

Baburao

Vs

Manikrao

Civil Appeal No. 622 of 1998

(Sujata V. Manohar, K. Venkataswami JJ)

13.07.1999

JUDGMENT

K. Venkataswami, J.

1. Aggrieved by the dismissal of Election Petition No. 4/95 on the file of Bombay High Court (Aurangabad Bench), this appeal is filed by the appellant.

2. In January, 1995 the elections to the Maharashtra State Legislative Assembly were held. The appellant and the first respondent alongwith others had filed nominations to contest from 211 Nilanga Assembly Constituency, Latur District. The appellant raised objections before the Returning Officer (Respondent No. 2) to the candidature of first respondent. According to the appellant, as the first respondent's name was appearing in the electoral rolls of 211 Nilanga Assembly Constituency and also 206 Latur Assembly Constituency, he could not be an elector in both the constituencies and, therefore, his nomination has to be rejected. After hearing the parties, the Returning Officer overruled the objections of the appellant by an order dated 19.1.1995. A Revision filed before the Chief Electoral Officer, Maharashtra State, was also not successful. The Returning Officer announced the result of the 211 Nilanga Constituency on 12.3.1995 by declaring that the first respondent was elected from that constituency.

3. The appellant challenged the election of the first respondent by filing an Election Petition. The main challenge in the election petition was on the ground that the first respondent's name appears in two assembly constituencies and as such he has incurred disqualification under the law relating to election of members to the Legislative Assembly. It was also contended by the appellant that the first respondent was not "ordinarily resident" within the meaning of Section 20 of the Representation of People Act, 1950 (hereinafter called the "1950 Act") in Nilanga Constituency and, therefore, not qualified to contest the election from the said Constituency. It was further contended that the objection raised by him before the Returning Officer was wrongfully and illegally turned down.

4. The first respondent contested the Election Petition denying all the objections raised by the appellant. According to the first respondent, his name finds a place in the electoral roll for the Nilanga Constituency and, therefore, it was not open to the appellant to raise the objection that he was not an ordinary resident of any of the villages coming under Nilanga Constituency. According to the first respondent, he was not disqualified to contest from Nilanga Constituency as contended by the appellant.

5. Before the learned Judge, the parties have agreed that two issues can be framed as preliminary issues and on those issues no oral or documentary evidence need be adduced. Accordingly, the following issues were framed :-

"(1) Do the entries of the name of the respondent No. 1 in two Assembly Constituencies entail any disqualification and does the election become void on that count ?

(2) Is the petition tenable in the absence of essential or necessary parties ?

(3) What Order ?"

6. The learned Judge on the basis of the submissions made before him answered the first issue in the negative and the second issue affirmatively. Accordingly, under the third issue he dismissed the election petition.

7. Mr. O.P. Rana, learned Senior Counsel appearing for the appellant, contended that the High Court should have held accepting the case of the appellant that in view of the first respondent's name appearing in the electoral rolls of two constituencies, namely, 206 and 211, he was not eligible to contest the election from Nilanga Constituency. According to the learned Senior Counsel that on a conjoint reading of relevant provisions of the Representation of People Act, 1950 and 1951, the High Court should have held that the first respondent was not qualified to be chosen as he was not eligible to contest the election and as such the election was void *ab initio*. In other words, the contention of the learned Senior Counsel for the appellant was that the first respondent's name having been found in the electoral roll of more than one constituency, he has incurred the disqualification from being contested and his nomination ought to have been rejected when objection was raised by the appellant before the Returning Officer. In support of that contention, he placed reliance on Section 5(c) of 1951 Act read with Section 2(1)(e) of the same Act. He also placed reliance on Section 33(5) read with Section 36(2)(b) of the Act 1951 Act and contended that the failure on the part of the first respondent to produce the electoral roll of 206 Latur Assembly Constituency wherein his name finds a place, the Returning Officer ought to have rejected the nomination of the first respondent accepting the objection raised by the appellant. According to the learned Senior Counsel, the High Court erred in holding that sections 17 and 18 of 1950 Act are not mandatory but only directory. He placed reliance on *Sher Singh Budh Singh and another v. The State of Punjab and others*, AIR 1965 Punjab 361 and *Anandrao Sitaram Nagmote and another v. Shri S.P. Mohoni and others*, ILR 1967 Bom. Series 1358. He also invited our attention to *Jagannath R. Nunekar v. Genu Govind Kadam*, 1989 Supp.(1) SCC 55, *Rosamma Punnose v. Balakrishnan Nair*, AIR 1958 Kerala 154, *Mohammed Refique v. S.M. Pagnis, District Judge, Bhind and another*, AIR 1960 M.P. 369 and *Lila Krishan v. Mani Ram Godara*, 1985 (Supp.)1 SCC 179.

