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(1997) 08 BOM CK 0069

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 776 of 1997

Baburao Rathod	APPELLANT
Vs	
The State of Maharashtra and others	RESPONDENT

Date of Decision: Aug. 18, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226, 243
- Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 - Section 27
- Maharashtra Zilla Parishad Election Rules, 1962 - Rule 14(3B), 3

Citation: (1997) 4 ALLMR 508 : (1998) 2 BomCR 840

Hon'ble Judges: N.P. Chapalgaonker, J; B.B. Vagyani, J

Bench: Division Bench

Advocate: N.P. Patil-Jamalpurkar, for the Appellant; S.V. Chillarge, A.G.P., N.H. Patil, R.N. Borulkar, S.B. Patil, V.G. Sakolkar and K.B. Bhise, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.P. Chapalgaonker, J.
Leave to amend. Prayer clause be added.

2. This writ petition challenges the rejection of the nomination paper of the petitioner in the elections for the Councillors of Zilla Parishad, Osmanabad from sattur Constituency on a seat reserved for other backward community and the rejection of the appeal bearing Miscellaneous Civil Appeal No. 28 of 1997 confirming the order of the Returning Officer by the 1st Additional District Judge, Osmanabad.

3. On 15-2-1997 the petitioner filed his nomination paper. It accompanied a copy of caste certificate authenticated by the Head Master of a private school. This certificate issued by the Tahsildar, Omerga was shown to have certified that petitioner belongs to Laman

caste. On 15th February 1997 itself petitioner was intimated in writing by the Returning Officer that he should produce the original certificate of his caste at the time of the scrutiny. When the nomination was taken up for scrutiny the petitioner could not produce the original certificate and contended that the original is lost and therefore prayed for 8 days'' time. The Returning Officer by his order refused to grant time and rejected the nomination paper under Rule 14(3-B) of the Maharashtra Zilla Parishads Election Rules, 1962. This order of the Returning Officer was challenged in Miscellaneous Civil Appeal No. 28 of 1997 in the District Court and the learned 1st Additional District Judge was pleased to reject the appeal by his order dated 24th February, 1997. This order has been challenged in this petition.

4. Shri N.R Patil-Jamalpurkar, learned Counsel for the petitioner, firstly contended that failure to produce original caste certificate at the time of scrutiny as required by the rule is not a defect of substantial character and Rule 19(4) of the Rules mandates that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial character. Secondly, Shri Patil submits that the Returning Officer himself was authorised to issue caste certificate in the capacity of the Sub Divisional Officer. Shri Patil points out that since at the time of the scrutiny the petitioner could not get original certificate he immediately applied on the very date for a duplicate certificate of caste to the very person who was acting as Returning Officer. But instead of taking of note of this fact, the Returning Officer acted too technically over-looking the spirit of the legislation and rejected the nomination paper and on the next date of scrutiny i.e. on 18th February, 1997 issued a caste certificate in favour of the petitioner. Therefore, the fact that the petitioner belongs to Laman caste was not really in dispute and is established beyond doubt. Shri Patil contends that too technical view of the matter would defeat the valuable right of the petitioner.

5. Shri S.V. Chillarge, Assistant Government Pleader for respondents No, 1, 3 and 4, Shri N.H. Patil, Counsel for respondent No. 2, Shri R.N. Borulkar, Advocate for respondent No. 5; Shri S.B. Patil, Advocate for respondent No. 7 and Shri K.B. Bhise, Advocate for respondent No. 8 defended the order of the Returning Officer and the learned Additional District Judge. Shri K.B. Bhise, Counsel, appearing for the elected candidate - contesting respondent - submitted that the requirements as per rules to produce the original certificate was not complied by the petitioner and, therefore, the Returning Officer has rightly rejected the nomination paper. Shri Bhise further objected to the maintainability of the petition contending that an election petition would lie u/s 27 of the Act of 1961 and since the elections are over the challenge to the elections is maintainable only by way of election petition as provided u/s 27 before the District Judge and this petition is not maintainable. We are afraid that this objection cannot be sustained in view of the provisions of Rule 20 of the Maharashtra Zilla Parishads Election Rules, 1962 which provides for an appeal against acceptance or rejection of the nomination paper in an election of the Councillor to the Zilla Parishad. Sub-rule (8) of Rule 20 makes it clear that the decision of the District Court on appeal, if there is an appeal, and otherwise decision

of the Returning Officer of accepting or rejecting the nomination paper shall be final and conclusive and shall not be called in question in any Court or before a Judge referred to in sub-section (2) of section 27. This sub-rule (8) is quoted below for ready reference :

"(8) The decision of the District Court on appeal under this rule and subject to only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any Court or before a Judge referred to in sub-section (2) of section 27."

This makes it clear that the question of acceptance or rejection of nomination paper shall been kept outside the purview of the enquiry u/s 27(2) by a specific provision and because of this exclusion, an election petition will not be a competent remedy. Therefore. Shri Patil"s contention that the election petition is not a remedy available for the petitioner and this writ petition is maintainable will have to be upheld.

