

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7544 OF 2017

Sanjivani Ramesh Patil

.... Petitioner

V/s.

Mohan Pandurang Ugale & Ors.

.... Respondents

Mr. Raju D. Suryawanshi for the Petitioner.

Mr. Prashant Kamble, i/by Mr. A.S. Rao, for Respondent No.10.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH MARCH, 2018.

P.C. :

1. Heard Mr. Suryawanshi, learned counsel for the Petitioner, and Mr. Kamble, learned counsel for Respondent No.10.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is taking an exception to the order dated 18th February 2017 passed by the Civil Judge, Senior Division, Kalyan, thereby dismissing Miscellaneous Application No.424 of 2015, which was filed by the present Petitioner for condonation of delay of 15 days caused in preferring the Election Petition, under Section 16 of the Bombay Provincial Municipal Corporation Act, to challenge the election of Respondent No.1 in the Kalyan-Dombivli Municipal Corporation for the post of "Councillor" from Ward No.21, held in the year 2015. The

Petitioner and Respondent Nos.1 to 9 had contested the said 'Election', which was conducted by Respondent No.10. As per the results of the 'Election', declared on 2nd November 2015, Respondent No.1 was declared as 'elected candidate'.

3. As per the case of the Petitioner, there were some lacunae in the Nomination Form of Respondent No.1. On account of her medical ground, Petitioner could not collect the relevant information within time. Thereafter, the Petitioner came to know that Respondent No.1 had suppressed relevant information regarding immovable properties owned and possessed by his wife and daughter. Respondent No.1 has not disclosed the details of his Bank Accounts. Petitioner also learnt that Respondent No.1 has misappropriated funds, when he was holding the post of the "Corporator", and on all these grounds, she has decided to challenge the election of Respondent No.1 and, accordingly, she started collecting relevant documents. However, as her leg was fractured on 22nd October 2015, she was not able to go anywhere. Hence, she could not file the Election Petition on or before 12th November 2015 i.e. within the stipulated period of 10 days. Hence, along with the Election Petition, she filed this Miscellaneous Application for condonation of delay of 15 days in preferring the Election Petition.

4. This application came to be resisted by Respondent No.1, denying

all the adverse allegations made against him and further denying that there was any sufficient cause for condonation of delay. A legal contention was also raised that the application for condonation of delay itself is not maintainable, as the provisions of Section 5 of the Limitation Act do not apply to the Election Petition filed under Section 16 of the Bombay Provincial Municipal Corporation Act.

5. In support of her contentions, Petitioner examined herself and filed copies of the relevant documents, including the Medical Certificates; whereas, Respondent No.1 did not lead any oral or documentary evidence.

6. The Trial Court has dismissed the said application for condonation of delay only on the ground that, the provisions of Section 5 of the Limitation Act are not applicable for the Election Petitions. In arriving at this conclusion, the Trial Court has relied upon the Judgment of this Court in the case of *Umesh Tukaram Kamble Vs. Shamrao Sakharam Patil, 2008 (2) Mh.L.J. 727*, wherein, it was held that, as the special period of limitation is provided in the Bombay Village Panchayat Act, 1959, for filing of Election Petition, the provisions of Section 5 of the Limitation Act have no application thereto.

7. Learned Trial Court has further relied upon the Judgment of the

Hon'ble Supreme Court in the case of *Smita Subhash Sawant Vs. Jagdeeshwari Jagdish Amin and Ors.*, 2015 (9) SCJ 468, wherein the Hon'ble Apex Court was pleased to hold that,

“In the absence of any provision made in the Mumbai Municipal Corporation Act for condoning the delay in filing the Election Petition, the Court has no power to condone such delay and entertain the Election Petition beyond the period of limitation prescribed in the specific law.”

8. While challenging the impugned order passed by the Trial Court, the submission of learned counsel for the Petitioner is that, both these authorities, on which the Trial Court has placed reliance, do not pertain to the provisions of Bombay Provincial Municipal Corporation Act. The first authority of this Court in the case of *Umesh Tukaram Kamble (Supra)* pertains to the provisions of the Bombay Village Panchayats Act, 1959; whereas, the second authority of the Hon'ble Supreme Court in the case of *Smita Subhash Sawant (Supra)* pertains to the provisions of Bombay Municipal Corporation Act i.e. Maharashtra Municipal Corporations Act. According to him, there is direct authority of this Court itself, as reported in the case of *Yogesh Mangalsen Bahal Vs. Rajesh Chimantro Wable and Ors.*, 2008 Bom.C.R. 243, in which this Court has held that, the provisions of Section 5 of the Limitation Act are applicable in respect of the Election Petition filed under Section 16 of the Bombay Provincial Municipal Corporation Act.

9. Per contra, according to learned counsel for Respondent No.10, the dictum laid down by the Apex Court in the case of *Smita Subhash Sawant (Supra)* is very clear, which prohibits the Court in importing the provisions of the Limitation Act in deciding the Election Petitions. He relies upon following observations of the Apex Court in paragraph No.31, which read as under :-

“31. It is a settled principle of rule of interpretation that the court cannot read any words, which are not mentioned in the section nor can substitute any words in place of those mentioned in the section and at the same time, cannot ignore the words mentioned in the section. Equally well-settled rule of interpretation is that if the language of a statute is plain, simple, clear and unambiguous, then the words of a statute have to be interpreted by giving them their natural meaning.”

