

(1998) 08 BOM CK 0072

Bombay High Court (Aurangabad Bench)

Case No: Election Petition No. 1 of 1996 with Civil Application No. 16 of 1997, (Exhibit 8)

Shri Vidyasagar Bhagwanrao
Sakhare

APPELLANT

Vs

Shivajirao Vithalrao Kamble

RESPONDENT

Date of Decision: Aug. 19, 1998

Acts Referred:

- Representation of the People Act, 1951 - Section 100, 103, 81(3), 86

Citation: (1999) 1 ALLMR 530 : (1999) 2 BomCR 200

Hon'ble Judges: V.K. Barde, J

Bench: Single Bench

Advocate: A.H. Kapadia, for the Appellant; P.K. Joshi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.K. Barde, J.

The petitioner challenges the election of the respondent to the Parliamentary Constituency No. 36, Osmanabad. This Parliamentary Constituency in Maharashtra is reserved constituency for Scheduled Caste. The petitioner is Mahar by caste and he, therefore, contested the election. The respondent also contested the election and was declared elected. It is the contention of the petitioner, that the respondent belongs to Maratha caste but he obtained a false and bogus certificate regarding caste indicating that he belongs to Hindu Khatik community. The petitioner has contended that the respondent does not belong to Scheduled Caste and, therefore, he was not eligible to contest the election from the constituency reserved for Scheduled Caste. He has, therefore, prayed that the election of the respondent to the House of People from 36th Osmanabad (Scheduled Caste) Parliamentary constituency held on 2-5-1996, the result of which declared on 9-5-1996, be declared as null and void and be set aside.

2. The respondent has filed Civil Application No. 16 of 1997 (Exhibit 8) and has raised various preliminary objections to this election petition. He has contended that the copy of Election Petition furnished to the respondent contains a statement which is titled as affidavit vide page 68 and at page 17 and 18 which is titled as verification. The respondent has contended that the copy furnished to the respondent does not indicate whether verification was done and, if so, before whom it was done. So, the copy is not the true copy of the petition. It is also contended that the copy furnished to the respondent does not bear the endorsement of the presentation of Election Petition and, therefore, it is not true copy because the respondent cannot ascertain whether the presentation of the petition was proper and as per the mandatory provision of the law.

3. It is also contended that the copy which is supplied to the respondent indicates that it was verified on 25th day of June 1996 i.e. 46th day from the date of result of election and from this point of view also, the copy supplied to the respondent is not true copy. Furthermore, the verification of the copy of 25th June, 1996 clearly indicates that the Election Petition is filed beyond period of limitation.

4. It is also contended that the petitioner has not filed affidavit in proper form as prescribed under the Representation of People Act, 1951 (hereinafter referred to as "the Act" for the purpose of brevity). It is also contended that the petition is not based on any one of the grounds mentioned u/s 100 of the Act and, therefore, it is not maintainable. It is further contended that the petitioner had not challenged the genuineness of the caste certificate before the appropriate and competent authority. So also, on 4-4-1996, at the time of scrutiny of nomination papers, the petitioner had not challenged the caste certificate produced by the respondent before the Returning Officer. The petitioner cannot rely upon the objection raised before the Returning Officer, by Suresh Rohidas Sherkhane, to the caste certificate produced by the respondent before the Returning Officer. It is, therefore, prayed that these points be treated as preliminary issues and the Election Petition be dismissed u/s 86 of the Act.

5. The petitioner has filed his say to this civil application and has contended that the allegations in the civil application are very vague. The election of the respondent is challenged only on one ground, that he did not belong to Scheduled Caste and, therefore, was not eligible to contest the election from that constituency. There is no challenge to the election on corrupt practices. So, all the grounds raised in the civil application are without any foundation. There is no material defect in the copy of the petition supplied to the respondent and, therefore, it is prayed that the application be rejected.