8. Mr. S.M. Jadhav, learned Counsel appearing for the first respondent, in reply to the contentions of the learned Senior Counsel for the appellant submitted that so long as the name of the first respondent finds a place in the electoral roll of Nilanga Constituency and the nomination of the first respondent was filed on that basis, the question of production of electoral roll relating to 206 Latur Constituency did not arise and the reliance placed on Section 33(5) of 1951 Act was misconceived. According to the learned Counsel appearing for the first respondent, the objection as to the inclusion of first respondent's name in 211 Nilanga Constituency, if at all, ought to have been raised before his name was validly included in the electoral rolls of that constituency. Once the name finds a place in the electoral roll validly published, the same cannot be challenged on any ground to oppose the

nomination when filed from that constituency. In support of that he placed reliance on a judgment of this Court in *B.M. Ramaswamy v. B.M. Krishna Murthy and others*, 1963(3) SCR 479. It was the contention of the learned Counsel for the first respondent that this Court has repeatedly held that the right to contest an election is only a statutory right and the right to challenge an election is also circumscribed by the provisions of 1951 Act on the grounds mentioned in section 100 of that Act and in no other manner. In support of that, he placed reliance on a decision of the Constitution Bench of this Court in *Hariprasad Mulshankar Trivedi v. B.B. Raju and others*, 1974(3) SCC 415. The learned Counsel also invited our attention to *Rangilal Chaudhari v. Dhau Sao and others*, 1962(2) SCR 401, *Rafiq Khan and another v. Laxminarayan Sharma*, 1997(2) SCC 228 and *Indrajeet Baruah, etc. etc. v. Election Commissioner of India*, AIR 1984 SC 1912.

9. We have considered the rival submissions. It is not in dispute and cannot be disputed that the name of the first respondent finds a place in the electoral roll of 206 Latur Constituency as well as in the electoral rolls of 211 Nilanga Constituency. We, therefore, proceed on that basis. The issue is whether the appearance of the name of the first respondent in two constituencies is a disqualification to contest from any one of the constituencies under any of the provisions of the Representation of the People Act, 1950 or 1951. At this juncture it will be useful to set out the relevant provisions of the 1950 and 1951 Act :-

THE REPRESENTATION OF THE PEOPLE ACT, 1950

Section 16 - Disqualifications for registration in an electoral roll :- (1) A person shall be disqualified for registration in an electoral roll if he -

- (a) is not a citizen of India; or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included :

[Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorizing such removal.]

Section 17 - No person to be registered in more than one constituency - No person shall be entitled to be registered in the electoral roll for more than one constituency.

Section 18 - No person to be registered more than once in any constituency - No person shall be entitled to be registered in the electoral roll for any constituency more than once.

Section 19 - Conditions of registration - Subject to the foregoing provisions of this part, every person who -

- (a) is not less than [eighteen years] of age on the qualifying date, and

(b) is ordinarily resident in that constituency, shall be entitled to be registered in the electoral roll for that constituency.

Section 20 - Meaning of "ordinarily resident" -

(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground that he owns, or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.]

(2) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

(3) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date]

(4) Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date.

(5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed form and verified in the prescribed manner, that [but for his having the service qualification] or but for his holding any such office as is referred to in sub-section (4) he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary, be [accepted as correct].

(6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall if she be ordinarily residing with such person be deemed to be ordinarily resident on it the constituency specified by such person under sub-section (5).

(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made in this behalf by the Central Government in consultation with the Election Commission].

(8) In sub-sections (3) and (5) "Service qualification" means -

- (a) being a member of the armed forces of the Union; or
- (b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950) have been made applicable whether with or without modifications; or
- (c) being a member of an armed police force of a State, who is serving outside that State; or
- (d) being a person who is employed under the Government of India, in a post outside India.

THE REPRESENTATION OF THE PEOPLE ACT, 1951

Section 2 - Interpretation - (1) In this Act, unless the context otherwise requires, -

.....

(e) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950).

Section 5 - Qualifications for membership of a Legislative Assembly - A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

(a)

(b)

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State :

[Provided that for the period referred to in clause (2) of Article 371-A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that Article].

Section 32 - Nomination of candidates for election :- Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act [or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

Section 33 - Presentation of nomination paper and requirements for a valid nomination -

.....

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of

the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

Section 36 - Scrutiny of nominations -

(1)

(2) The returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds :-

[(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191.

[Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3)

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5)

(6)

(7) For the purposes of this Section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

Section 100 - Grounds for declaring election to be void -

(1) Subject to the provisions of sub-section (2) if [the High Court] is of opinion -

(a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his

election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.]

(2) If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but [the High Court] is satisfied -

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

.....

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

the [the High Court] may decide that the election of the returned candidate is not void.

"Article 173 - Qualification for membership of the State Legislature - A person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he -

[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament"

Article 191 - Disqualification for membership - (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

(Explanation - For the purpose of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the government of any State specified in the first Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.)"

