

HIGH COURT OF MADHYA PRADESH : JABALPUR

SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR

Case No.	Civil Revision No.374/2018
Parties Name	Smt. Saraswati Manjhi <u>Vs.</u> Smt. Manju Kol
Date of Judgement	25.09.2018
Bench Constituted	Single Bench
Judgement delivered by	Hon'ble Ms. Justice Vandana Kasrekar
Whether approved for reporting	Yes
Name of counsels for parties	Shri Mohammad Ali and Shri S.K. Kashyap, learned counsel for the petitioner. Shri Dinesh Kumar Upadhyay, learned counsel for the respondent.
Law laid down	"Whether the election petition is maintainable in view of amendment made in Section 41-A of the Municipalities Act" Held - Yes.
Significant paragraph numbers	12, 13, 14, 15, 16 and 17

ORDER
(25/09/2018)

The petitioner has filed this revision challenging the order dated 18/5/2018 passed by 2nd Additional District Judge, Umariya in Election Petition No.04/2015.

2. The post of President at Nagar Panchayat, Chandiya was reserved for woman candidate belonging to Schedule Tribe. Election of the said post was held on 28/11/2014 and the petitioner is elected as President of the Nagar Panchayat on 04/12/2014. The respondent was also a candidate for the said post. The petitioner was declared elected by margin of 947 votes as the petitioner secured 3608 votes and the respondent secured 2661 votes out of 8432 votes. Thereafter the petitioner was notified as President of Nagar Panchayat, Chandiya. Being aggrieved by the election of the petitioner, respondent has filed an election petition before the Election Tribunal, Umariya on 02/01/2015 on the ground that the petitioner does not belong to reserve category and the cast certificate produced by the petitioner is not genuine. She belongs to Dheemer community which is not a schedule tribe. The petitioner after receiving the notice filed her reply on

10/09/2015 denying the allegations made in the election petition.

3. After reply, Election Tribunal has framed issues No.1 to 6 which relates to genuineness of the caste certificate of the petitioner and the genuineness of candidature of the petitioner for the reserve category. Issue No.6 has been specifically framed regarding jurisdiction of the Tribunal in view of provisions of Section 41-A of the Municipalities Act (in short “the Act”). One Anupam Chaturvedi had filed Writ Petition No.4382/2015 for registration of offences under Sections 420, 467, 468 and 471 of IPC against the petitioner. The said writ petition was disposed of vide order dated 3/11/2015 in which this Court has directed the petitioner to invoke the jurisdiction of High Power Committee constituted under the judgment of Hon'ble Supreme Court in the case of **Ku. Madhuri Patil Vs. Additional Commissioner, Tribal Department and others, AIR 1995 SC 94**. Learned Election Tribunal recorded the evidence of the respondent, however, the petitioner was not given any opportunity for adducing the evidence and passed an order dated 18/5/2018 thereby allowing the election petition preferred by the

respondent. Being aggrieved by that order, the petitioner has filed the present revision.

4. Learned counsel for the petitioner submits that only the high power committee has a jurisdiction to decide the issue relating to caste certificate and the said issue cannot be raised in a election petition. He submits that after amendment in Section 41-A of the Act, only State Government has a power to remove the President or Vice President of the Municipalities, therefore, the order passed by the Election Tribunal is without jurisdiction. He further submits that learned Election Tribunal has erred in holding that the petitioner does not belong to Manjhi caste. He also submits that the petitioner has produced caste certificate before the Tribunal i.e. Ex.P/4 in which Majhi caste has been declared as Schedule Tribe in District Umariya. He also submits that the petitioner has filed documents relating to admission of the petitioner in school which is exhibited as Annexure-P/6 as well as some revenue documents of the land of father of the petitioner which is also filed as Annexure-P/8. All these documentary evidence shows that the petitioner belongs to Manjhi caste. The respondent has not produced any

document in support of pleading that the petitioner belongs to Dheemer community and nor by oral evidence she has supported her pleading. In her statement, she has stated that Barman comes under the OBC category.

