
(2016) 09 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 7927 of 2016

Rajmal Namdeo Bhagwat

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 10(1A), Section 11

Citation : (2016) 6 ALLMR 564

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Rajendra Deshmukh, Advocate, for the Respondent No. 3; S.R. Yadav, AGP, for the Respondent Nos. 1 and 2; Talhar Ajay G, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

T.V. Nalawade, J. - The petition is filed under Articles 226 and 227 of Constitution of India to challenge the order made by the learned Additional District Collector, Jalgaon in Dispute Application No. 31/2016 which was filed by present respondent No. 3 under the provision of section 10-1A of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as "the Act" for short). Both the sides are heard.

2. The petitioners were elected to Village Panchayat Londhri (Bk), Tahsil Jamner, District Jalgaon in general elections of Village Panchayat held in the year 2015. They had contested the elections from reserved category. Along with the nomination forms, they had filed their caste certificates, but within six months from the date of elections, they did not file the caste validity certificate and so, a person from the same village had filed aforesaid dispute for seeking disqualification of the present petitioners. Notices were given to the present petitioners. They filed their reply and they contested the proceeding.

3. It appears that subsequent to the date fixed in the relevant provision, the

petitioners Rajmal Bhagwat and Jyoti Sapkale got the caste validity certificates i.e. on 29.3.2016. Copies of those validity certificates are produced on record. Lilabai has contended that the validity certificate is issued to her, though it is in her name, which was prior to the date of marriage.

4. The learned counsel for petitioners submitted that on 4.8.2016, the State Government has issued Government Resolution and the period mentioned in section 10-1A of the Act is extended up to 31.12.2017 and this order of the State Government is not taken in to consideration by the learned Additional District Collector and so, the order needs to be set aside. In support of the contentions made, he placed reliance on the case reported as 2008 (2) Bom.C.R. 712 [Dadasaheb Arjun Gulve v. State of Maharashtra & Ors.] and the order of one case made by another Division Bench which is interim in nature made in Writ Petition No. 8002/2016 and others [Vaishali Kesharlal Mahajan v. The State of Maharashtra & Ors.] dated 2.8.2016 and the decision given by the Single Judge of this Court in Writ Petition No. 3963/2013 and another (Alka w/o. Rajkaran Kshirsagar v. Sow. Shalini w/o. Mahadeo Lokhande and Ors.) dated 16/09/2013. On the other hand, the learned counsel for respondent placed reliance on the decision given by this Court in Writ Petition No. 5686/2016 [Shankar s/o. Raghunath Devre (Patil) v. The State of Maharashtra and Ors] dated 2.9.2016, in which this Court has used the decision given by another Division Bench of this Court in the case reported as 2010(1) Mh.L.J. 497 (Gita Rupchand v. State of Maharashtra).

5. Submission was made by the learned counsel for petitioners that in view of the time extended in Government Resolution, the disqualification cannot occur at least till 31.12.2017. This submission is not at all acceptable and there is misconception behind this contention.

6. The relevant provision is section 10-1A of the Act and it is as under :-

"10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.

- Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001) :

Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December 2017, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the

Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member."

The aforesaid provision shows that the basic provision was made with the intention to see that a candidate who is having caste validity certificate is allowed to contest the election from reserved category mentioned in first part of the provision. Considering the possibility that candidates were not having validity certificates on the date of nomination, by way of concession, the first proviso came to be added. By the first amendment, which was made in the year 2012, concession was given to the candidates, who wanted to contest elections from the reserved category and it was for the elections which were to be held prior to 31.12.2014. The candidates were allowed to contest the elections if condition Nos. (i), (ii) of the first proviso were fulfilled by the candidates. Below these conditions, right from the first amendment, further proviso was added which was making it clear that if the caste validity certificate was not produced within the period of six months from the date on which he was declared as elected, his election was to be deemed to have been terminated retrospectively and he was to be disqualified for being a member. By subsequent amendments, the date mentioned in the first proviso was changed to make it 31.12.2015 and then by the recent amendment, the date fixed is 31.12.2017. It can be said that only the dates mentioned in the first proviso are changed and the remaining provision of the first amendment is kept intact.

7. In view of the aforesaid steps taken by the State Government to give concession, but to put conditions for the concession, it can be said that the concession can be availed only after complying two conditions mentioned in the first proviso and after that there is mandatory provision in the second proviso. In the mandatory provision, it is specifically provided that election shall be deemed to have been terminated retrospectively if the validity certificate is not produced within a period of six months from the date of the declaration of the election. Thus, it cannot be said that any further scope is kept to the candidate and he can give excuse that the Caste Scrutiny Committee constituted by the State Government for issuing caste validity certificate was not discharging function or it was not making progress in the matter for some reason. There can be many

reasons including inaction on the part of such candidate to supply necessary information to the Caste Scrutiny Committee or seeking time before Caste Scrutiny Committee during hearing of the said proceeding. There can be reason which can be used against the Caste Scrutiny Committee also. But these circumstances are not required to be considered in view of the mandatoriness of the second proviso quoted above.

8. It can be said that there are two cases of Division Bench on the aforesaid point and there is one case of Hon"ble learned Single Judge of this Court in which the decision given by the Division Bench of this Court in the case of Dadasaheb Gulve cited supra is followed (Writ Petition No. 3969/2013) and on the other hand, there is the decision of other Division bench in the case of Gita Rupchand cited supra. As per the law of precedent, this Court has liberty to choose one of the two decisions delivered by the two benches of equal strength of this Court. Further, there is aforesaid provision which is mandatory in nature. It can be said that there was no opportunity to consider the aforesaid proviso which was not there in the Act. The case of Dadasaheb Gulve cited supra was decided on the basis of similar provision made in Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act. It can be said that in the said provision also the second proviso mentioned in the Act was there. But the Division Bench of this Court had held that the proviso prescribing the period of four months in that case was not mandatory in nature. In subsequently decided case of Gita Rupchand cited supra, the Division Bench held that the provision is mandatory in nature. In view of the wording used in the second proviso, this Court holds that the view expressed by the Division Bench of this Court in the case of Gita Rupchand cited supra needs to be accepted and this Court is accepting that view.

9. The learned counsel for petitioners placed reliance on some observations made by the Apex Court in the case reported as AIR 2011 SC 312 [Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.]. The purpose behind some observations in that case was totally different. This Court holds that those observations made with regard to the grant of anticipatory bail by the Apex Court can not be used in the present matter.

10. In the result, petition stands dismissed. Interim relief, if any, is vacated.