

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1388 OF 2014

Ms. Asha Narayan Landge	...	Petitioner
vs.		
The State of Maharashtra through Secretary & Ors.	...	Respondents

Mr. B.K. Barve a/w. Mr. Sandeep Barve and Ms. Archana Lad i/b. B.K. Barve & Co., Advocate for the petitioner.
Mrs. M. Kajale, AGP for respondent no. 1/State.
Mr. M.P.S. Rao, Senior Counsel, Advocate for respondent nos. 2 to 8.
Mr. Bharat Joshi, Advocate for respondent no. 9.

**CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.**

DATE : 8th January, 2015.

P.C.

By this Petition, the petitioner challenges the nomination of the respondent no. 9 as a Member on the Wards Committee under section 50TT of the Mumbai Municipal Corporation Act, 1988. Certain other ancillary prayers are also made.

The petitioner claims to be an advocate engaged in social activities in Byculla region. The members on the Wards Committee were required to be nominated under section 50TT of the Mumbai Municipal Corporation Act, 1988 and hence advertisements were issued by the Corporation from time to time inviting applications from eligible persons

for being nominated as Members on the Wards Committee. The first such advertisement was issued on 20th April, 2012 and the second on 9th July, 2013. According to the advertisement dated 9th July, 2013, eligible persons were required to tender applications before 30th July, 2013 between 10.30 a.m. to 5.30 p.m. It was stated in the advertisement that a person desirous of being nominated as a Ward Member should not be an office bearer of any political party or an employee of the Central Government, the State Government, a Municipal Corporation or a Municipal Council. It appears that by the third advertisement dated 6th August, 2013, the date for submission of the application was extended to 20th August, 2013 and the applicants were requested to submit the application by 20th August, 2013 between 10.30 a.m. to 5.30 p.m. According to the petitioner, the petitioner submitted the application, in view of the advertisement dated 9th July, 2013, on 29th July, 2013. So also, the respondent no. 9 submitted an application on 20th August, 2013, i.e., the last date for submission of the application as per the advertisement dated 6th August, 2013. The Applications were scrutinized by the Corporation on 24th October, 2013 and the petitioner and two other persons were held eligible for nomination as Ward Members. In view of section 50TT(2)(c), only three members were entitled to be nominated and since only three persons were held to be eligible after scrutiny on 24th October, 2013, according to the petitioner, there was no necessity to hold

the election for nomination of the Ward Members. The application of the respondent no. 9 was rejected only on the ground that the respondent no. 9 had not furnished a declaration that he was not an office bearer of any political party. The respondent no. 9 cured the deficiency and submitted a declaration to the aforesaid effect on 8th November, 2013. Initially, the Corporation was of the view that the lacuna could not have been cured after 20th August, 2013, i.e., cut-off date, before which the applications were to be received but on second thought, the Corporation decided to consider the application filed by the respondent no. 9 along with the declaration submitted by him on 8th November, 2013. After accepting the declaration, the respondent/Corporation held that the respondent no. 9 was also eligible to be nominated as a Ward Member. The petitioner is aggrieved by the said decision, as in view of the said decision, there would be a necessity to hold an election for the nomination of the three Ward Members.

Shri Barve, the learned counsel for the petitioner submitted that the Corporation was not justified in considering the application of the respondent no. 9 for nomination when the application was incomplete in the absence of the declaration as required by Rule 4 of the Maharashtra Municipal Corporation, Municipal Council & Nagar Panchayat (Norms for representation to the Non-Government Organization and Committee

based Organization in the Wards Committee) Rules, 2000. It is submitted that as per the advertisement dated 6th August, 2013, a person desirous of seeking nomination was required to tender an application by 20th August, 2013. It is stated that though the respondent no. 9 had submitted an application on 20th August, 2013, he had failed to give a declaration that he was not affiliated to a political party. It is submitted that the declaration tendered by the respondent no. 9 on 8th November, 2013 could not have been accepted. It is submitted that with the declaration of eligibility of the respondent no. 9, the petitioner would not be directly nominated as a Ward Member and an election for nomination of the three Ward Members would be necessary.

