(1968) 11 BOM CK 0025

Bombay High Court

Case No: Special Civil Application No. 1430 of 1968

Bhimaji Laxman Dinde		APPELLANT
	Vs	
C.N. Gite		RESPONDENT

Date of Decision: Nov. 21, 1968

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1969) 71 BOMLR 490 : (1969) MhLj 759

Hon'ble Judges: Nain, J; Chandruchud, J

Bench: Division Bench

Judgement

Nain, J.

This is a petition under Articles 226 and 227 of the Constitution of India for setting aside and quashing an order dated July 12, 1''968, made by the learned Civil Judge, Junior Division, Sangamner, District Ahmednagar, dismissing'' an election petition by the petitioners filed u/s 15 of the Bombay Village Panchayats Act, No. III of 1959, hereinafter called the said Act. The facts leading to this petition briefly stated are that the six petitioners, respondent No. 15, and respondents Nos. 6 to 14 had filed their nominations for election to Khirwire Village Panchayat in Akola taluka, Ahmednagar District, for various wards in the said village. The said nominations were required to be filed on March 10, 1.967, between the hours of 10.00 a.m. . and 3.00 p.m. The nomination papers of the petitioners and respondent No. 15 were rejected by the Returning Officer on the ground that they were filed late. There is some dispute as to the exact time at which the nomination papers were filed, but to that we shall revert later. The petitioners and respondent No. 15 preferred an appeal to the Mamlatdar of Akola, respondent No. 2, under Rule 12(4) of the Bombay Village Panchayats Election Rules, 1959, hereinafter referred to as the Election Rules. The Mamlatdar dismissed the said appeal. Thereafter the petitioners and respondent No. 15 filed in this Court Special Civil Application No. 604 of 1967 under Articles 226 and 227 of the Constitution of India. The said petition was

disposed of on January 22, 1968 and an order in the following terms was passed:

Petition allowed to be withdrawn as the petition involves disputed questions of feet. No order as to costs.

On the same day, an interim injunction which had been issued on March 20, 1967, was dissolved and the Returning Officer, who is respondent No. 1, became from to declare the election of respondents Nos, 6 to 14 as uncontested under Rule15 of the Election Rules. Thereafter a communication dated May 2, 1968 was, according to the petitioners, received by the Panchayat Secretary on May 7, 1968, through the Mamlatdar of Akola declaring that respondents Nos. 6 to 14 had been elected uncontested. The said communication was sent to the Village Panchayat with a direction that it should be published on the notice board of the Panchayat and the fact of publication should be reported. According to the petitioners, the said notice was published by the Village Panchayat by affixing it on its notice board on May 9, 1968. Thereafter on May 22, 1968, the petitioners alone filed before the learned Civil Judge, Junior Division, Sangamner, Miscellaneous Application No. 6 of 1968, an election petition under the provisions of Section 15 of the said Act for setting aside the election of respondents Nos. 6 to 14 on several grounds, including non-compliance with some of the Election Rules. The said application was dismissed by the learned Civil Judge on July 12, 1968, Against the said decision, the petitioners have filed the present application.

2. Before the learned trial Judge three contentions were taken 011 behalf of respondents Nos. 6 to 14. Firstly, that the election petition was required by Section 15 of the said Act to be filed within 15 days of the declaration of the results of election. According to the respondents, the results were declared on May .2, 1968 and the election petition was filed on May 22, 1968 and was, therefore, beyond the time prescribed by law. Secondly, that on the question of rejection of the nomination of the petitioners herein and respondent No. 15, the decision of the Mamlatdar was final under Rule 12(4) of the Election Rules and the learned trial Judge had, therefore, no jurisdiction to go behind that order, and thirdly, that the election petition suffered from multifarious-ness inasmuch as all the petitioners could not combine to file one composite application as the act of rejection of the nomination of each petitioner was a separate cause of action vesting in that petitioner alone. The learned trial Judge upheld all these three contentions of these respondents and dismissed the petition with costs. All these three contentious have been raised before us,

3. The first contention is as to the election petition being beyond the time prescribed by Section 15 of the said Act. It is not in dispute that the declaration of the result, exh. A to the petition, bears the date May 2, 1''968 or that the election petition was filed on May 22, 1968 and is beyond a period of 15 days from the date which the declaration bears. The dispute, however, is about the date of the actual declaration of the result of the election, on the true interpretation of the word "declaration". The

communication received by the Village Panchayat bears an endorsement by the Sahayak Gram Sevak, Khirwire Village Panchayat that it was received on May 7, 1968. The petitioners contend that this communication was affixed to the notice board of the Village Panchayat on May 9, 1968. None of the respondents has filed an affidavit in reply to this petition disputing these two dates. If we take May 7, 1968, as the date of declaration the period of 15 days would commence from the next day and the election petition having been filed on May 22, 1968, will be within 15 days and therefore within time. However, if we take into consideration the date of the said communication of the result of election being affixed to the Panchayat notice board, the election petition will be well within time.

