

(1967) 10 BOM CK 0021

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 294 of 1967

Shashikalabai Anandrao

APPELLANT

Vs

Returning Officer, Gram
Panchayat Election, Umri and
Others

RESPONDENT

Date of Decision: Oct. 25, 1967

Acts Referred:

- Bombay Village Panchayats Election Rules, 1959 - Rule 10(1), 8

Citation: AIR 1968 Bom 445 : (1968) 70 BOMLR 310 : (1968) MhLj 391

Hon'ble Judges: Padhye, J; Abhyabkar, J

Bench: Division Bench

Advocate: P.G. Palshikar, for the Appellant; B.A. Masodkar, for the Respondent

Judgement

Abhyankar, J.

This petition raises an interesting question about the election of members to a village panchayat from a constituency where a seat is reserved for women in addition to a general seat. In our opinion, the rules framed require immediate reconsideration to avoid certain anomalous results which may follow if the intention of the Legislature is not to be defeated by the rules as they are.

2. The petitioner Shashikalabai was nominated as a candidate from Ward No. 3 of village Umri Mamdabad in Daryapur taluq of Amravati district. In the panchayat elections held in 1967 for Ward No. 3, which was a multi-member constituency, one seat was reserved as a general seat and another seat was reserved for women. In the nomination paper filed by Shashikalabai, the petitioner, which was in form A as prescribed by Rule 8 of the Bombay Village Panchayats Election Rules, 1959, there was nothing to indicate whether the petitioner's nomination or candidature was for the reserved seat or the general seat. This is because Form A itself does not require any such information or option to be exercised or indicated by a woman candidate.

Respondent No. 3, Gokurnabai was another candidate who had also filed her nomination paper in the same ward. The Returning Officer ruled that inasmuch as respondent No. 3 Gokurnabai had made a deposit of only one rupee by way of deposit payable under Rule 10 with the nomination it was intended for the reserved seat from Ward No. 3. At the same time, he rejected the nomination paper of the petitioner Shashikalabai because Shashikalabai had not stated, it is alleged, in the nomination paper whether her candidature was for the reserved seat or the general seat, while perhaps it was so stated by Gokurnabai, Against the rejection of her nomination Shashikalabai preferred an appeal and the appellate authority, that is, Tahsildar, Daryapur, took the view that it was erroneous for the Returning Officer to reject the nomination of Shashikalabai wholesale. He held that Shashikalabai had made a deposit of Rs. 5 as nomination fees and there being two seats in Ward No. 3 one general and another reserved for women, Shashikalabai's nomination could be properly construed as a nomination for the general seat. He, therefore, allowed the appeal holding that the nomination paper of Shashikalabai is accepted for the general seat. At the same time, the seems to have confirmed the decision of the Returning Officer declaring respondent No. 3 Gokurnabai as elected to the seat reserved for women from Ward No. 3. The petitioner challenges the order of the Returning Officer and the appellate authority in this petition as erroneous and not valid under the law and the rules.

3. Rules have been framed by the State Government called the Bombay village Panchayats Election Rules, 1959, which prescribe the procedure for holding of the elections to the village panchayats. Under Rule 8 on the day appointed for the nomination of candidates each candidate has to make an application in writing in Form A signed by him and present it either in person writing. Now, Form A prescribed under Rule 8 of the Bombay Village Panchayats Election Rules, 1959 is as follows:-

"FORM A

(Vide Rule 8)

Nomination Paper.

Name of the ward for which the candidate is nominated-

Full name of candidate.

Sex.

Age.

Address.

In the case of a ward in which a seat is reserved for Scheduled Castes or Scheduled Tribes, State whether or not belonging to such castes or tribes for which seat or seats is or are reserved. If member of a Scheduled Caste or Scheduled Tribe, state the name of the caste and tribe-

Name of ward in which candidate is entitled to vote, and his number in the Voters List-

I hereby declare that I am willing to serve as a member, if elected.

Date

Signature of Candidate.

Serial No.

Date on which and time at which nomination paper was delivered to Returning Officer.

Receipt.

Date.

Signature of the Returning officer".

3-A. Rule 10 requires that on or before the date appointed for the nomination of candidates, each candidate has to deposit or cause to be deposited with the Returning Officer a sum of five rupees in cash, but under the proviso to this sub-rule (1) of Rule 10, in a ward in which a seat or seats is or are reserved for women, Scheduled Castes or Scheduled Tribes, the sum to be deposited by or on behalf of a candidate who is a woman or a member of a Scheduled Caste or Scheduled Tribe shall be rupee one. The requirement of deposit has to be strictly followed because it is provided that no candidate shall be deemed to be duly nominated unless the deposit referred to in this sub-rule has been made.

