
(2006) 11 BOM CK 0074
In the Bombay High Court
Case No : W. P. No. 7470 of 2006

Jagannath Gawaji Chavan

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 44(3)

Citation : (2006) 11 BOM CK 0074

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : B.L. Sagar Killarikar, for the Appellant; V.H. Dighe, AGP for respondent No. 1, S.T. Shelke for respondent Nos. 2 and 4, A.W. Kshirsagar for respondent No. 3, A.S. Golegaonkar, for the Respondent

Judgement

Vasanti A. Naik, J.—Rule. Rule made returnable forthwith. The matter is finally heard with consent of learned counsel for the parties.

2. The election programme for the election to Deolali Pravara Municipal Council was declared and Ward No. 5 was earmarked for open category. The respondent No. 5 filed his nomination form for contesting the election to the Municipal Council from Ward No. 5 from general category. The nomination form of the respondent No. 5 was, however, rejected by the respondent No. 4. Returning Officer by order dated 29-10-2006. Being aggrieved by the order of rejection of his nomination form, the respondent No. 5 preferred an election appeal before the 2nd Ad hoc Additional District Judge, Ahmednagar, which came to be numbered as Election Appeal No.1 of 2006. The 2nd Ad hoc Additional District Judge, by the judgment dated 3-11-2006, allowed the appeal filed by the respondent No. 5 and declared that the order passed by the Returning Officer on 29-10-2006 was illegal. The Returning Officer was directed to accept the nomination form of the respondent No. 5 and to allow him to contest the election. The order passed by the 2nd Ad hoc Additional District Judge on 3-11-2006 is impugned in the instant petition.

3. It is not in dispute that the respondent No. 5 was elected as the President of Deolali Pravara Municipal Council in the year 2001 for a term of five years. In the year 2001, the respondent No. 5 had contested the election to the Deolali Pravara Municipal Council on a seat which was earmarked for Other Backward Class category. It was the claim of respondent No. 5 that the respondent No. 5 belonged to Kunbi caste and hence, was entitled to contest the election on a seat which was reserved for the Other Backward Class category. The caste certificate of the respondent No. 5 was sent to the Caste Certificate Verification Committee and the Caste Certificate Verification Committee validated the caste claim of the respondent No. 5 as belonging to Kunbi caste, which was included in Other Backward Class. The order passed by the Caste Certificate Verification Committee was challenged by one Jagannath Damodhar Hole in Writ Petition No. 4476 of 2002. By a judgment dated 17th October, 2003, this Court allowed the petition filed by Jagannath Damodhar Hole and quashed and set aside the order passed by the Caste Certificate Verification Committee validating the caste claim of the respondent No. 5. This Court further held that the caste certificate issued to the respondent No. 5 on 3-11-2001 was liable to be cancelled and confiscated. It was further held by this Court in the aforesaid judgment that three generations of respondent No. 5 i.e. Kashiram, Rangnath and respondent No. 5 himself claimed to belong to Maratha caste till the respondent No. 5 obtained the caste certificate dated 3-11-2001 from the Sub Divisional Officer, Shirampur. The judgment passed by this Court in Writ Petition No. 4476 of 2002 was challenged by the respondent No. 5 before the Supreme Court but the SLP filed by the respondent No. 5 was dismissed by the Supreme Court on 15-4-2005.

4. After the dismissal of the Special Leave Petition, the Collector, Ahmednagar passed an order u/s 44(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 declaring that the seat of the President of Deolali Pravara Municipal Council had become vacant as the respondent No. 5 was disqualified under the provisions of section 16(1)(1C) of the Act of 1965. It is further not in dispute that the respondent No. 5 had not challenged the order passed by the Collector, Ahmednagar on 7-5-2005 before the State Government under the provisions of sub-section (4) of section 44 of the Act of 1965.

