

Saida Vs. Masrrat

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Court : Madhya Pradesh

Decided On : Oct-04-1996

Reported in : 1997(1)MPLJ152

Judge : N.K. Jain, J.

Acts : Madhya Pradesh Municipal Corporation Act, 1956 - Sections 16(1), 441, 441B and 433; [Constitution of India](#) - Article 243ZA

Appeal No. : Civil Revision No. 271 of 1996

Appellant : Saida

Respondent : Masrrat

Advocate for Def. : V.N. Maltare, Adv.

Advocate for Pet/Ap. : G.M. Chafekar and ;Meena Chafekar, Adv.

Disposition : Revision allowed

Judgement :

ORDER

N.K. Jain, J.

1. This revision petition filed under section 441-F(2) of the Municipal Corporation Act, 1956 (for short, 'the Act'), is directed against the order dated 29-2-1996

passed by the Additional Judge to the Court of District Judge, Dewas in M. C. C. No. 4/95 declaring the election of the petitioner as Councillor to the Municipal Corporation, Dewas, as void.

2. Amongst others the petitioner as also the respondent contested election for the Office of the Councillor of the Municipal Corporation, Dewas from ward No. 5. The petitioner was declared elected on 5-12-1994. The respondent filed election petition against the petitioner under section 441 of the Act challenging latter's election on the ground, one : that she committed corrupt practices, and; two : that she was not qualified to contest the election inasmuch as her name appeared simultaneously as a voter in two wards i.e., Nos. 5 and 7. Court below after taking evidence of the parties and on evaluation thereof negated the respondent's allegation regarding commission of corrupt practices but upheld her contention regarding disqualification and accordingly set aside the election vide order impugned, thus giving rise to this revision.

3. I have heard Shri G. M. Chafekar, learned Sr. Counsel appearing with Smt. Meena Chafekar, Adv. for the petitioner and Shri V N. Maltare, learned counsel for the respondent.

4. Grounds on which an election of a returned candidate can be declared to be void, are enumerated under sub-section (1) of section 441-B which thus reads as follows :

'441-B. Grounds for declaring elections or nominations to be void. - (1) Subject to the provisions of sub-section (2), if the Court 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 Councillor; or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(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 a corrupt practice having been committed in the interest of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent; or

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

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder save the rules framed under section 10 in so far as they relate to preparation and revision of list of voters;

the Court shall declare the election of the returned candidate to be void.'

5. In the instant case we are concerned with clause (a) which deals with the qualification/disqualification for being chosen as a Councillor. Section 16 prescribes qualification for election as Councillor while section 17 enumerates general disqualifications for becoming a Councillor. In the instant case we are not concerned with general disqualifications. What is to be seen is whether the petitioner was qualified for election as Councillor under section 16 which is as follows :

'16. Qualification for election as Councillor. - (1) Subject to the provisions of this Act, a person who is enrolled in the municipal electoral roll as a voter for a ward shall be qualified to be a Councillor and to be elected from such ward or from any other ward.

(1-a) No person who is a candidate for any one ward shall be candidate for any other ward.

(2) Any person who ceases to be a Councillor shall, if qualified under sub-section (1), be eligible for re-election as such.'

6. A bare reading of section 16 goes to show that a person who is enrolled in the Municipal Electoral Roll as a voter for a ward shall be qualified to be a Councillor and to be elected from such ward or from any other ward.

7. In the instant case, it is not disputed that the petitioner was enrolled in the Municipal Electoral Roll as a voter for ward No. 5 from which she was elected as a Councillor. It is true, that she was so enrolled as a voter from another ward No. 7 too. It is also true, that section 12 of the Act prohibits a person to be registered in the Electoral Roll of more than one ward. But, merely because by mistake or otherwise a person is enrolled as a voter in more than one wards, that does not in law, disqualify him or her for election as a councillor from a ward. The only restriction is that no person who is a candidate for any one ward shall be a candidate from any other ward. The petitioner in the instant case contested election only from one ward and since she was enrolled as a voter it cannot be said that she was not qualified for election as a Councillor.

8. Shri Maltare, learned counsel for the respondent was however, at pains to explain that petitioner's name as a voter in ward No. 5 was wrongly enrolled inasmuch as she, in fact, was ordinarily resident of the ward No. 7 within the meaning of section 20 of the Representation of Peoples Act, 1950. She was thus not qualified to be enrolled as a voter of ward No. 5 and could not, therefore, contest election as a Councillor. I am however, not persuaded by the arguments.

9. At the first place, section 16(1) requires that a candidate for election as a Councillor should be enrolled as a voter for a ward. Once this condition is fulfilled, the question of correctness of such an enrolment cannot be gone into in an election petition. Article 243ZA of the Constitution vests the State Election Commission with the powers of preparation of electoral rolls. The State Government in exercise of its powers under section 433 of the Act and in consultation with the State Election Commission has made 'M. P. Nagar Palika Election Niyam, 1994' Chapter II of which provides for preparation of voter lists and adjudication of claims and objections to such voter lists. Appellate Forum is also provided in the matter. These rules attach finality to the voter lists so prepared subject to the decision of claims, objections and appeals if any. In view of this it

was not open for the Court below in an election petition to go into the question of correctness of the petitioner's enrolment as voter in a particular ward and no disqualification could, therefore, be attached to her on account of correctness or incorrectness of such enrolment.

10. Dealing with the scope of an Election Tribunal in the matter of election petition the Apex Court in the case of *Jyoti Basu v. Debi Ghosal*, AIR 1982 SC 983 observed :

'A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it.'

11. It is thus clear that it was not open for the Court below to go into the question of correctness of the enrolment of the petitioner as a voter either in ward No. 5 or in ward No. 7. Different procedure and different forum are prescribed under the Act and the Rules for adjudication of the question. So far as the petition challenging the election is concerned what was to be seen, is whether the petitioner is qualified to be a Councillor in terms of section 16 of the Act.

12. Even assuming not admitting that the petitioner is ordinarily a resident of Ward No. 7 and his name in ward 5 has been wrongly enrolled, then also it could not and did not disqualify her to be a Councillor from ward No. 5. The words 'from such ward or from any other ward' occurring in section 16(1) leave no manner of doubt that a person registered as a voter from a ward can contest election from such ward or from any other ward. So as per respondent's own case the petitioner was rightly enrolled as a voter in ward No. 7 and that being so, she was qualified to be a Councillor and to be elected from any ward in the city including ward No. 5.

13. This revision should, therefore, succeed and is hereby allowed. The order of the Court below setting aside the petitioner's election is quashed and the election petition filed by the respondent challenging her election is dismissed. No order is, however, made as to the costs which the parties are left to bear their own as incurred throughout.

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