5. Learned counsel for the petitioner further submits that Barman is surname which comes under the caste of Dheemer and Majhi. Thus, the respondent failed to prove her pleading that the petitioner belongs to Dheemer community. It is further submitted that Section 41-A provides for remedy including the procedure for challenging the genuineness of the caste certificate and, therefore, the jurisdiction of the Election Tribunal is excluded in respect of the said issue. He further submits that while deciding Issue No.6, learned Tribunal has relied on the certain judgments passed by Apex Court as well as by this Court. The said judgments would not be applicable in the present case because those judgments have been passed prior to unamended provisions of Section 41-A of the Act. He contends that if in the election petition there is no pleading that the caste of returned candidate is Barman and Barman are not Manjhi, therefore the evidence of Annexure-P/6 and P/8 cannot be taken into account. So far

as Ex.P/9 and P/10 which are secondary evidence and relied upon by the Tribunal while passing the order, the same is not admissible without compliance of Section 66 of the Evidence Act. He contends that caste certificate Ex.P/4 is 22 years old document so non-traceability of the same in the revenue record of Jabalpur, does not create any suspicion on the authenticity of the document. He further contends that the respondent has not taken any such objection at the time of submitting nomination form before the returning officer. In such circumstances, he relied on the order passed by this Court in **W.P. No.704/2015 on 27/03/2015**.

6. Respondent has filed her reply and in the said reply the respondent has stated that the petitioner has challenged the order passed by learned Election Tribunal mainly on the ground that the order passed by the Election Tribunal is without jurisdiction. She submits that Section 20 of the Act provides for filing of election petition on the ground specified under Section 22 of the Act. Under Section 41-A of the Act, powers have been given to the State Government. However, for the affected individual person has a remedy only to approach under Section 20 of the Act by filing election

petition, therefore, the Tribunal has not committed any error in passing the impugned order. She further submits that the order passed by the Election Tribunal is just and proper and has been passed after proper appreciation of the evidence. The respondent has also submitted that the petitioner failed to discharge his duty regarding burden of proof as per the provisions of Section 106 to 108 of the Evidence Act. Respondent has further stated that documents which have been filed by the petitioner relating to parents of the petitioner are in respect of Berman and not a single document has been filed by the petitioner to show that she belongs to Manjhi caste. The documents which are produced by the respondents, all are public documents. In light of these documents, learned Election Tribunal has held that the caste certificate which is produced by the petitioner in respect of Manjhi is forged and fabricated document. She further submits that the Election Tribunal has ample power to decide each and every issue in respect of election matter from the date of initiating election proceeding till publication of election notice and, therefore, the provisions of Section 41-A

of the Act will not come in the way of Tribunal while deciding the election petition.

7. Learned counsel for the respondent argues that argument raised by learned counsel for the petitioner that the order passed by the Election Tribunal is without jurisdiction in view of the provisions of Section 41-A of the Act is not sustainable. He submits that under the Act there is a specific provision under Section 20 for filing the election petition and under Section 22 grounds have been mentioned on which the election petition can be filed. In the present case, the respondent has filed an election petition on the ground mentioned in Section 22(1) and (2) of the Act in respect of illegal acceptance of the nomination form, therefore, the election petition is maintainable in view of the provisions of Section 20 of the Act. He further argues that Section 41-A of the Act has been inserted subsequently by way of amendment. As per this section, the power has been given to the State Government in case the State Government thinks that working of President or Vice President of Municipality is not a public interest or doing work which is against the interest of the Municipality, involved in the corruption, or not belonging

to the category in which the word of Municipality is reserved. On such grounds, the State Government may remove the President, but, at the time of inserting of Section 41-A of the Act, Section 20 and 22 has not been amended or deleted.

8. He further argues that under Section 20 of the Act, any aggrieved person can file a election petition while under Section 41-A of the Act, only State Government has a power to remove the President or Vice President. He submits that above question has already been decided by the Apex Court in the case of **Satrucharia Vijaya Rama Raju Vs. Nimmaka Jaya Raju & others** reported in **AIR 2006 SC 543** as well as by the Division Bench of this Court in the case of **Sharda Devi Vs. Noorjahan**, reported in **2007(1) MPLJ 153**. He further submits that the petitioner has raised similar objection before the Election Tribunal which has been rejected by the Tribunal and against the said rejection order, the petitioner has filed W.P. No.165/2016 and at the time of arguing the said writ petition, the petitioner has raised a ground that the Division Bench of this Court in the case of **Sharda Devi (supra)** is per incuriam, however, this Court dismissing the prayer of interim relief has held that the judgment passed in

the case of **Sharda Devi (supra)** is fully applicable in the present case. However, subsequently, the said writ petition was dismissed by this Court because during pendency of the said writ petition, the election petition had already been dismissed due to technical ground. He further submits that the judgment relied on by learned counsel for the petitioner passed by this Court in W.P. No.704/2015 would not be applicable in the present case as this Court has not taken into consideration the judgment passed by the Supreme Court while passing the said order.