4. Now a close scrutiny of the Form of Nomination, that is, Form A which we have reproduced above, will show that in the case of a ward where a seat is reserved for the Scheduled Castes or Scheduled Tribes, the candidate has to state whether or not he belongs to the Scheduled Caste or Scheduled Tribe for which a seat or seats is or are reserved, but in the case of a ward where such a seat is reserved for women, there is no obligation cast on a candidate of giving any additional information. It will be evident from the name and sex of a candidate that the candidate is a woman, but the requirement which the Form A lacks is an indication whether a woman candidate who files a nomination paper in Form A wants to contest the general seat reserved for Scheduled Castes or a seat reserved for Scheduled Castes or a seat reserved for Scheduled Tribes when the constituency is a multi member constituency. Form A is, therefore, patently defective inasmuch as it does not require any candidate to indicate whether his candidature is for the general seat or a seat reserved for women or member of the Scheduled Caste or member of the Scheduled Tribe. In view of this form prescribed for nomination, it is obvious that there was no defect in the nomination paper filed by the petitioner if she did not indicate in the nomination from that she was contesting either a seat reserved for women or the general seat. It has also been ruled by the Division Bench of this

Court in Special Civil Appln. No. 127 of 1963, D/- 14-9-1964 (Bom), that failure of a candidate to indicate in this form of nomination, whether the nomination is for a general seat or a seat reserved for women, is not fatal to the acceptance of the nomination paper.

5. Therefore, there is no doubt that the rejection of the nomination paper of Shashikalabai on the sole ground that she had not indicated whether she was contesting for the general seat was unsustainable and was rightly set aside. At the same time, we are unable to affirm the correctness of the order of the appellate authority that the nomination of Shashikalabai, the petitioner, should be taken to be for the general seat on the ground that she was shown to have deposited Rs. 5 under Rule 10. In this respect, perusal of Rule 10(1), Proviso, would indicate that in the case of women candidates the sum to be deposited is rupee one in a ward where the seat is reserved for women. Thus, whether or not, woman candidate is nominated to fill the general seat or a seat reserved for women in that ward, the nomination fee as the rule stands, in the case of a women candidate is only rupee one. Thus, even the amount deposited could not determine whether or not, the candidature was for the general seat or the seat reserved for women in this case.

6. We are clear that there is a substantial defect in the rules and in the Form inasmuch as the Form does not require indication of choice in multi-member constituency where the candidate is a woman or a member of the Schedule Caste or member of the Schedule Tribe, requiring the candidate to state clearly whether such candidate is contesting the general seat or the seat reserved for women or member of the Scheduled Caste or member of the Scheduled Tribes. This effect has to be immediately corrected by proper amendment to the rules and the form.

7. The difficulties created by the rules do not stop there. After the poll is taken, the question to be decided is declaration of the result of the election. Instructions in rule 34 would seem to lead to anomalous results and in some cases result in defeating the intention of the Legislature where seats are reserved for member of the Scheduled Castes or Scheduled Tribes or a woman. Rule 34 is as follows:-

"34. Returning Officer to declare result of election.-(1) 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:

Provided 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.

(2) The Returning Officer shall then 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.

(3) When an equality of votes is found to exist between any candidates either for the reserved or the unreserved seats and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such an additional vote shall be deemed to have been given shall be made by lots to be drawn in the present of the Returning Officer and the candidates or their agents who may desire to be present, and in such manner as the Returning Officer may determine".

8. Under sub-rule (1) of Rule 34, it is provided that, first on a counting of votes recorded, the Returning Officer has to find which candidate is elected for the reserved seat and under the proviso this declaration in respect of a seat reserved for women or members of Scheduled Castes or Scheduled Tribes has to be made first. Now in a given case, it may well be that a woman candidate may top the list amongst all the candidates including the candidates competing for the general seat, yet a faithful implementation of sub-rule (1) of Rule 34 will require the Returning Officer to declare such woman as elected for the reserved seat. The necessary consequence of a woman who was topped the whole poll being declared elected to the seat reserved for women is that no other woman can claim to be elected to the seat reserved for women because a woman candidate has topped the poll and had to be declared elected to seat reserved for women. We do not think that it was intended by the Legislature that in the case of a multi-member constituency where a seat is reserved for a woman or the members of the Scheduled Castes or Scheduled Tribes, even though a candidate belonging to any of these categories topped the poll, he should be declared elected to the reserved seat for these categories. On the other hand, the intention of the Legislature undoubtedly appears to be to give additional opportunities to the candidates belonging to these categories to have representations for the reserved seat in any case and in addition to have a fair chance of competing for the general seats. This will be defeated by implementation of sub-rule (1) of Rule 34 of the Bombay Village Panchayats Election Rules, as it now stands.

When the nomination form does not require a candidate, who is a woman or a member belonging to the Scheduled Caste or Scheduled Tribe, to declare whether or not such candidate wants to contest for the seat reserved for the member of his community or sex, it is unfair to force him as a candidate to represent the reserved constituency without any indication to that effect either by the electorate or even by the candidate.

9. We have examined in some details the provisions made in the rules to point out how the rules are defective and require to be suitably amended to bring out the intention of the Legislature in implementing the provisions in respect of the candidates who belong to the class, of women or to members of the Scheduled

Castes and Scheduled Tribes, rather than restricting them, as would be the result of working out the provisions of sub-rule (1) of Rule 34. Sub-rule (1) of rule 34 is unjust in other respects because the next best woman candidate who would have a right to claim election to the reserved seat loses that opportunity simply because another woman, though she has topped the poll amongst all the candidates and would be entitled to be declared elected to the general seat, happens to be a woman.

10. We, therefore, allow the petition, set aside the orders of the Returning Officer and the appellate authority, and direct that fresh elections shall be held with due advertence as to what we have stated above. However, if the rules as they are have to be given effect to, the results are bound to be anomalous. The authorities concerned may consider whether it is not advisable to move the proper authorities to make necessary amendments in the rules. In the circumstances, there will be no order as to costs.

11. Petition allowed.