

(1952) 11 BOM CK 0018

Bombay High Court

Case No: Special Civil Application No. 1528 of 1952

Narayan Maruti

APPELLANT

Vs

District Judge, Kolaba and Others

RESPONDENT

Date of Decision: Nov. 10, 1952

Acts Referred:

- Bombay District Municipal Act, 1901 - Section 12, 13, 13A, 15, 15(1)
- Bombay District Municipal Election Rules, 1950 - Rule 10

Citation: AIR 1953 Bom 288 : (1953) 55 BOMLR 314 : (1953) ILR (Bom) 942

Hon'ble Judges: Chagla, C.J; Dixit, J

Bench: Division Bench

Advocate: P.S. Joshi, for the Appellant; A.A. Adarkar and B.N. Gokhale, for the Respondent

Judgement

Chagla, C.J.

(1) A very interesting question arises on this petition as to the law of election applicable to the District Municipal elections. The petitioner is a Harijan and he and opponent 2 offered themselves as two candidates for one seat which was reserved for Harijans in Ward No. III of the Panvel Municipality for the triennial election of the Municipality of Panvel which was held on 10-6-1952. The votes were counted on 12-6-1952, and the petitioner secured 395 votes as against 342 secured by opponent No. 2. Accordingly, the petitioner was declared duly elected. Opponent No. 2 then filed an election petition before the District Judge who set aside the election of the petitioner on the ground that the petitioner was not 21 years of age at all material times. The learned Judge held that the petitioner was born on September 2, 1931, and hence he was below the age of 21, and, therefore, he held the election of the petitioner void and declared opponent No. 2 to be the duly elected councillor.

(2) Now, Mr. Joshi, for the petitioner contends that the District Judge had no jurisdiction to entertain this election petition and to set aside the election. The jurisdiction of the District Judge to deal with election petitions arises u/s 22, Bombay

District Municipal Act. Sub-section (1) provides that if the validity of any election of a councillor is brought in question by any person qualified either to be elected or to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, apply to the District Judge of the District within which the election has been or should have been held, and then Sub-section (2) provides for the holding of an inquiry by a Judge, and further provides that such Judge may, after such inquiry as he deems necessary, and subject to the provisions of Sub-section (3), pass an order confirming or amending the declared result of the election, or setting the election aside. Sub-section (3) (a) gives the power to the Judge to set aside the election where a candidate has committed a corrupt practice for the purpose of the election, and Sub-section (3) (b) gives the power to the Judge to hold a scrutiny of votes and after holding such scrutiny to declare the candidate who is found to have the greatest number of valid votes in his favour to have been duly elected. Sub-section (4) defines what is a corrupt practice. Now, the contention of Mr. Joshi is that the jurisdiction of the District Judge on the election petitions is confined only to two cases; one, the case of corrupt practice dealt with in Sub-section (3) (a) of Section 22 and the other the scrutiny of votes under Sub-section (3) (b) of Section 22, and Mr. Joshi says that it was not competent to the District Judge to set aside the election on the ground that a councillor is not qualified to be elected by reason of his age. Mr. Gokhale on behalf of the Municipality, on the other hand, contends that the jurisdiction of the District Judge is much wider than deciding cases specified in Sub-section 3(a) and (3)(b) of Section 22. In our opinion, Mr. Gokhale seems to be right because the powers of the Judge are really set out in Sub-section (2) of Section 22 -and not in Sub-section (3)(a) and (3)(b) of Section 22, and then Sub-section (2) limits his powers by providing that his powers have subject to the provisions of Sub-section (3), all that it means is that in the two cases referred to in Sub-section (3) (a) and 3(b) it is obligatory upon him to set aside the election in one case and to declare a particular candidate elected in the other. But apart from those two cases, the District Judge has the power to pass an order confirming or amending the declared result of the election, or setting the election aside. But it must be borne in mind that the power of the District Judge to pass any such order arises provided an election itself is challenged or disputed on the ground that something had happened in the course of the election which would justify the petition and which would entitle the Judge to pass the necessary order contemplated by Section 22 (2). Now, in this particular case opponent No. 2's grievance before the District Judge was that the petitioner was not qualified to be a councillor by reason of his age. Turning to these provisions of the Act, Section 12 provides for qualifications for enrolment on the roll as voters and for candidates for election, and one of the qualifications is that the candidate or the voter must have attained the age of 21 years on the first day of January of the year for which the Municipal Election roll is being prepared, and Section 13 deals with the publication of Election Roll and Section 13A provides that a person shall not be qualified to be elected a councillor unless he is enrolled in the Municipal Election Roll. When we

