

# **Smita Subhash Sawant vs Jagdeeshwari Jagdish Amin And Ors on 4 September, 2015**

**Equivalent citations: AIR 2016 SUPREME COURT 1409, 2015 (12) SCC 169, 2016 (3) ABR 141, AIR 2016 SC (CIVIL) 1235, (2015) 6 MAD LJ 748, (2015) 5 ALLMR 962 (SC), (2015) 9 SCALE 526, (2015) 6 BOM CR 333**

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**Bench: Abhay Manohar Sapre, J. Chelameswar**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6848 OF 2015  
(ARISING OUT OF SLP (C) No. 6244/2015)

Smita Subhash Sawant .....Appellant(s)

VERSUS

Jagdeeshwari Jagdish Amin & Ors. ....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 09.02.2015 passed by the High Court of Judicature at Bombay in Writ Petition No. 9388 of 2014 which arises out of judgment and order dated 24.09.2014 passed by the Court of Small Causes at Bombay in Municipal Election Petition No. 129 of 2012 holding that the election petition filed by respondent No.1 herein questioning the appellant's election as a Councilor of the Bruhan Mumbai Municipal Corporation from Ward No.76 is within the period of limitation prescribed under Section 33 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the Act").

3. In order to appreciate the issue involved in this appeal, it is necessary to state a few relevant facts:

(a) The election schedule for General Election 2012 of Councilors under the Act was published by Notification dated 02.02.2012 declaring the date of poll as 16.02.2012 and counting of votes on 17.02.2012. The said Notification also declared that the list of elected candidates along with total number of valid votes polled by them will be published in the Government Gazette on or before 21.02.2012 as required under the provisions of Sections 10, 28(k) and 32 of the Act.

(b) The appellant and respondent No.1 herein contested the election from Ward No.76 for Municipal Corporator. The election was held on 16.02.2012 and after counting, which took place on 17.02.2012, the Election Officer declared the appellant herein to have been elected as a Municipal Corporator from Ward No.76. A certificate to that effect was also issued by the Election Officer in favour of the appellant herein in Form No. 21-C as per Rule 103 of Municipal Corporation of Greater Mumbai conduct of Election Rules 2006 (hereinafter referred to as 'the Rules') on 17.02.2012.

Thereafter on 21.02.2012, the Municipal Commissioner published the Official Gazette declaring the names of the candidates elected from all the 227 wards of the Municipal Corporation with the names of their political parties and the votes polled by them as per Section 10 and Section 32 (i) of the Act and Rule 104 of the Rules.

(c) Challenging the election of the appellant herein, on 28.02.2012, respondent No.1 filed Election Petition No. 129 of 2012 in the Court of Chief Judge, Small Causes Court, Mumbai. After service of notice, the appellant herein appeared before the Chief Judge and filed written statement contesting inter alia on the ground that the said election petition filed by respondent No.1 herein was barred by limitation as provided in Section 33 (1) of the Act. According to the appellant, the election petition was required to be filed within 10 days from the date on which the list prescribed under clause (k) of Section 28 was available for sale or inspection as provided in Section 33 (1) of the Act. It was contended that since in this case, the list was published and was available for sale or inspection on 17.02.2012, hence, the limitation to file election petition was up to 27.02.2012 as prescribed under Section 33 (1) of the Act whereas the election petition was filed on 28.02.2012 by the election petitioner. It was, therefore, barred by limitation and hence liable to be dismissed as being barred by time. She also filed an application before the Chief Judge praying for framing the issue of limitation as a preliminary issue. Initially, the Chief Judge had rejected the said application but thereafter by order dated 30.07.2013 issued direction to try the said issue as a preliminary issue. After hearing the parties, by judgment and order dated 24.09.2014, the Chief Judge held that the election petition was within limitation. He accordingly entertained the election petition filed by respondent No.1 herein for being tried on merits.

(d) Aggrieved by the said judgment, the appellant herein approached the High Court of Bombay by way of W.P. No. 9388 of 2014. By judgment and order dated 09.02.2015, the learned Single Judge of the High Court dismissed the petition and upheld the judgment of the Chief Judge. The High Court also held that the election petition filed by respondent No.1 herein is within limitation as prescribed under Section 33 (1) of the Act.

(e) Against the said judgment, the present appeal has been filed by way of special leave.