4. Section 15 of the said Act provides that if the validity of any election of any member of a Panchayat is brought in. question by any candidate at such election or by any person qualified to vote at the election to which such question refers, such candidate or voter may at any time within 15 days after the date of the declaration of the results of the election apply to the Civil Judge for determination of such question. The question, therefore, is as to what should be taken, to be the date of the declaration of the results, whether it should be May 2, 1968, May 7, 3968 or May 9, 1968. Section 10(5) of the said Act provides that the names of elected members shall be published by the Collector in the prescribed manner. Rule .15 of the Election Rules provides for declaration of results of an uncontested election. Rule 34 provides for declaration of results of a contested election. It states 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 the candidate who has secured the largest number of votes to be elected to fill such reserved seat. Rule 36 provides for posting of results of election by the Returning Officer. It states that the Returning Officer shall cause the names of the elected candidates to be posted at the village ''Chawdi or at the Village Panchayat Office or at such other place, if any, appointed in that behalf by him. and shall report such names immediately to the Collector.

5. In this case on March 20, 1967, this Court granted an injunction in Special C.A. No. 604/1967 prohibiting the declaration of results 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 86. 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. After the injunction was dissolved the candidates did not know as to when the Returning Officer would declare the results. It is true that the necessary notification was issued

by the Returning Officer on May 2, 1968. But until the results are declared, the period of limitation prescribed by Section 15 would not run. If the Returning Officer makes the results known only to himself and does not declare the same to the persons who are interested in such results, such as the Village Panchayat or the other contestants in the election, it cannot be said that the results were declared. In order that the results can be said to be declared, they must be made known or stated publicly and formally to the electorate in accordance with the provisions of Rule 36. In this case, the result of the elections, although it bore the date of May 2, 1968, was received by the Village Panchayat on May 7, 1968 and was posted on the Panchayat notice board on May 9, 1968. In our opinion, the result was declared on May 9, 1968, when it was posted on the notice board of the Village Panchayat. In no case can it be said to have been declared earlier than May 7, 1968, when it was received by the Village Panchayat. In this view of the matter, the election petition filed 011 May 22, 1968, was within time and was not barred by the provisions of Section 15 of the said Act.

6. The next contention taken on behalf of the respondents is as to multifarious-ness. This contention can be divided into two parts: (a) that the rejection of each nomination paper filed by each of the petitioners furnished a separate cause of action to the petitioner concerned and one composite application could not be filed on behalf of all of them, and (b) that petitioners Nos. 1 to 3 had filed their nominations for ward No. 3, petitioners Nos. 4 to 6 for ward No. 1, and respondent No. 15 for ward No. 1, respondents Nos. 6 to 8 had filed their nominations for ward No. 3, respondents Nos. 9 to 11 for ward No. 1 and respondents Nos. 12 to 14 for ward No. 2. It was contended that in any case, the petitioners were not interested in the result of ward No. 2. Even respondent No. 15 was not interested in the result of ward No. 2. In ward No. 2 there were only three seats and respondents Nos. 12 to 14 being the only candidates should have been declared to have been elected uncontested. Their election was, however, challenged not on the ground of wrongful rejection of the nomination papers of the petitioners, but on other grounds, which were not applicable to respondents Nos. 6 to 11. There was neither a common question of law or fact between the petitioners and respondents Nos. 12 to 14.

7. At the outset, we pointed out to Mr. Rane appearing for the petitioners that whatever we might have to say with regard to the plea of multifarious-ness so far as the other respondents were concerned, respondents Nos. 12 to 14 stood altogether on a different footing, and in no case could it be said that the petition against them did not suffer from the defect of multifariousness. Mr. Rane thereupon stated before us that he would withdraw the petition so far as respondents Nos. 12 to 14 were concerned. The petition is accordingly allowed to be withdrawn so far as these respondents are concerned and they will have to be declared to be elected uncontested from ward No. 2.