turn to the Bombay District Municipal Election Rules, 1950, they provide an elaborate procedure for preparing the Municipal Election Roll and after the procedure is carried out under Rule 10 a copy of the Election Roll signed by the Registration Officer shall be the Municipal Election Roll. Now, it was open to any interested party to challenge the right of the petitioner to be on the Municipal Election Roll. No objection was taken to his right to be on that Roll and under the rules the Municipal Election Roll became final and conclusive. On that happening, the petitioner had a right to vote in the Municipal election and also to stand as a candidate. Having been elected at the election, Section 15 came into operation, and that section provides that no person may be a councilor (and the material sub-clause is (1)) who is less than 21 years of age, and Sub-section (1-A) of Section 15 provides that if any person is elected or nominated as a councillor in contravention of the provisions of Sub-section (1), his seat shall, subject to the provisions to Sub-section (IB), be deemed to be vacant and Sub-section (IB) gives the power to the Collector to decide whether a vacancy has occurred under Sub-section (1A) or not. Then Sub-section (2) provides for a disqualification occurring during" the term for which a person has been elected or appointed a councillor, and Sub-section (3) provides that there would be a vacancy if a disqualification attaches to a councillor subsequent to the election, and in that case the competent authority to decide whether there was a vacancy or not is the Collector. Now, in this particular case, it is clear that the petitioner having been elected a councillor is disqualified by reason of Section 15 because he was elected in contravention of the provisions of Sub-section (1), and as he is disqualified, the only competent authority which can declare that he is disqualified and declare a vacancy is the Collector. Mr. Gokhale's contention is that the jurisdictions of the District Judge and the Collector in this behalf are rtincurrent, that it is open to the District Judge to hold that the petitioner was disqualified and it would ultimately be for the Collector to declare that there is a vacancy. It is not possible to take that view because a vacancy in a seat can only take place provided there is an election or a nomination. The whole scheme of Section 15 is that after there is a proper election it is found that a disqualification attaches to a particular councillor, the Collector is given the power to declare the seat of that councillor vacant. So far as the election is concerned, the election has been perfectly proper. It has been in accordance with the rules. The petitioner was qualified to stand as a candidate by reason-of the fact that he was on the Municipal Election Roll. But for Section 15 his seat would never have become vacant and Section 15 does not deal with anything that happened in the course of the election it deals with the disqualification which attaches to a councillor on his being elected. No jurisdiction is conferred upon the District Judge to decide whether any disqualification attaches to the councillor u/s 15. His jurisdiction is confined to deal with election petitions and an election petition by its very nature must be restricted to bringing before the Court either a mal-practice or a corrupt practice or an irregularity that takes place in the course of the election. There is one other important aspect of the matter to which attention might be drawn. u/s 18 when a vacancy has occurred a by-election

has to be held. The learned District Judge exercising his power u/s 22 has held the election of the petitioner to be bad and has declared opponent No. 2 to be elected. By doing so he has taken away the right of the constituency to have a by-election and to elect such person as the constituency has confidence in. Therefore, the consideration of Section 18 makes it clear what the scheme of the Act with regard to election petitions and vacancies is; an election takes place and an election can be challenged before the District Judge; he has a right to set aside the election; he has a right to confirm the election and he has a right to amend the result of the election. That is his exclusive jurisdiction. If there is no irregularity in the conduct of the election, the question arises whether a councillor properly elected is disqualified by reason of Section 15. This jurisdiction is conferred solely upon the Collector. If the Collector holds that the councillor is disqualified, he must declare the seat to be vacant, and on the seat being declared vacant, a by-election takes place u/s 18. Mr. Gokhale on behalf of the Municipality has asked us not to interfere with the decision of the District Judge as his finding is based on facts and his finding has not been seriously challenged. We cannot accede to that application, because if we were to do so, we would uphold an order which declares opponent No/ 2 elected, whereas the law requires that there should be a by-election at which the voters should have a right to go to the election again and to vote for a person in whom they have confidence.

We must, therefore, set aside the order of the District Judge. The rule will be made absolute with costs. Opponent No. 2 to pay the petitioner the costs of this petition. He must also pay the costs of the election petition. No order as to costs against the Municipality.

(3) Rule made absolute.