there was a formal declaration of results of the election. A petition to challenge such an election ought to have been filed within 15 days from that date. The two petitions which are filed in the Court of the Civil Judge on November 20, 1969 are clearly barred by limitation. We would, therefore, uphold the order passed by the learned Civil Judge as Election Tribunal and dismiss both these petitions. As there is no appearance for the respondents, there will be no order as to costs.