5. In the backdrop of the aforesaid factual matrix, it was the case of the respondent No. 5 before the 2nd Ad hoc Additional District Judge, Ahmednagar that the Returning Officer was not justified in rejecting the nomination form of the respondent No. 5. The challenge to the order of the Returning Officer was mainly on two grounds. According to the respondent No. 5, under the provisions of section 16(1)(1C) of the Act of 1965, a Councillor who had been elected to a reserved seat could be disqualified for being a Councillor only if the Caste Certificate Verification Committee or a competent authority specified by the State Government for the purpose of scrutiny of the caste certificate, declared that the caste certificate of such Councillor was invalid and was cancelled on the ground of the same having been based on a false claim or declaration made by such

person claiming to be belonging to the reserved category. It was the case of the respondent No. 5 that the Caste Certificate Verification Committee had validated the caste claim of the petitioner and though the High Court, by the judgment dated 17-10-2003 had quashed and set aside the order passed by the Caste Certificate Verification Committee and has declared that the certificate was invalid, the High Court had not rendered a finding that the caste certificate of respondent No. 5 was based on a false claim or a false declaration made by respondent No. 5. It was further canvassed on behalf of the respondent No. 5 before the 2nd Ad hoc Additional District Judge that since the State Government had not issued a notification in the official gazette disqualifying the respondent No. 5 for being a Councillor or for being elected as a Councillor for a period of six years under sub-clause (b) of section 16(1)(1C) of the Act of 1965, the rejection of the nomination form by the Returning Officer on the ground that the respondent No. 5 was disqualified for being elected for a period of six years, in view of section 16(1)(1C) of the Act of 1965 was illegal and liable to be set aside.

6. The 2nd Ad hoc Additional District Judge virtually scanned the judgment passed by this Court in Writ Petition No. 4476 of 2002 to hold that the judgment of this Court in Writ Petition No. 4476 of 2002 did not specifically record that the respondent No. 5 had obtained the caste certificate falsely or that he had been specifically disqualified for contesting the election. The 2nd Ad hoc Additional District Judge held that in the absence of such a finding in the judgment dated 17-10-2003, the provisions of section 16(1)(1C) of the Act of 1965 were not attracted. The 2nd Ad hoc Additional District Judge further held that since the Government had failed to publish a notification in the official gazette declaring that the respondent No. 5 had been disqualified to contest the election for a period of six years, the respondent No. 5 could not have been said to be disqualified for contesting the election for a period of six years and the order of rejection of nomination form of the respondent No. 5 was, therefore, illegal.

7. Shri Sagar Killarika, learned counsel appearing on behalf of the petitioner submitted that the judgment passed by the 2nd Ad hoc Additional District Judge on 3-11-2006 clearly suffers from an error apparent on the face of record as the District Judge had misread the clear provisions of section 16(1)(1C) of the Act of 1965. It is canvassed on behalf of the petitioner that section 16(1)(1C)(a) of the Act of 1965 stipulates that a Councillor shall be deemed to have vacated his office on and from the date of declaration of his caste certificate to be invalid and cancellation of the same by the Committee or the competent authority. Relying on the deeming provision in section 16(1)(1C) of the Act of 1965, is submitted on behalf of the petitioner that vacation of the office of the Councillor and disqualification for being a Councillor or for being so elected for a period of six years, is automatic under the aforesaid provision. It is canvassed on behalf of the petitioner that after this Court rendered the judgment in Writ Petition No. 4476 of 2002 on 17-10-2003, the respondent No. 5 had deemed to have vacated his office and was also disqualified for being a Councillor or being elected as a Councillor for a period of six years. It was submitted on behalf of the petitioner

that issuance of a notification by the Government under sub-clause (b) of section 16 (1)(1C) of the Act of 1965 was merely a ministerial act and it could not be said that in the absence of issuance of notification by the State Government in the official gazette disqualifying the respondent No. 5 for a period of six years, the respondent No. 5 could either hold the office of the Councillor or canvass that he was not disqualified for a period of six years. It was then submitted on behalf of the petitioner that the 2nd Ad hoc Additional District Judge was not justified in scanning the judgment passed by this court in Writ Petition No. 4476 of 2002 to consider whether this Court had arrived at a finding that the claim of the petitioner as belonging to Kunbi caste was false or not. The counsel for the petitioner relied on an unreported Full Bench judgment of this Court in Writ Petition No. 8389 of 2005, to canvass that it is not necessary for the Caste Scrutiny Committee to record specifically that the caste certificate had been obtained by the person concerned by making a false claim or declaration and once a caste certificate obtained by a candidate is cancelled by the Scrutiny Committee, it is implicit that such certificate has been obtained by making a false claim or declaration.