6. Well recognised principle of the election law that a nomination paper should not be rejected for any defect which is not of substantial character has been recognised and embodied in the rules by way of Rule 19(4). The requirements for valid nomination and the manner of its presentation have been provided in Rule 14 of the said Rules. Sub-rules (3-A) and (3-B) of Rule 14, relevant for the purpose of this writ petition, read as under:

"(3-A) In addition to a declaration to be made by a candidate contesting election to a reserved seat, that he belongs to the Scheduled Caste, the Scheduled Tribe or the Backward Class of citizens, as the case may be, the nomination paper shall be accompanied by a true copy of the Caste Certificate issued by the competent authority.

(3-B) The contesting candidate or any person authorised by him shall produce an original Caste Certificate for verification at the time of scrutiny of the nomination papers."

7. Eligibility to contest a post reserved for certain category goes to the root of the right of the contesting candidate. This eligibility is to be established in the manner provided by the statute and the rules. Sub-rule (3-A) of Rule 14 requires that if a seat is reserved for Scheduled Caste, Scheduled Tribe or the Backward Class of citizens, then the nomination paper shall be accompanied by a true copy of the caste certificate issued by the competent authority and sub-rule (3-B) provides that the contesting candidate or any person authorised by him shall produce an original caste certificate for verification at the time of scrutiny of the nomination papers. Both these requirements; firstly, accompanying a true copy to the nomination paper and, secondly, the production of the original for verification at the time of the scrutiny are the means by which the Returning Officer will judge the candidate"s right to contest. If the State has framed the rules under rule making power given by the statute, laying down the manner in which electoral right is to be exercised, it will not be open for any officer or even for the courts to prescribe some other mode for establishing that right. As was observed by the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, right to contest is

not a fundamental right, Since this right is created by a statute it wilt have to be exercised and enjoyed within the four corners of the statute and the rules made thereunder.

8. Shri Patil further submitted that the Returning Officer is empowered to adjourn the scrutiny for the next day under Rule 19(5) and he could have given time to the petitioner to comply with the said requirement. There is no dispute over the fact that the petitioner had asked for 8 days" time and the Returning Officer rejected the said prayer. The discretion is vested in the Returning Officer to give time but it cannot be later than next day and what was asked for was beyond his power and it was rightly rejected. It is true that on the next date the petitioner is given the certificate and if the Returning Officer would have adjourned the scrutiny for next date the petitioner could have produced that certificate at the time of the scrutiny. If the petitioner would have asked for time till next date and the Returning Officer would have been satisfied about the reason he might have adjourned the scrutiny to the next date and the whole picture would have changed.

9. The fact that the Sub Divisional Officer himself was the Returning Officer and on the very date of the scrutiny the petitioner had filed an application for issuing a duplicate caste certificate was not taken into account by the Returning Officer. Returning Officer in an election to the Zilla Parishad is appointed by the Collector. Under Rule 3 of the said Rules he may be either a Government officer or Officer of a local authority or of a Government Corporation. It is just a coincidence that in the instant case the Returning Officer was the same person who was to issue the caste certificate. An officer acting as Returning Officer is persona designata and whatever job he may be doing has nothing to do with his duty as Returning Officer. Therefore, merely because he did not bring his personal knowledge into play that the petitioner has applied for duplicate caste certificate, it cannot be said that he has acted illegally. Shri Patil read out some portions of the judgments of the District Court by which the District Judge took a different view and allowed some other appeals on the ground that the authorities to issue caste certificate and the Returning Officers were the same persons and therefore the Returning Officer could have waited till the new certificate is issued by himself. We do not wish to comment on this view taken by the learned District Judge in matters which are not before us. Suffice it to say that the personal knowledge of the Returning Officer is not compulsorily brought into play while examining the validity of a nomination paper. Rule 19(2) gives reasons for which the Returning Officer may reject the nomination paper. Clause (c) of the said sub-rule provided that nomination paper may be rejected if there has been a failure to comply with any of the provisions of Rule 14 or 17. Requirement to produce original caste certificate at the time of the scrutiny is provided by Rule 14 and, therefore, the nomination paper could be rejected for the non-compliance of this requirement. Shri Patil, learned Counsel for the petitioner, lastly contended that because of the non-exercise of the discretion vested in him, the valuable right of the petitioner to contest the election is lost. It is true that for the non-compliance of the rules one may get out of the picture in an election. But it is all the part of the game. If one wants to contest an election he must be vigilant and it is presumed that every contestant of the election knows

the election law. If the rules provide that the original will have to be produced at the time of scrutiny, the petitioner should have before hand prepared for this eventuality and kept the certificate ready. The action of the Returning Officer was well within the rules.

10. Therefore, we reject the writ petition. No order as to the costs. However, we feel that if the Returning Officer himself was issuing the caste certificate and was already told that the petitioner has applied for a duplicate caste certificate, it would have been better, if he would have postponed the scrutiny for a day and considered the question of the caste of the petitioner.

11. At this juncture, Shri Patil, learned Counsel for petitioner, prays for certificate for appeal to the Supreme Court. We do not see any reason to grant the prayer. Therefore, the request is refused.

12. Certified copy be given within a week, if applied for.

13. Petition rejected.