Shri Rao, the learned senior counsel appearing on behalf of the Corporation, supported the action of the Corporation and submitted that in the absence of any rules prohibiting the Corporation from accepting the declaration after the cutoff date, the Corporation was entitled to exercise the discretion to accept the document tendered by the respondent no. 9 in support of the application on 8th November, 2013. It is stated that the last date for tendering an application was 20th August, 2013 and the respondent no. 9 had duly tendered the application before the cut-off date. It is submitted that there is nothing in the rules or the advertisement prohibiting the Corporation from considering a document tendered by an

applicant in support of the application after the cut-off date. It is stated that the Corporation has, therefore, rightly exercised the discretion in considering the document tendered by the respondent no. 9 on 8th November, 2013 before holding that the respondent no. 9 was eligible for nomination as a Ward Member.

Shri Joshi, learned counsel for respondent no. 9 also supported the action of the Corporation and submitted that the advertisement did not mention that the application should be accompanied by documents like declaration etc. and, therefore, the Corporation has rightly considered the document tendered by the respondent no. 9 on 8th November, 2013. It is submitted that advertisements were issued by the Corporation from time to time and the Corporation desired to nominate deserving persons as Ward Members. It is stated that the last date of tendering the applications was postponed by the Corporation from time to time and ultimately by the last advertisement dated 6th August, 2013, the date was extended to 20th August, 2013. It is stated that the application of the respondent no. 9 was filed within the stipulated time and there is nothing wrong with the action of the Corporation in accepting the document tendered by the respondent no. 9 on 8th November, 2013.

On hearing the learned counsel for the parties and on a perusal of

the advertisements as also the Rules of 2000, it appears that there is nothing in the Act or the Rules which prescribe the filing of the application in any particular format. Rule 4 of the Rules of 2000 reads thus:

“4. Qualification for nomination as Member of the Wards Committee – A Member of the said organization who is not an office bearer of any political party or an employee of the Central Government, the State Government, a Municipal Corporation or a Municipal Council, shall be qualified for being nominated as a member of the Wards Committee.”

It is only mentioned in Rule 4 of the Rules, 2000 that a person desirous of being nominated as the member on the Ward Committee should not be an office bearer of any political party or an employee of the Central Government, the State Government, a Municipal Corporation or a Municipal Council. Neither Rule 4 nor Rule 5 of the Rules of 2000 speak of any declaration in a particular form. What is required by the Rules is the absence of affiliation of a person desirous of being nominated as a Ward Member to any political party or the Central or the State Government. The advertisements issued by the Corporation from time to time also do not state that the applicants are required to tender a declaration in regard to the absence of affiliation with the political party in a particular form. In this background, it is the case of the respondent no. 9 that the declaration was not submitted along with the application on 20th August, 2013 and deficiency, if any, in submitting the application was cured on 8th November, 2013. We do not find anything in the

advertisements issued by the Corporation from time to time that the Corporation could not have accepted any document in support of the application after the cut off date, though we usually find such a stipulation in several advertisements. It is, therefore, rightly submitted on behalf of the Corporation and its authorities that in the absence of any rules prohibiting the Corporation from exercising the discretion of accepting the document after the cut-off date in support of the application filed before the cut-off date, the Corporation was justified in considering the declaration tendered by the respondent no. 9 on 8th November, 2013. It is not the case of the petitioner that the respondent no. 9 was in fact affiliated to any political party between the period from 20th August, 2013 to 8th November, 2013 and therefore, the declaration submitted by him was not liable to be considered. This is not a case where the respondent no. 9 became eligible for being nominated as a ward member after the cut-off date. Since we do not find that the exercise of discretion by the Corporation is arbitrary, we are unable to hold that the Corporation has committed an illegality in holding that the respondent no. 9 was eligible for nomination.

In view of the aforesaid, we dismiss the Writ Petition, with no order as to costs.

The learned counsel for the petitioner seeks a stay of this judgment for a period of four weeks. We find that though the petition was filed on 4th February, 2014, no interim relief was granted in favour of the petitioner till date. Hence, the prayer made by the counsel for the petitioner stands rejected.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)