8. Shri S. T. Shelke, learned counsel appearing on behalf of respondent No. 4 Returning Officer supported the order passed by the Returning Officer and submitted that the impugned order passed by the 2nd Ad hoc Additional District Judge on 3-11-2006 was clearly illegal.

9. Except for Shri Golegaonkar, learned counsel appearing on behalf of respondent No. 5, the counsel for other respondents had nothing much to say in the matter and neither supported nor opposed the petition. Shri Golegaonkar, learned counsel for respondent No. 5 supported the order passed by the 2nd Ad hoc Additional District Judge on 3-11-2006 and canvassed that in the absence of publication of a notification in the official gazette, by the Government disqualifying the petitioner for being a Councillor or for contesting an election for a period of six years, it cannot be said that the respondent No. 5 was disqualified to contest the election for a period of six years from the date of the judgment passed by the High Court on 17-10-2003. The counsel for the respondent No. 5 further submitted that the 2nd Ad hoc Additional District Judge was justified in holding that this Court had not rendered a clear finding in the judgment dated 17-10-2003 that the respondent No. 5 had made a false caste claim or a false declaration that he belonged to Kunbi caste. When the arguments were almost closed, the counsel for the respondent No. 5 submitted that in any case, the petitioner was not entitled to challenge the judgment passed by the 2nd Ad hoc Additional District Judge in an election appeal filed under the provisions of Rule 15 of the Election Rules by this writ petition. The counsel for respondent No. 5 relied on a judgment of this Court reported in 1997(1) Mh.L.J. 637, Vijaykumar Maniklal Bang vs. State of Maharashtra and ors. to substantiate the aforesaid submission.

10. As pointed out by Shri S. T. Shelke, learned counsel appearing on behalf of

the Returning Officer, the Supreme Court, in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, and specially paragraph Nos. 32 and 33 thereof, has laid down certain principles on entertaining writ petitions in election matters and since the impugned order passed by the District Judge, Ahmednagar was contrary to law, the order could be challenged in a writ petition. In the peculiar facts of this case, it would also be useful to refer to the decision of this Court in the case of Anant Janardan Patil Vs. State of Maharashtra and Others, and Deelip Devidas Ajmere and others vs. Returning Officer and others, reported in 2002(2) B.C.R. 678. Moreover, since the petition calling the order of the District Judge in question is decided at the stage of admission, it certainly does not result in interrupting, protracting or obstructing the election process. Also, the Maharashtra Municipal Councils Act of 1965 and the Maharashtra Municipalities Election Rules, 1966 provide for two attacks, one at the stage of acceptance or rejection of nomination paper by preferring an appeal under Rule 15 before the District Judge and second, by means of an election petition u/s 21.

11. So as to consider the merits of the rival submissions made on behalf of the parties, it is necessary to peruse the provisions of section 16(1)(1B), 16(1)(1C) and section 44 of the Maharashtra Municipal Councils Act of 1965. On a reading of the aforesaid provisions of the Act, it is clear that the provisions of section 44 and section 16(1)(1B) of the Act of 1965 would not apply to the facts of this case. The instant case would be governed by the provisions of section 16(1)(1C) of the Act of 1965. It can be safely said that the disqualification of the respondent No. 5 was not in view of section 16(1)(1B)(a) of the Act of 1965 as the respondent No. 5 was not disqualified for being a Councillor or for contesting an election for being elected as a Councillor, for a period of six years by an order passed by the concerned authority either u/s 21 of the Act or section 44 of the Act. It would now be necessary to consider the provisions of section 16(1)(1C)(a) and (b) of the Act as the disqualification of the respondent No. 5 occurred under the aforesaid provisions. As already stated hereinabove, the respondent No. 5 had contested the earlier election on a post reserved for Other Backward Class category. The caste certificate of the respondent No. 5 as belonging to Kunbi caste was validated by the Caste Certificate Verification Committee but the order of the Caste Certificate Verification Committee was quashed and set aside by the judgment of this Court in Writ Petition No. 4476 of 2002. It is necessary to consider as to whether the disqualification of the respondent No. 5 to hold the office of the Councillor or to contest the election for a period of six years, was automatic under the deeming provision in section 16(1)(1C)(a) of the Act of 1965. The provisions of section 16(1)(1C)(a) of the Act of 1965 are reproduced hereunder for ready reference :