6. The learned Counsel for the respondent has argued that the copy of the petition which is supplied to the respondent is not the true copy of the petition filed by the petitioner. The copy supplied to the respondent is produced on record by the respondent and the same is at Exhibit 16. The learned Counsel for the respondent

has pointed out that this copy bears the endorsement of Additional Registrar, High Court of Bombay, Bench at Aurangabad, which indicates that the petitioner had sworn the same before the Additional Registrar on 25-6-1996. Though it is mentioned that the Election Petition was filed on 20-6-1996, there is no endorsement of the officer before whom the Election Petition was presented, that it was presented on 20-6-1996.

7. The other grounds mentioned in the civil application are not pressed by the learned Counsel for the respondent.

8. The point raised by the learned Counsel for the respondent is that the copy which is supplied to the petitioner bears the endorsement of the Additional Registrar which indicates that the petitioner had sworn before him on 25th day of June 1996. While it is the contention of the petitioner that the petition was filed on 20th June, 1996. This endorsement which is in the form of affidavit clearly misleads the respondent regarding the date of filing of the petition. The result of the election was declared on 9-5-1996. The Election Petition ought to have been filed within 45 days from that date. On reading the copy which is received by the respondent, it appears that it was filed on 25th June 1996, that means, beyond the period of 45 days and, therefore, per se it appears that the Election Petition is barred by limitation and this has the effect of misleading the respondent. This is material discrepancy in the original petition filed in the Court and the copy which is given to the respondent.

9. Their Lordships of the Apex Court, in the case of Dr. Smt. Shipra etc. etc. v. Shanti Lal Khoiwal AIR 1996 S.C. 1691 , have relied upon the observations of the Apex Court, in the case of [Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Others](#) , and have pointed out the four principles which Court has to take into consideration while resolving the dispute regarding the copy supplied to the returned candidate. The third principle is as follows:

"Where the copy contains important omission or discrepancies of vital nature which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been substantial compliance of the provisions of section 81(3) of the Act."

10. In this respect, the observations of the Apex Court, in the matter between [Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others](#), also should be taken into consideration. Their Lordships have observed :

"We are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person."

11. In the present matter, the petition is filed on 20-6-1996. However, the copy which is supplied to the respondent bears the endorsement of the Additional Registrar

indicating that it was sworn before the Additional Registrar on 25-6-1996. So, on receiving this copy, any person will be misled to think that the Election petition was filed on 25-6-1996 as per the date of affirmation indicated by the Additional Registrar, that means, after the expiry of the period of limitation and this is definitely misleading.

12. The learned Counsel for the petitioner has argued that the copy given to the respondent does contain a declaration that the petition was solemnly affirmed at Aurangabad on 20th June 1996. The copies of other documents which are supplied to the respondent along with the copy of the petition also indicate that those were filed on 20th June 1996 and, therefore, the endorsement by the Additional Registrar would not mislead the respondent regarding date of filing of the petition. It has to be noted that the petitioner might have put date 20th June 1996 on some of the documents filed along with the petition. But it has also to be mentioned that on some of the documents the date is changed from 18-6-1996 to 20-6-1996. So, merely because in the petition it is mentioned that it was affirmed on 20th June 1996, it cannot be said that it was really affirmed on 20th June 1996 when the endorsement of the Additional Registrar in the form of affidavit bears the date 25-6-1996.

13. Whether such affirmation on the copy in the form of affidavit was necessary for the present type of petition is altogether different question. Once the affirmation on the form of affidavit before the Additional Registrar is there and it indicates quite different date than the date on which the petition was filed, then it cannot be said that the copy given to the respondent is substantially true copy which will not mislead the respondent, in any way. The discrepancy in the original and in the copy is of very serious nature and, therefore, this copy cannot be considered as true copy as contemplated under sub-section (3) of section 81 of the Act. The objection raised by the respondent in his civil application is, therefore, allowed.

14. In the result, Civil Application No. 16 of 1997 (Exhibit 8) of the respondent is allowed.

15. Election Petition No. 1 of 1996 is dismissed u/s 86 of the Act. No order as to costs.

16. Copy of this order be sent to the Election Commission of India, and Speaker of Parliament, as required u/s 103 of the Act, and Rule 19 of the High Court Original Side Rules. The amount deposited by the election petitioner be refunded to the petitioner.

17. Civil application allowed.

18. Election petition dismissed.