
(2019) 02 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 968 Of 2017

Priya Rahul Kokate

APPELLANT

Vs

Collector, Akola

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 2, 4(2), 8(2), 10(1A)

Citation : (2019) 02 BOM CK 0074

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : R.D. Dhande, V.P. Maldure

Final Decision : Dismissed

Judgement

[1] Heard.

[2] The petitioner got elected as member of the Gram Panchayat in the election which was held on 07/08/2015. The petitioner got elected from the seat reserved for woman (OBC). Subsequently, the petitioner got elected as Sarpanch. At the time of submitting the nomination form, the petitioner had submitted her caste certificate, however, caste validity certificate was not submitted as it was not issued by the Scrutiny Committee till that date. As per Section 10-1A of the Maharashtra Village Panchayats Act, 1958 (for short "the Act of 1958") (as it stood then), the petitioner was required to submit the caste validity certificate within six months from the date of declaration of the result of the election. The petitioner had not received the caste validity certificate within time and therefore, she could not comply as per Section 10- 1A of the Act of 1958. The learned Collector, by order dated 06/01/2017 disqualified the petitioner from continuing as the Member and Sarpanch of the Gram Panchayat. This order is challenged in this petition.

[3] The provisions of Section 10-1A of the Act of 1958 were amended initially by the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and

Panchayat Samitis (Amendment) Act, 2018 (hereinafter referred to as "the Maharashtra Act No. LXVI of 2018"). The Maharashtra Act No. LXVI of 2018 was published in the Maharashtra Government Gazette on 14/12/2018. Section 2 of the Maharashtra Act No. LXVI of 2018 amended Section 10-1A of the Act of 1958.

Then the Maharashtra Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019 (hereinafter referred to as "the Maharashtra Ordinance No. II of 2019") is promulgated. The Maharashtra Ordinance No. II of 2019 is published in the Maharashtra Government Gazette on 14/02/2019. Section 2 of the Maharashtra Ordinance No. II of 2019 has amended Section 2 of the Maharashtra Act No. LXVI of 2018.

The position as it stands today i.e. after issuance of the Maharashtra Ordinance No. II of 2019, is that any person who has obtained the caste certificate or the caste validity certificate after 26/03/2015, but has not filed such certificate within the stipulated period i.e. within 12 months from the date of declaration of the result of the election, shall not be deemed to be disqualified under the provisions of Act of 1958, if he has submitted the caste validity certificate to the competent authority after expiry of such stipulated period but before the publication of the Maharashtra Ordinance No. II of 2019 in the Official Gazette or if he submits such certificate within three months from the date of publication of the Maharashtra Ordinance No. II of 2019 in the Official Gazette.

[4] Section 8 of the Maharashtra Act No. LXVI of 2018 laid down that any person who had obtained the caste certificate or validity certificate but had not submitted the certificate prior to the commencement of the Maharashtra Act No. LXVI of 2018, he shall not be deemed to be disqualified under the provisions of the Panchayat law, if he submitted the certificate within three months from the date of commencement of the Maharashtra Act No. LXVI of 2018.

The proviso below Section 8 of the Maharashtra Act No. LXVI of 2018 laid down that the provisions of Section 8 of the Maharashtra Act No. LXVI of 2018 will not apply where the State Election Commission had already, prior to the date of commencement of the Maharashtra Act No. LXVI of 2018, had held elections to fill the vacancy of such person or declared the programme for holding of such election.

By Section 4 of the Maharashtra Ordinance No. II of 2019, Section 8 of the Maharashtra Act No. LXVI of 2018 is amended and Sub- section (2) is added. The effect of this amendment is that the person, who has obtained the caste certificate or validity certificate after 26/03/2015 but has not submitted the certificate within the stipulated period as per the provisions of the Act of 1958, is protected and is not deemed to be disqualified under the provisions of the Act of 1958 if he has submitted the validity certificate to the competent authority after expiry of such stipulated period but before the publication of the Maharashtra Ordinance No. II of 2019 in the Official Gazette, or if he submits the certificate within three months from the date of publication of the Maharashtra Ordinance

No. II of 2019 in the Official Gazette.

[5] In the present case, the petitioner got the caste validity certificate on 18/11/2015 and submitted it to the competent authority on 18/02/2016. On 17/02/2017, this Court has granted an interim order in favour of the petitioner and has stayed the effect, operation and implementation of the order passed by the learned Collector on 06/01/2017. Consequently, the petitioner continues in the post of Member and Sarpanch of the Gram Panchayat and the vacancy is not notified and therefore, there is no question of holding of election for that post.

[6] In view of the above facts, it is clear that the petitioner gets benefit of Section 4 of the Maharashtra Ordinance No. II of 2019 by which Sub-section (2) is introduced in Section 8 of the Maharashtra Act No. LXVI of 2018. As the petitioner has submitted the caste validity certificate on 18/02/2016 i.e. before the publication of the Maharashtra Ordinance No. II of 2019 in the official gazette, as per Section 8 (2) of the Maharashtra Act No. XLVI of 2018 (as amended by Section 4 of the Maharashtra Ordinance No. II of 2019), the petitioner cannot be deemed to be disqualified for not submitting the caste validity certificate within the period as was stipulated earlier.

Hence, the following order is passed:-

O R D E R

a) The impugned order is set aside.

b) The complaint filed by the respondent no. 2 against the petitioner is dismissed.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.