4. Heard Mr. Vinay Navare, learned counsel for the appellant and Mr. Sudhanshu S. Choudhari, learned counsel for respondent No.1, Ms. Jayashree Wad, learned counsel for respondent No.2 and Mr. Vijay Kumar, learned counsel for respondent No.3.

5. Learned Counsel for the appellant while assailing the legality and correctness of the impugned order reiterated the submissions, which were urged by him before the Courts below. According to the learned counsel, both the Courts below erred in holding that the election petition filed by respondent No. 1 herein (election petitioner) is within limitation as prescribed under Section 33 (1) of the Act. In other words, it was his submission that both the Courts below should have held that the election petition filed by respondent No. 1 herein was beyond the period of limitation and in consequence was liable to be dismissed as being barred by limitation.

6. Elaborating the aforementioned submissions, learned counsel contended that in order to decide the question of limitation and how it will apply to the facts of the case in hand, two Sections are relevant, namely, Section 33 (1) and Section 28 (k) of the Act. Learned counsel contended that Section 33 (1) prescribes limitation of 10 days for filing the election petition and the period of 10 days has to be counted from the date on which the list prescribed under Section 28 (k) of the Act is available for sale or inspection.

7. Learned counsel pointed out that the election in question was held on 16.02.2012 and counting of votes was done on 17.02.2012 followed by declaration of election result declaring the appellant to have won the election and finally issuance of certificates of the election result as required under Rule 103 of the Rules in the prescribed format (Form No. 21- C) were given to the appellant herein and the election petitioner (respondent No. 1 herein) on the same day, i.e., 17.02.2012 by the Returning Officer. Similarly, it was pointed out that the list of the ward was also made available for sale or/and inspection on 17.02.2012 to all including the candidates immediately after declaration of result and handing over the certificates in Form No. 21-C to both the candidates by the Returning Officer. Learned counsel thus contended that in the light of these admitted facts, the limitation to file Election Petition began from 17.02.2012 as prescribed under Section 33 (1) and ended on 27.02.2012. Since the election petition was filed by respondent No.1 on 28.2.2012, it was liable to be dismissed as being barred by limitation.

8. In reply, learned counsel for respondent No. 1 while supporting the reasoning and the conclusion of the High Court, contended that the view taken by the High Court is just and proper and hence it does not call for any interference by this Court. It was his submission that the limitation to file election petition began from 21.02.2012, this being the date on which the gazette publication of election results in the official Gazette was published by the Election Commissioner as required under Section 10 read with Section 32 of the Act and Rule 104 of the Rules. According to learned counsel, 10 days' period prescribed for limitation therefore began from 21.02.2012 and ended on 02.03.2012. Learned counsel, therefore, urged that the election petition filed by the election Petitioner (respondent no.

1) on 28.02.2012 was within limitation and hence was rightly held to be within time for being tried on merits.

9. Having heard the learned Counsel for the parties and on perusal of the record of the case including their written submissions, we find force in the submissions of the learned counsel for the appellant.

10. The question which arises for consideration in this appeal is whether the election petition filed by respondent No.1 against the appellant under Section 33 (1) of the Act before the Chief Judge is within limitation as prescribed under Section 33 (1) of the Act?

11. Section 28 (k) and Section 33 (1) of the Act, which are relevant for deciding the aforesaid question, read as under:

“ Section 28 (k)

(k) the State Election Commissioner shall, as soon as may be, declare the result of the poll, specifying the total number of valid votes given for each candidate, and shall cause lists to be prepared for each ward, specifying the name of all candidates, and the number of valid votes given to each candidate. In accordance with such rules as the State Election Commissioner may frame for the purpose and on payment of such fee as may be prescribed by him a copy of such list shall be supplied to any candidate of the ward and shall be available for inspection to any voter of the ward.

Section 33 (1) Election petitions to be heard and disposed of by Chief Judge of the Small Cause Court.