9. Learned counsel for the respondent further submits that the second objection raised by learned counsel for the petitioner that at the time of scrutiny of nomination paper, objection regarding caste of the petitioner has not been raised is also rejected. He submits that any question in respect of election dispute arose after issuing the election notification (moral code of conduct) can be challenged in election petition, even question of preparation of the voter list can also be challenged in the election petition because there is settled principle that any question in respect of election after declaring the election notification cannot be entertained by

any Court of law and, therefore, there is no necessity to raise this objection earlier before filing the election petition. He further submits that in fact respondent has raised such objection before the returning officer at the time of scrutiny orally but the same has been rejected by the Returning Officer due to pressure of the petitioner as closed relative of the petitioner was a Minister in relevant time. So far as the next argument which is raised by learned counsel for the petitioner is regarding that proper opportunity of hearing has not been given to the petitioner for adducing the evidence and the case has been closed on 14/5/2018 is concerned, learned counsel for the respondent submits that the Election Tribunal has given ample opportunities to the petitioner to lead the evidence. From perusal of the order sheet, it is clear that the case was listed number of time for recording the evidence of the petitioner, but, he failed to do so. From perusal of the order sheet dated 14/12/2017, 05/01/2018 and 18/01/2018, witness of the petitioner was absent on the said dates and interlocutory applications were filed. Thereafter again the case was fixed for evidence on 06/03/2018 and 22/03/2018 again witness of the petitioner was absent and the Tribunal

granted seven times to the petitioner by imposing the cost of Rs.500/-. Thereafter on 26/04/2018 the Tribunal again granted time by imposing the condition that if witness was not present then right of the petitioner will be closed. But, in spite of specific order witnesses have not been present on 03/05/2018 and learned Election Tribunal again granted time and fixed the case for 12/05/2018. From perusal of the order sheet, it is clear that the Election Tribunal has given ample opportunities to the petitioner to lead the evidence.

10. The next ground which is raised by learned counsel for the petitioner is regarding caste of the petitioner is Dheemer but all the documents which have been exhibited relates to Barman caste, therefore, the evidence is not in accordance with the pleading made by the respondent in the election petition. Learned counsel for the respondent argues that only question before the Election Tribunal is that whether the petitioner belongs to Manjhi caste or not. He submits that the respondent has produced number of documents before the Tribunal showing that the petitioner belongs to Barman caste and not Manjhi caste. He further submits that the petitioner has applied under Right to Information Act in which the

authority has informed the petitioner that the said caste certificate (Ex.P/4) has not been issued by the authority and, therefore, the caste certificate produced by the petitioner is forged document. He also submits that as per Section 106 of the Evidence Act, the burden lies on the person who is within the knowledge of the said fact. He relied on the judgment passed by the Apex Court in the case of **Satrucharia Vijaya Rama Raju (supra)** as well as the judgment passed by the Division Bench of this Court in the case of **Sharda Devi (supra), Govind Singh Vs. Ramcharan** reported in **2012(4) MPLJ 670** and the order passed in **W.P. No.165/2016**. In light of aforesaid, he prays that the present revision deserves to be dismissed.

11. Heard learned counsel for the parties and perused the record.

12. From perusal of the record, it reveals that the post of President, Nagar Panchayat, Chandiya was reserved for Schedule Tribe of woman candidate. The petitioner, being member of Manjhi community, falls within the Schedule Tribe category, therefore, submitted her nomination form for election on the post of Nagar Panchayat, Chandiya. In the

present case the election for the post of President, Nagar Panchayat, Chandiya was held on 28/11/2014 and the result of the said election was declared on 04/12/2014. The petitioner was declared as President of the said Nagar Panchayat and elected by margin of 947 votes. The respondent has also contested the said election for the post of President. The petitioner was thereafter notified as President, Nagar Panchayat, Chandiya. Being aggrieved by the election of the petitioner, the respondent filed an election petition before the Election Tribunal, Umariya on 02/01/2015 mainly on the ground that the petitioner does not belong to the reserved category and the caste certificate produced by the petitioner is forged and fabricated as she belongs to Dheemer community which is not the Schedule Tribe. The petitioner submitted her reply denying all the allegations made in the election petition. After filing of reply, the Election Tribunal has framed issues No.1 to 6 which mainly relate to genuineness of the caste certificate of the petitioner and her candidature for reserve category. Issue No.6 is specifically provided for maintainability of election petition in view of the provisions of Section 41-A of the Act. Section 41-A of

the Act was inserted by M.P. Act No.29/2003 which reads as under :

41-A. Removal of President or Vice-President or Chairman of a Committee.- (1) The President or a Chairman of any committee, if his continuance as such is not in the opinion of the State Government desirable in public interest or in the interest of the Council or if it is found that he is incapable of performing his duties or is working against the provisions of the Act or any rules made thereunder or if it is found that he does not belong to the reserved category for which the seat was reserved.