"Section 16(1)(1C):

(a) Notwithstanding anything contained in sub-section (1B), a Councillor who has been elected to a reserved seat as mentioned in sub-section (1B), shall be

disqualified for being such Councillor consequent upon the Caste Certificate Verification Committee or any other Competent Authority specified by the State Government for the purpose of scrutiny of the caste certificate, declaring the caste certificate of such Councillor to be invalid and cancelling the same, on the ground of the same having been based on a false claim or declaration made by such person claiming to be belonging to the reserved category, and thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such Certificate to be invalid and cancellation of the same by the said Committee or the Competent Authority.

(b) On any person having been disqualified for being a Councillor and consequently, his seat as such Councillor having become vacant under clause (a), the State Government shall, by notification in the official gazette, disqualify such person for being elected or being a Councillor for a period of six years from the date of such order."

12. The provisions of section 16(1)(IC)(a) of the Act of 1965 start with a non-obstante clause. The aforesaid provision provides that notwithstanding anything contained in sub-section (IB) of section 16(1), a Councillor shall be disqualified for being a Councillor consequent upon the Caste Certificate Verification Committee or any other competent authority declaring the caste certificate of such Councillor to be invalid and cancelling the same on the ground that it was based on a false claim or declaration. The provision stipulates that thereupon the Councillor shall be deemed to have vacated his office on and from the date of declaration of such certificate to be invalid and cancellation of the same by the said Committee or the competent authority. The provision further stipulates that the office of the Councillor would be automatically vacated on the invalidation and cancellation of the caste certificate of the Councillor concerned. Sub-clause (b) of section 16(1)(1C) of the Act of 1965 then stipulates that on any person having been disqualified for being a Councillor and consequently his seat having become vacant under clause (a), the State Government shall, by notification in the official gazette, disqualify such person for being a Councillor or being elected as a Councillor for a period of six years from the date of such order. A reading of clauses (a) and (b) of section 16(1)(1C) makes it clear that there is no discretion vested in the State Government to issue or not to issue a notification in the official gazette disqualifying such Councillor or person for being a Councillor or being elected as a Councillor for a period of six years from the date of such order. The act of issuance of a notification in the official gazette by the Government under the provisions of section 16(1)(IC)(b) of the Act of 1965 is merely a ministerial act and it could not be said that the Councillor was not disqualified for being elected for a period of six years merely because the State Government had failed to perform the ministerial act of issuing a notification in the official gazette, disqualifying such Councillor. Thus, a combined reading of sub-clauses (a) and (b) of section 16(1)(1C) of the Act of 1965 leaves no doubt that a Councillor would be disqualified for being a Councillor and for being elected as a Councillor for a period of six years after the order is passed by the Caste Certificate

Verification Committee or any other competent authority declaring the caste certificate of the Councillor to be invalid. No sooner the Caste Certificate Verification Committee or any other competent authority passes an order cancelling the caste certificate of the Councillor than the Councillor is deemed to have vacated his office and is further disqualified for being a Councillor or being elected as a Councillor for a period of six years from the date of such order. The 2nd Ad hoc Additional District Judge was, therefore, not justified in holding that the respondent No. 5 could not have been held to be disqualified for being a Councillor or for being elected as a Councillor for a period of six years, in the absence of issuance of a notification by the Government in the official gazette under the provisions of section 16(1)(IC)(b) of the Act of 1965.