(1) If the qualification of any person declared to be elected for being a councilor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the State Elections Commissioner of a nomination or of the improper reception or refusal of a vote, or for any other cause or if the validity of the election of a person is questioned on the ground that he has committed a corrupt practice within the meaning of section 28F, any person enrolled in the municipal election roll may, at any time, within ten days from the date on which the list prescribed under clause (k) of section 28 was available for sale or inspection apply to the Chief Judge of the Small Causes Court. If the application is for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all candidates who although not declared elected, have, according to the results declared by the State Election Commissioner under section 32, a greater number of votes than the said candidate, and proceed against them in the same manner as against the said candidate. (emphasis supplied) ”

12. The question is – what is the true meaning of the words "any person enrolled in the municipal election roll may, at any time, within ten days from the date on which the list prescribed under clause (k) of section 28 was available for sale or inspection apply to the Chief Judge of the Small Causes Court" occurring in Section 33 (1) of the Act.

13. A plain reading of the aforementioned words shows that the period of 10 days prescribed for filing the election petition begins from "the date"

on which the list prescribed under clause (k) of Section 28 of the Act was available for sale or inspection. In other words, the starting point of limitation for filing the election petition for counting 10 days is "the date" on which the list prescribed under clause (k) of Section 28 of the Act was available for sale or inspection. Therefore, in order to see as to when the list was prepared and made available for sale or inspection, it is necessary to read Section 28 (k) of the Act.

14. Section 28 (k) of the Act provides that the State Election Commissioner shall, as soon as may be, declare the result of the poll, specifying the total number of the valid votes given for each candidate and shall cause lists to be prepared for each ward, specifying the names of all candidates and the number of valid votes given to each candidate. It also confers power on the State Election Commissioner to frame Rules for payment of such fee as may be prescribed by him for supply of a copy of such list to any candidate of the ward and for its inspection by any voter of the ward.

15. It is pertinent to mention here that till date the State Election Commissioner has not framed any Rules as required under Section 28 (k) of the Act.

16. Section 29 empowers the State Government to frame rules for the conduct of election on the subjects specified in clause (a) to (i). In addition, the State is also empowered to make rules on other subjects regarding conduct of election as it may think proper. The State has accordingly framed rules called Municipal Corporation of Greater Mumbai Conduct of Election Rules 2006.

17. Rule 2 (q) of the Rules defines "Returning Officer" as an Officer appointed as such under Rule 3. Rule 3 enables the Municipal Commissioner designate to nominate any officer of the State Government not below the rank of Deputy Collector or of the Corporation not below the rank of Assistant Municipal Commissioner as the Returning Officer for the purpose of conducting the election. Rule 103 provides that the Returning Officer shall complete and certify the return of election in Form- 21 C and send the signed copies thereof to the Municipal Commissioner and State Election Commissioner. Rule 104 inter alia provides for grant of certificate of election to returned candidate as required under Section 32 and also empowers the State Election Commission to publish the result in the Official Gazette.

18. At the outset, we consider it apposite to state that if the State Election Commissioner has failed to frame the Rules for proper implementation of the functions set out in Section 28 (k) of the Act and due to that reason, there appears to be some kind of ambiguity noticed in its interpretation, then in our considered opinion, such provision should be interpreted as far as possible in a manner which may benefit the elected candidate rather than the election petitioner.

19. This Court in *Anandilal and another vs. Ram Narain and others* [AIR 1984 SC 1383] had the occasion to construe Section 15 of the Limitation Act. While construing the said section, the learned Judge A.P. Sen J. speaking for the Bench observed in para 10 “It is also true that in construing statutes of limitation considerations of hardship and anomaly are out of place. Nevertheless, it is, we think, permissible to adopt a beneficent construction of a rule of limitation if alternative constructions are possible.” Our observations made above are also in line keeping in view this principle.

20. This we have said because we find that the High Court in Para 30 has held that since no rules have been framed and there appears to be some ambiguity in applying Section 28 (k), therefore, in such circumstances while interpreting such provision, its benefit must go to the election petitioner (defeated candidate) rather than to the elected candidate. We do not agree with the High Court on this issue as in our opinion it should be the other way round as held by us *supra*.

21. On perusal of the impugned judgment, we find that the High Court in Para 23 has held that the list was prepared by the Returning Officer immediately after the declaration of the result of the election on 17.02.2012 and it satisfied all the requirements of Section 28 (k) of the Act. The High Court therefore held that the list was issued under Section 28 (k) of the Act.

22. We are in agreement with this finding of the High Court as in our opinion also, the list prepared by the Returning Officer on 17.02.2012 was in conformity with all the requirements specified in Section 28 (k) of the Act.