10. Here in the case, it is submitted by learned counsel for Respondent No.10 that, when Section 16 of the Bombay Provincial Municipal Corporation Act lays down the period of 10 days for challenging the 'Election', that period cannot be extended by invoking the provisions of Section 5 of the Limitation Act. Hence, the Trial Court has rightly rejected such application for condonation of delay. Learned counsel for Respondent No.10 has also, further relying upon the Judgment of this Court in the case of *Umesh Tukaram Kamble and Ors. (Supra)*, urged

that, in this Judgment, this Court has considered the provisions of the *Bombay Village Panchayats Act*, which are *para materia* to the provisions of the Mumbai Municipal Corporation Act, and found that, as those provisions clearly lay down the stipulated period for filing of Election Petition and if within that period, the Election Petition is not filed, then, the provisions of Section 5 of the Limitation Act has no application thereto.

11. However, in my considered opinion, neither the Judgment of this Court in the case of *Umesh Tukaram Kamble and Ors. (Supra)*, nor that of the Apex Court in the case of *Smita Subhash Sawant (Supra)*, can have application to the facts of the present case. As rightly submitted by learned counsel for the Petitioners, the Judgment of this Court in the case of *Umesh Tukaram Kamble and Ors. (Supra)*, pertains to the provisions of the Bombay Village Panchayats Act; whereas, the Judgment of the Apex Court in the case of *Smita Subhash Sawant (Supra)*, pertains to the provisions of the Bombay Municipal Corporation Act; whereas, the present case pertains to the provisions of the Bombay Provincial Municipal Corporation Act. The provisions of this Act were considered by this Court in the case of *Yogesh Mangalsen Bahal (Supra)*, wherein also, very specific issue raised for consideration was about the application of the provisions of Section 5 of the Limitation Act to the Election Petition filed under Section 16 of the Bombay Provincial

Municipal Corporation Act and after considering the provisions of Section 435(1), 430, 403 and 404 of the Limitation Act, in paragraph No.16, it was categorically held as follows :-

“16. A combined reading of section 16 and 403 and 404 leaves me in no manner of doubt that the Legislature with a view to protect and preserve purity of elections and democratic process has inserted the provision providing for election petition. The election process should be free and impartial is the anxiety. Further, merely because the election is over does not mean that the results thereof cannot be questioned or disputed. A person who has enrolled himself in the Municipal Election Roll can call in question the election itself or dispute qualifications of person who has contested and is elected. It is with this anxiety that in section 435, the Legislature has taken care to provide that in computing the period of limitation prescribed for an appeal or application referred in Chapter 26, the provisions of section 5, 12 and 14 of the Limitation Act shall sofar as may be applied. The word "referred to" appearing in section 435(1) demonstrates that the intent was to make sections 5, 12 and 14 of the Limitation Act Applicable sofar as may be to the proceedings and enquiries contemplated in the Chapter. Even sections 434 and 436 are indicative of the Legislature Intent. In such circumstances, it is not proper to urge that section 5 of the Indian Limitation Act would not apply to the election petitions. Upon a plain reading of section 16 and sections 403 and 404 along with section 435 would make it clear that the Legislature did not

exclude applicability of sections 5, 12 and 14 of the Limitation Act.”

12. While doing so, the reliance was also placed on the Judgment of the Apex Court in the case of *Shaikh Saidulu @ Saida Vs. Chukka Yesu Ratnam and Ors.*, AIR 2002 SC 749, and it was held in paragraph No.19 that,

“19. Suffice it to state that, insofar as Election Petitions contemplated by Section 16 are concerned, the same are squarely covered and fall within sub-section (1) of Section 435 of the Act and in view of that matter, learned Judge was fully empowered to take cognizance of the application preferred by the first respondent, seeking condonation of delay of 32 days in filing Election Petition.”

13. This Judgment being directly under the provisions of the Bombay Provincial Municipal Corporation Act, which specifically contain Sections 430, 404 and 435, which are not appearing in the Bombay Municipal Corporation Act or Village Panchayats Act, this Court has held the provisions of the Limitation Act, including Section 5 of the said Act, to be applicable to the Election Petition filed under Section 16 of the said Act. This Court has to follow the said Judgment, as it directly deals with the provisions of the Bombay Provincial Municipal Corporation Act. No other Judgment of this Court or of the Hon'ble Supreme Court, taking a contrary view under this Act, is pointed out by learned counsel for Respondent No.10, despite sufficient opportunity being given.

14. Hence, it has to be held that, the impugned order passed by the Trial Court dismissing the Petitioner's application for condonation of delay, only on the count that Section 5 of the Limitation Act is not applicable to the Election Petition under Section 16 of the Act, is liable to be quashed and set aside.

15. However, as the Trial Court has not considered whether the cause given by the Petitioner was sufficient or otherwise for condonation of such delay and the entire order of the Trial Court being conspicuously silent on that aspect and as the Trial Court has rejected the application only on the count that it cannot be entertained under Section 5 of the Limitation Act, the matter needs to be remanded to the Trial Court, for considering whether the cause shown by the Petitioner is sufficient or not for condonation of the delay.

16. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court, dismissing the Petitioner's application for condonation of delay in preferring the Election Petition, stands quashed and set aside.

17. The matter is remanded to the Trial Court for considering whether the cause given by the Petitioner for condonation of delay is sufficient or otherwise.

18. The Trial Court to decide the application of the Petitioner as expeditiously as possible and preferably within a period of one month from today.

19. Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]