8. With regard to the plea of multifarious-ness in respect of respondents Nos. 6 to 11, we might point out that Section 15(2) provides that after an election petition is filed, an inquiry shall be held and that for the purpose of the said inquiry, the Judge may exercise all the powers of a Civil Court. Sub-section (4) provides that notwithstanding anything contained in the Civil Procedure Code, 1908, the Judge shall not permit any application to be compromised or withdrawn, altered or amended, except in certain circumstances. These provisions clearly indicate that the Code of Civil Procedure, 1908, is applicable to proceedings u/s 15 of the said Act. Order I, Rule 1 of the CPC provides that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate suits a common question of law or fact would arise. In this case, the nomination papers of the petitioners and respondent No. 15 were rejected by the Returning Officer on the ground that these nomination papers were tendered to him and were received by him some time after 3.00 p.m. on March 10, 1967. It is, therefore, obvious that the right of the petitioners to relief arises out of the same series of transactions. Under the aforesaid provision of the Civil Procedure Code, they could therefore file one application, Rule 2 of Order I provides that where it appears to the Court that any joinder of the plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. Rule 3 of Order II provides that any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly, may unite such causes of action in the same suit. This is another provision under which the petitioners could have joined their causes of action. These provisions normally applicable to suits would apply to an election petition also by virtue of Section 141 of the Civil Procedure Code. We are, therefore, of the view that the composite application filed by the petitioners against respondents Nos. 6 to 11 was maintainable and did not suffer from the defect of multifariousness. The petition has already been withdrawn against respondents Nos. 12 to 14 and the other respondents are formal parties. We, therefore, hold that the petition is maintainable.

9. The third contention taken before us was on behalf of respondents Nos. 6 to 11 by Mr. More appearing on their behalf. He stated that against the rejection of their nomination papers the petitioners and respondent No. 15 filed an appeal to the Mamlatdar under Rule 12 of the Election Rules. Rule 12(4) provides that the order passed by the Mamlatdar in appeal shall be final. Mr. More contended that in view ''of the fact that this rule makes the order of the Mamlatdar final, it would not be open to the petitioners to challenge the .order of rejection in an election petition filed under the provisions of Section 15 of the said Act, Section 15 of the said Act, however, provides that if the validity of any election of a member of a Panchayat is brought in question by a candidate or a voter such candidate or voter may file a

petition before a Civil Judge, Junior Division, for determination of such question. Now, the validity of any election may be challenged even on the ground that the nomination papers of the rival candidates were wrongly rejected, and such wrongful rejection of nomination papers would affect the validity of an election. The right to challenge the election on this ground is conferred by statute inasmuch as it is contained in Section 15 of the said Act. Rules framed under an Act cannot normally take away this statutory right unless the rule making power in the statute itself delegates to the rule making authority the power to take away this right in certain specified circumstances. We are unable to find such provision in the section conferring the rule making power on the Government. In fact, in respect of the said Act, namely, the Bombay Village Panchayats Act, and the rules framed thereunder, this question has been agitated and decided by a Division Bench of this Court consisting of our learned brethren Abhyankar and Palekar JJ. in the case of Manohar v. G.S. Solanke (1902) 66 Bom. L.R. 378. In the judgment of Abhyankar J. it is observed that it is well-settled that the right given by Section 15 of the said Act cannot be cut down or abridged by the election Rule 12(4). The finality which is given by the rule only means this that there is no farther challenge at that stage to the decision of the Returning; Officer or the Mamlatdar as an appellate authority so far as the rejection or acceptance of the nomination paper was concerned. But it cannot mean that the -jurisdiction of the election tribunal created u/s 15 is in any way abridged in this matter. It was further observed that on the interpretation of Rule 12(4) of the Election Rules and Section 15 of the said Act which permitted an election petition, the petitioners were not without a remedy in case the appellate authority had decided against them. With these observations of the learned Judges, we are in respectful agreement and we accordingly hold that the finality of the order of the Mamlatdar referred to in Rule 1.2(4) of the Election Rules did not prevent the learned trial Judge from considering the question of the rejection of the nomination papers of the petitioners. Mr. More invited our attention to another Division Bench judgment of our Court delivered, by Tambe and Palekar JJ. in the case of Venkatrao v. Vithal (1908) 65 Bom. L. R. 545. This was under the provisions of the Maharashtra Zilla Parishads and Panchayat Samitis Act. It was held in that case that in an election petition filed u/s 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, it was not open to a voter to challenge the election on the ground that the person declared elected was a disqualified person at the time his nomination paper was filed. It might be stated that the provisions of Section 27 of the Maharashtra Zilla Parishads and Panchayat Samitis Act and Section 15 of the Bombay Village Panchayats Act are similar. The rule making were in the two Acts is, however, different. Section 14(2) of the Zilla Parishads Act provides that the State Government shall make rules for the conduct of elections, including the provision for an appeal against the decision of a Returning Officer accepting or rejecting the nomination paper and the finality of such decision. Pursuant to this, Rule 20 (8) of the Maharashtra Zilla Parishads Election Rules, 1962, provided that 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 Section 27 of the Zilla Parishads Act. It will thus be seen that the statutory right of filing an election petition or challenging an election conferred by Section 27 of the Zilla Parishads Act in terms similar to Section 15 of the said Act was curtailed by the rules and such rules were expressly authorised by another statutory provision of the same Act. The curtailment of the rights was in fact under the authority of the statute itself, while in respect of the Bombay Village Panchayats Act, the rule making power contained in Section 176 of the said Act merely states that the State Government may make rules u/s 11 of the said Act prescribing the manner in which the election of members shall be held. There is neither a provision similar to Section 14 of the Zilla Parishads Act, nor a rule similar to Rule 20(8) of the Zilla Parishads Election Rules. The judgment in Venkatrao v. Vithal has, therefore no application to the facts of the case.

