

Shashikalabai Anandrao Vs Returning Officer, Gram Panchayat Election, Umri and Others

Court: Bombay High Court (Nagpur Bench)

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 form 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 on members of Scheduled Castes or

Scheduled Tribes has to be made first. Now in a given case, it may well be that a women 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.