10. Before we proceed further, we shall set out in brief the view expressed by the High Court. The learned Judge has set out the objection raised by the appellant as follows :-

"The main objection by the petitioner to the election of the respondent No. 1 is that the Returned Candidate namely respondent No. 1 was enrolled as elector (voter) in Assembly Constituency No. 206 i.e. Latur Assembly Constituency and Assembly Constituency No. 211 i.e. Nilanga Assembly Constituency, and according to the petitioner, the appearance of name of the respondent No. 1 in two constituencies is disqualification under section 16 of the Representation of the People Act, 1950."

11. The learned Judge after noticing the provisions of Sections 14 to 25 of the 1950 Act and also noticing the provisions in Chapters II and III of 1951 Act held as follows :-

"It is the case of the petitioner that the respondent No. 1 is disqualified from contesting election and getting elected to the State Assembly because of appearance of his name in more than one constituency. The disqualification on this ground does not find place in any of the above provisions of law. It is not in dispute in the present case that at the time of the scrutiny of the nomination papers, the present petitioner had raised similar objections against the respondent No. 1 and it is also undisputed that the Returning Officer-Respondent No. 2 overruled all the objections by order dated 19.1.1995. It is also an admitted position that the petitioner took up the matter

to the Chief Electoral Officer of the Maharashtra State in revision, which came to be dismissed by an order dated 23.1.1995."

12. In the course of the judgment under appeal the learned Judge after noticing Articles 173 and 191 of the Constitution of India observed as follows :-

"It may further be noted that the nomination of a candidate can be rejected on the ground of disqualification mentioned in Section 16 of the Act, 1950 and disqualifications mentioned under Articles 173 and 191 of the Constitution of India. Section 100 of the Act of 1951 mentions the grounds for declaring the elections to be void and if the Returned candidate was not qualified or was disqualified to be chosen to fill in the seat on the date of election, the election can be declared void. Further, improper rejection of nomination is also a ground to declare the election to be void. The petitioner does not allege any of such grounds for declaring the election to be void. It may also be stated at this juncture that the Court cannot go into the question as to whether the names of certain persons were entered illegally as laid down by the Supreme Court in case of *S.K. Chaudhari v. Baidhyanath*, AIR 1973 SC 717."

13. Ultimately, the learned Judge reached the following conclusion :-

"Admittedly, the petitioner has not raised any objection before the electoral registration officer about inclusion of the name of the respondent No. 1 in this Constituency. Section 100 of the Act of 1951 discloses the grounds for challenging the election of returned candidate and the present petition fails to disclose any of the grounds mentioned in the said Section. In view of the above discussion, it, therefore, cannot be held that the appearance of name of the respondent No. 1 in two Assembly Constituencies entails any disqualification and as such, election of respondent No. 1 cannot be declared void on the count. Issue No. 1 is, therefore, answered in negative."

14. On a careful perusal of the relevant provisions, as extracted above, we are of the view that the High Court was right in rejecting the contention of the appellant that the first respondent was disqualified to contest the Nilanga Constituency as his name was found in two constituencies. We generally agree with the conclusions arrived at by the High Court. However, we are not in agreement with the view taken by the High Court that Sections 17 and 18 of 1950 Act are not mandatory. For the purposes of 1950 Act they are mandatory. For example, to object to the inclusion of the name in the electoral roll.

15. There is nothing to suggest in Section 16 of the 1950 Act that if a person's name finds a place in more than one constituency that would automatically entail disqualification from contesting in any one of the constituencies. It is relevant to note that Section 2(1)(e) of 1951 Act refers disqualification under Section 16 of 1950 Act alone while interpreting the word 'Elector' and has not mentioned any contravention of Section 17 as disqualification. No doubt, Section 17 of 1960 Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency. But if a person's name finds a place in more than one constituency, does it automatically entail the disqualification under Section 16 ? We do not think so. Objection under Section 17 could have been successfully raised to prevent respondent No. 1's name from being included in Nilanga Constituency.

16. Likewise, a reading of other sections also does not come to the help of the appellant to sustain his contention. We are unable to find any ground after reading Section 16 of the 1950 Act and Articles 173 and 191 of the Constitution of India to hold that the nomination of the first respondent ought to have been rejected. The contention based on Section 33(5) of the 1951 Act is misconceived. As the respondent No. 1 did not file his nomination to the 211 Nilanga Constituency on the basis of his name finding a place in 206 Latur Constituency. On the other hand he filed the nomination to 211 Nilanga Constituency only on the basis of his name finding a place in that Constituency. That being the position, the contention based on Section 33(5) cannot be accepted and the citations have no relevance. Likewise, after reading Section 100 of the 1951 Act we are unable to declare the election of the first respondent void under any one of the grounds set out therein. It is not in dispute that the appellant did not raise any objection before the Electoral Registration Officer about inclusion of the name of the first respondent in 211 Nilanga Constituency. After carefully going through the judgments cited by the learned Counsel for the appellant, we find that they have no application to the facts of this case.

17. In the circumstances, we do not find any infirmity in the judgment of the High Court in dismissing the Election Petition. The appeal fails and is dismissed accordingly. There will be no order as to costs.

Appeal dismissed.