23. The next question that needs to be examined is on which date such list was available for sale or inspection to the voter of the ward. To decide this question, we consider it apposite to read the evidence adduced by the parties on this issue in the affidavits.

24. This is what the appellant (respondent No. 3 in the election petition) said on affidavit on this issue:

“5. I say that the Election Result of Ward No. 76 of Mumbai Municipal Corporation was declared by the Returning Election Officer on 17th Feb. 2012 at about 12.30 p.m. I say that after the counting was over the Election officer prepared list of votes polled by each contesting candidate as prescribed under clause (k) of section 28 of Mumbai Municipal Corporation Act which is a same list annexed hereto as Exhibit A and also annexed as Exhibit E of the Election Petition. I say that the said Election result as contemplated under section 28 (k) of MMC Act was available for sale and inspection since 17th Feb. 2012. I say that the Petitioner and his election Agent and his Counting Agents who were present in the counting Hall during Counting of votes, took inspection of the Election Result declared by the Returning/Election officer I

prepared as per Section 28 (k) of the MMC Act. I say that thereafter the copy of the Election Result was taken by the Petitioner on 17.02.2012 itself which is annexed as Exhibit E to the Election Petition.

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7. I say that on the date of counting i.e. on 17.02.2012, I was present in the counting hall and the Petitioner was also present in counting hall with her Election Agent and counting Agents. I further say that after counting was completed on the same day, the concerned election officer had published the Election Result as prescribed under section 28 (k) of the MMC Act and gave inspection and copies of the Result to all the candidates present on 17.02.2012. I say that the Petitioner himself took the inspection of the result on the same day i.e. 17.02.2012 and thereafter collected the copy of the Result sheet as declared by the Election officer under section 28 (k) of the Mumbai Municipal Corporation Act. The copy of the same is filed by the Petitioner and marked as exhibit "E" to the election petition."

25. So far as the election petitioner is concerned, she did not deny much less categorically the statement of the appellant quoted above in her affidavit and instead said as under:

"3. I say that in so far as preliminary issue framed by this Hon'ble Court in regard to the limitation is concerned, I say that result of the Municipal Elections in question was declared on 17.02.2012. My advocate, thereafter, had taken up the matter with the Respondent No. 1 Corporation so as to ascertain as to when, the list prescribed under clause (k) of section 28 has been made available for sale and inspection by his letter dated 23.02.2012. Accordingly, the Deputy Election Officer of Respondent No. 1 Corporation by its letter dated 28.02.2012 informed my advocate that Gazette Notification under Section 10 to 32 of the MMC Act was published in Government Gazette on 21.02.2012. I hereby produce original letter dated 28.02.2012 addressed by the Dy. Election Officer attached to the respondent No. 1 as Document No.1, I, therefore, pray that the said letter issued by the respondent No. 1 through its Dy. Election Officer be read into as evidence in relation to the preliminary issue framed by this Hon'ble Court.

I thus, say that the Respondent No. 1 notified result of the election in the Official Gazette by its Notification dated 21st February, 2012 as required under Section 28 (k) of the Municipal Corporation of Greater Mumbai.

5. I, therefore, say that since the above-said Gazette Notification was published on 21.02.2012, election petition filed by me is within limitation considering Section 33(1) of the said Act."

26. After reading the aforesaid two statements of the parties, we have no hesitation in holding that the list prescribed under Section 28 (k) was made available to all the parties including the voter of

the ward in question on 17.02.2012 by the Returning Officer. This we say so for the reasons that firstly, there is no ground much less sufficient ground to disbelieve the sworn testimony of the appellant wherein she said that the appellant and respondent No.1 herein (election petitioner) including their voting agents and other persons were throughout present in-person on 17.02.2012 during counting of votes. Indeed, counting of votes is always done in presence of the candidates and their agents and in this case also it was done in presence of the candidates, who contested the election. Secondly, as soon as the results were announced on 17.02.2012, the appellant and respondent No.1 herein were given their respective certificates in Form-21C as prescribed in Rule 103 of the Rules by the Returning Officer. Thirdly, respondent No.1 herself inspected the list prepared by the Returning Officer, which she could not do unless the list was made available for inspection on 17.02.2012 by the Returning Officer. Fourthly, the Returning Officer could not have announced the results unless he had first prepared the list specifying therein the necessary details which were required for declaring the result of election and lastly, there was no reason for not making the list available to the voter on 17.02.2012 and keep withholding when it was prepared on that day itself by the Returning Officer for declaration of the result of the election.