(2) As a result of the order of removal of Vice-President or Chairman of any Committee, as the case may be, under sub-section (1) it shall be deemed that such Vice-President or a Chairman of any Committee, as the case may be, has been removed from the office of

Councillor also. At the time of passing order under sub-section (1), the State Government may also pass such order that the President or Vice-President or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of President or Vice-President or Chairman, as the case may be, for next term :

Provided that no such order under this Section shall be passed unless a reasonable opportunity of being heard is given.

As per said section, the State Government has power to remove the President, Vice President or Chairman of any committee, if their continuance, in the opinion of the State Government, is not desirable in public interest or in the interest of council or if it is found that he does not belongs to reserve category for which the seat was reserved. Prior to amendment, the said section does not provide removal of President or Vice President on the ground that he does not belong the caste of reserved category. The aforesaid clause

was inserted by the amended Act of 2003. On the basis of this section, learned counsel for the petitioner argues that it is only the State Government has a power to remove the President or Vice President if it is found that he belongs to reserve category for which the seat was reserved. He further submits that whether a person belongs to reserved category is to be decided by the caste scrutiny committee as held by the Apex Court in the case of **Kumari Madhuri Patil (supra)**.

13. Section 20 of the Act provides for filing of the election petition. Section 20(1)(2) of the Act reads as under :

“20. Election Petition (1) No election or nomination under this Act shall be called into question except by a petition presented in accordance with the provisions of this section.

(2) Such petition may be presented on one or more of the grounds specified in section- 22

(a) by any candidate at such election or nomination; or

(b) (i) in the case of an election of a councilor, by any voter of the ward concerned;

- (ii) in the case of a nomination of Councillor, by any Councillor;
- (iii) in the case of election of President by any voter of the Municipal area;

to the District Judge, where such election or nomination is held within the revenue district in which the Court of the District Judge is situate, and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election or nomination is held and if there be more than one such Additional District Judge within the said revenue district, to such one of them as the District Judge may specify for the purpose (hereinafter such District Judge or Additional District Judge referred to as judge).”

As per the said section, the election or nomination under this Act can be called into question except by petition presented in accordance with the provisions of the Act.

14. Section 22 of the Act provides the ground for declaring election or Nomination to be void. Section 22(1) of the Act reads as under :

“22. Grounds for declaring election or (nomination) to be void.- (1) Subject to the provisions of sub-section (2) if the Judges is of the opinion-

- (a) that on the date of his election or (nomination) a returned candidate was not qualified or was disqualified, to be chosen as a (President or a Councillor); or
- (b) that any corrupt practice has been committed by returned candidate or his agent or by any other person with the consent of a returned candidate or his agent;
- (c) that any nomination paper has been improperly rejected; or
- (d) that the result of the election, or (nomination), in so far as it concerns a returned candidate, has been materially affected-

- (i) by the improper acceptance of any nomination; or

(ii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iii) by the non-compliance with the provisions of this Act or of any rules or orders-made thereunder save the rules framed under (section 32) in so far as they relate to preparation and revision of list of voters;”

he shall declare the election or (nomination) of the returned candidate to be void.”

15. In the present case, the respondent has filed the election petition on the ground mentioned in Section 22(1)(d) (I) of the Act i.e. by improper acceptance of nomination. He submits that at the time of filing of nomination form, the petitioner has shown that he belongs to reserve category candidates and the returning officer has improperly accepted the said nomination form.

16. The Division Bench of this Court in the case of **Sharda Devi (supra)** in para-3 has held as under :

“3. We are, therefore, satisfied that learned Judge in holding that Section 41A of the Act was not attracted in the facts of the case, did not commit any error or illegality. Though learned counsel submits that in view of the decision in *K. Benkatachalam Vs. A. Swamickan and another*, AIR 1999 SC 1723 and *Ravindra Kumar Nayak Vs. Collector, Mayurbhanj Orisa and ors.*, AIR 1999 SC 1120 there is no bar to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In the scheme of the Act when election petition is provided as the only remedy to challenge the election and provisions of Section 41A of the Act were not attracted as rightly held by the learned Single Judge, we find that cases relied upon by the learned senior counsel do not apply to the facts

and circumstances of the present case and the law involved.”

In view of aforesaid judgment, the Division Bench has held that in the scheme of the Act when election petition is provided then it is only the remedy to challenge the election and provisions of Section 41A of the Act would not be attracted.