10. In view of the fact that we have held that in an election petition the learned trial Judge was entitled to go into the question of the validity of the rejection of the nomination papers, we are afraid, we shall have to remand the election petition No. 6 of 1968 to the learned trial Judge for further proceedings not inconsistent with this judgment. We do not ''have before us sufficient material to go into the question of the validity of the rejection of nomination papers of the petitioners. Our attention has also been drawn to Rule 11, Sub-rules (2) and (2A) of the Election Rules which provide that on scrutiny of nominations, the Returning- Officer may reject the nomination paper on the ground that the candidate has failed to comply with any of the provisions required by the Election Rules or the said Act. The Returning'' Officer has obviously rejected the nomination papers of the petitioners on the ground that they Were not filed within the time prescribed under the Election Rules. Rule. 11(2A), however, provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The learned trial Judge will have to consider, apart from the question of validity of the rejection, also the question as to whether the late filing of the nomination papers in this case was a defect of a substantial character. In so doing, he will have to consider that in fact the deposit of fees required by Rule 10 was made by the petitioners at 2.00 p.m. The treasury where the deposit was made closes at 3.00 p.m. The table of the treasury Aval Karkoon was at the relevant time at a distance of 5 feet away from the table of the Returning Officer. These facts are admitted in para. 4 of'' the petition of Changdeo Narayan. Gite the Returning Officer in Special Civil Application No. 604 of 1967. It would appear from these facts that the petitioners were in fact present in the office of the Returning Officer before 3.00 p.m. In para. 3 of the same affidavit, the Returning Officer states that at about 3.35 p.m. petitioner No. 1 and six others (obviously the five remaining petitioners and respondent No. 15) brought their nomination papers, that the Returning Officer told them that he would not accept the nomination papers as they were late and ultimately on the advice of the Mamlatdar, he accepted the nomination papers at 3.40 p.m. The petitioners contend

that they tendered their nomination papers at 3.1.0 p.m. The learned trial Judge will have to go into the question of the extent of the delay in filing of the nomination papers and after taking- into consideration the judgment of this Court in The Municipal Corporation Vs. Hashu P. Advani, come to his own. conclusion as to whether the delay was a defect of a substantial character within the meaning of Rule 11(2A) of the Election Rules.

Accordingly, we quash and set aside, the judgment and order dated July 12, 1968, of the learned trial Judge and remand the petition to him for further proceedings not inconsistent with this judgment. The hearing of the election petition is expedited and the learned trial Judge will proceed with it as soon as possible. Respondents Nos. 12 to 14 shall, however, be declared to be duly elected from ward No. 2. In respect of the declaration of the results of wards Nos. 1 and 3, the present injunction will continue. Costs of this petition shall be costs in the election petition. There will be no order as to costs with regard to respondents Nos. 12 to 14 as they have not appeared by a separate advocate.