27. When we read the statement of respondent No. 1(election petitioner) extracted supra, we find that she did not deny her presence on the whole day on 17.02.2012 nor she denied what was specifically stated by the appellant in her affidavit. All that respondent No.1 herein said was that on 23.02.2012, her advocate wrote a letter to the Corporation as to when the list would be available and the Corporation by letter dated 28.02.2012 informed her that the Gazette Notification under Sections 10 and 32 of the Act was published on 21.02.2012. On this basis, respondent no. 1 claimed that limitation to file election petition would begin from 21.02.2012 and not from 17.02.2012.

28. Learned counsel for respondent No.1, therefore relying upon the aforesaid statement, made attempt to contend that the limitation would begin, as held by the High Court in her favour from 21.02.2012, for filing election petition which is the date on which the election results were declared and then were published in the official gazette as provided in Section 10 read with Section 32 of the Act and hence 10 days will have to be counted from 21.02.2012. Learned counsel, thus submitted that the election petition filed by respondent No.1 on 28.02.2012 was within limitation because 10 days period prescribed under Section 33 (1) ended on 02.03.2012.

29. We do not agree with this submission. It is, in our opinion, wholly misplaced in the facts of this case. Firstly, Section 33 (1) only mentions Section 28 (k) and does not refer to any other section much less Section 10 or/and 32 for deciding the issue of limitation. In other words, Section 33 (1) is controlled by Section 28 (k) only and not by any other section of the Act for deciding the issue of limitation. Secondly, if the intention of the legislature was to calculate the period of limitation from the date of issuance of Official Gazette as provided in Section 10 and/or Section 32, as contended by the learned counsel for respondent No.1, then instead of mentioning Section 28 (k), the legislature would have mentioned Section 10 and/or Section 32 in Section 33(1) of the Act. However, it was not done. The legislative intention, therefore, appears to be clear leaving no ambiguity therein by including Section 28 (k) only and excluding Section 10 and 32 in Section 33 (1).



30. 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 statute is plain, simple, clear and unambiguous then the words of statute have to be interpreted by giving them their natural meaning. [See. Interpretation of statute by G.P. Singh 9th Edition page 44/45]. Our interpretation of Section 33 (1) read with Section 28 (k) is in the light of this principle.

31. We accordingly, hold that the list prescribed under Section 28(k) was available for inspection and sale to the voters of the ward in question on 17.02.2012. In view of this finding, the limitation to file election petition would begin from 17.02.2012 and it will be up to 27.02.2012. In other words, period of limitation of 10 days prescribed for filing the election petition in Section 33 (1) of the Act would begin from 17.02.2012 and it would be up to 27.02.2012.

32. It was, therefore, necessary for respondent No.1 (election petitioner) to have filed the election petition on any day between 17.02.2012 to 27.2.2012. Since the election petition was filed on 28.02.2012, a date beyond 27.02.2012, it was liable to be dismissed as being barred by limitation. In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law. Indeed, no such argument was advanced by the learned counsel for respondent No.1 in this regard.

33. Before parting with the case, we consider it appropriate to observe that the State Election Commissioner would be at liberty to frame Rules under Section 28 (k) for its proper implementation. Indeed, when the legislature has conferred a rule making power on the specified authority for proper and effective implementation of Section 28 (k) then in our opinion, such power should be exercised by the State Election Commissioner within reasonable time by framing appropriate Rules.

34. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the two courts below when both proceeded to hold that the election petition filed by respondent No.1 on 28.02.2012 was within limitation. We accordingly hold that the election petition filed by respondent No.1 out of which this appeal arises was barred by limitation and hence it should have been dismissed as being barred by limitation.

35. The appeal is accordingly allowed. Impugned judgment is set aside. As a consequence, Election Petition No.129 of 2012 filed by respondent No.1 is dismissed as barred by limitation. There shall be no order as to costs.

.....J. [J. CHELAMESWAR] .....J. [ABHAY MANOHAR SAPRE] New Delhi;

September 04, 2015.