17. Sections 20 and 22 of the Act give the power to the aggrieved person to file election petition on the ground which is mentioned therein. However, under Section 41-A, the power has been given to State Government for removal of President or Vice President on the ground that if it is found that he does not belong to the reserve category for which he was applied for. Section 41-A of the Act would be applicable in the case when any complaint has been made to the caste scrutiny committee regarding the submission of false caste certificate and after obtaining the report from the caste scrutiny committee, the State Government has power to remove the President or Vice President as the case may be. However, in the present case, the respondent has filed election petition challenging the election of the petitioner on the ground that the petitioner does not belong to reserved

category candidate and, therefore, as per Section 20 of the Act as well as the judgment passed by this Court only the election petition is maintainable calling in question the election of the petitioner on the ground of producing false and fabricated caste certificate and, therefore, the Tribunal has rightly held that the election petition is maintainable before the Tribunal in view of the provisions of Section 20 of the Act. Learned counsel for the respondent relied on the judgment passed by this Court in W.P. No.704/2015. The judgment relied on the by the learned counsel for the respondent would not be applicable in the present case as while passing the said judgment, this Court has not taken into consideration the judgment passed by the Apex Court.

18. So far as the second contention that the objection has not been raised by the respondent at the time of submitting the nomination paper is concerned, as per Section 22(1)(d)(i) of the Act, the election petition can be filed on the ground of improper acceptance of any nomination, therefore, the ground of acceptance of nomination can be raised in an election petition, thus, even though the respondent has not raised this ground before the returning officer, on that ground alone, the

election petition cannot be dismissed. So far as non-grant of opportunity of hearing is concerned, from perusal of the record and the order sheets, it is clear that number of opportunities have been granted by the Tribunal to the petitioner to lead the evidence, however, with intention to delay the matter the petitioner fails to produce the evidence and, therefore, the petitioner now cannot say that no opportunity of hearing was given to the petitioner for leading evidence.

19. The next ground which is raised by learned counsel for the petitioner is that the pleading in the election petition is regarding the caste of the petitioner as Dheemer, but, all the documents which are exhibited are of Barman caste, therefore, the evidence which is produced by respondent is not in accordance with the pleadings.

20. I have perused the election petition and in para-6 of the election petition, the respondent has stated that the petitioner belongs to Dheemer Caste which is included as OBC in the State of Madhya Pradesh, however, suppressing this fact she had submitted nomination form and in the said nomination form she stated that she belongs to Manjhi caste which comes

under the Schedule Tribe and has also produced certificate dated 17/07/1992 issued by the competent authority. Thus, the respondent, in the election petition, has specifically stated that the petitioner belongs to Manjhi caste. The question in the present case is not whether the petitioner belongs to Dheemer caste or Manjhi caste, however, it relates that at the time of submitting the nomination form, the petitioner has produced the false and fabricated caste certificate. It is also to be noted that the respondent has filed an application under Right to Information Act in the Office of Collectorate, Jabalpur for supplying her copy of the caste certificate of the petitioner. In response to the said application, the authorities have informed the respondent that no such certificate has been issued from their office. The respondent has filed number of documents i.e. Samgra I.D. (Ex.P/7), khasra entry Ex.P/7-A and P/8. All these documents show that the petitioner does not belong to Manjhi community. Laxmi Shukla (PW-2) who is Headmaster of the School has also produced the Dakhil Kharij Register (Ex.P/6) of the school which also shows that the petitioner does not belong to Manjhi community.

21. The petitioner in her cross-examination has admitted that the petitioner belongs to Dheemer community and Barman is the sub-clause of the said community. The petitioner has failed to produce the original caste certificate before the Election Tribunal. The said certificate was issued in the year 1992 and from perusal of the said certificate, it is clear that the same has been typed in computer typing and it has been admitted by the petitioner in the cross-examination. Computer, for the first time, came in India in the year 1985 and in Madhya Pradesh, particularly, at Jabalpur the same came in 2000 and the said fact has been specifically pleaded in the election petition and has not been discarded in the cross-examination.

22. Section 106 of the Evidence Act provides for burden of proving the fact especially within the knowledge when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Thus, in the present case, the question whether the present petitioner belongs to Manjhi or not is a personal knowledge of the petitioner and her father, therefore, the burden of proof lies on the petitioner. The petitioner even the father of the petitioner have failed to

discharge their duties. The father of the petitioner has not been examined in the present case. Thus, the petitioner has failed to discharge the burden to prove that she belongs to Manjhi caste.

23. In light of aforesaid discussions, this Court does not find any interference into the order passed by the Election Tribunal.

24. Accordingly, the civil revision is dismissed without any order as to cost.

(Ms. Vandana Kasrekar)
JUDGE

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