13. The 2nd Ad hoc Additional District Judge further committed an error in scanning the judgment passed by this Court on 17-10-2003 in Writ Petition No. 4476 of 2002. The 2nd Ad hoc Additional District Judge ought to have appreciated that the invalidation of the caste claim of the respondent No. 5 and the cancellation of his caste certificate clearly led to the only inference that such certificate had been obtained by the respondent No. 5 by making a false claim or declaration. Even otherwise, this Court had clearly recorded in the judgment dated 17-10-2003 that the three generations of respondent No. 5 namely Kashiram, Rangnath and the respondent No. 5 himself claimed to belong to Maratha caste till the respondent No. 5 obtained the caste certificate dated 3-11-2001 from the Sub Divisional Officer, Shrirampur. The aforesaid observations undoubtedly showed that the respondent No. 5 had obtained the caste certificate from the Sub Divisional Officer, Shrirampur on a false claim or declaration. Further, it would be worthwhile to reproduce paragraphs 26 and 28 of the judgment rendered by the Full Bench of this Court in the case of Ramesh Suresh Kamble vs. The State of Maharashtra and ors. on 20-10-2006 [since reported in 2007(1) MhLJ (FB) 423] as they clearly shatter the case canvassed on behalf of the respondent No. 5.

"26. A candidate who sets up a claim as belonging to a particular caste by making an application to the Competent Authority and obtains the caste certificate based on such claim and information and contests the election of the Councillor from the reserved seat and gets elected and if, ultimately, the Scrutiny Committee upon inquiring into the correctness of such certificate declares such certificate invalid and cancels the same, it is obvious that such caste certificate has been obtained by that person on the basis of the declaration or information or claim which was not correct or true and upon invalidation and cancellation of the caste certificate by the Scrutiny Committee, such person incurs disqualification automatically. There is no escape from it.

28. It is not necessary for the Caste Scrutiny Committee, as we have already discussed above, to record specifically that the caste certificate has been obtained by the applicant by making false claim or declaration. Once the caste certificate obtained by the candidate u/s 4 from the Competent Authority is

cancelled by the Scrutiny Committee u/s 7(1) of Maharashtra Act No. XXM of 2001, the implicit inference is that such certificate has been obtained by making false claim or declaration because the power of the Scrutiny Committee to cancel the caste certificate is founded on such certificate having been obtained fraudulently."

14. In view of the law laid down by the Full Bench in the aforesaid judgment, the submission made on behalf of respondent No. 5 falls to the ground. Even otherwise, the 2nd Ad hoc Additional District Judge ought to have appreciated that the respondent No. 5 had not challenged the order passed by the Collector on 29-11-2006 declaring that the office of the President of Deolali Pravara Municipal Council had fallen vacant. This clearly showed that the disqualification of the Councillor was automatic under the provisions of section 16(1)(1C) of the Act of 1965 in view of cancellation of the caste certificate and it was not necessary for the Caste Certificate Verification Committee or the competent authority to render a clear finding that the caste certificate obtained by the Councillor was based on a false claim or declaration. If it was the case of the respondent No. 5 that he was not disqualified as there was no finding to that effect in the judgment rendered by this Court on 17-10-2003, he could have as well challenged his disqualification to hold the office of the Councillor during the term for which he was elected.

15. It is brought to the notice of this Court that though the caste claim of respondent No. 5 was invalidated and the caste certificate issued in favour of respondent No. 5 was cancelled as early as on 17-10-2003, the State Government has failed to perform the act of issuing a notification in the official gazette in terms of section 16(1)(1C)(b) of the Act of 1965 disqualifying the respondent No. 5 to be a Councillor or to contest the election for a period of six years from the date of the order. It is expected that the State Government would issue the notification u/s 16(1)(C)(b) of the Act as early as possible.

16. For the reasons aforesaid, the impugned judgment passed by the 2nd Ad hoc Additional District Judge on 3-11-2006 is hereby quashed and set aside. Rule is made absolute in terms of prayer clause (A). However, in the facts of the case, there would be no order as to costs.