

(2022) 12 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 753 Of 2021

Raviraj Rajendra Patil

APPELLANT

Vs

Gram Panchayat Bachni And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Village Panchayats Act, 1959 — Section 30(1A)
Maharashtra Regional And Town Planning Act, 1966 — Section 127
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965
— Section 9A

Citation : (2022) 12 BOM CK 0001

Hon'ble Judges : S. M. Modak, J

Bench : Single Bench

Advocate : Drupad S. Patil, B.G.Ligade, Nimitkumar S. Pansare, Chetan Patil,
Mandar G. Bagkar, S.D.Rayrikar

Final Decision : Dismissed

Judgement

S. M. Modak, J

1. Heard learned Advocate Shri.Drupad S. Patil for the Petitioner/ objector, learned Advocate Shri.Chetan Patil for the Respondent No.2 – Elected Sarpanch and learned AGP for Respondent No.3.

2. Respondent No.2 – Iqbal was elected as a Sarpanch of Gram Panchayat Bachani, Taluka : Kagal, District : Kolhapur on 25th March, 2019. He was elected for the seat reserved for backward class. As mandated, as per the provisions of Section 30(1A) of the Maharashtra Village Panchayats Act, he could not produce the caste validity certificate within a period of twelve months. Though applied before the Caste Verification Committee, in time, he could get it belatedly on 27th October, 2020. Learned Collector – District Kolhapur refused to accept the objection taken by the Petitioner for disqualifying the Respondent No.2 – Iqbal vide its order dated 12th January, 2021. Its correctness is challenged by way of

this Writ Petition.

3. The law on the point of effect of non production of caste validity certificate within a prescribed period, is well settled by Full Bench of this Court in case of Anant Ulahalkar and Another V/s. Chief Election Commissioner [2017 (1) Mh.L.J. 431]. There, the election of a councillor from Bhore Municipal Council was challenged for not submitting caste validity certificate within prescribed period. There, the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 was involved. There is no dispute that those provisions are more or less similar to the provisions of Section 30(1A) of the Maharashtra Village Panchayats Act, 1959. The Full Bench has held that the period for submitting caste validity certificate is mandatory.

4. Learned Collector has not considered the observations in case of Anant's case. But, he inspite of delayed production of validity certificate, rejected the objection. As said above, the law on this issue is settled. In this case, learned Advocate Shri.Chetan Patil for Elected Sarpanch has not contended that the law interpreted in case of Anant is not applicable to the facts of this case. In fact, dispute now raised in this Petition does not pertain to the said issue.

5. During arguments, learned Advocate Shri.Chetan Patil has supported the impugned order for different reason. According to him, he is not justifying the delayed production of validity certificate for normal reasons. But, he has justified the delay on account of the restrictions imposed during COVID period and particularly, on the basis of various directions given by Hon'ble Supreme Court in IN RE : COGNIZANCE FOR EXTENSION OF LIMITATION [Suo Motu Writ Petition (Civil) No(s). 3 of 2020].

6. It is also true that both the learned Advocates have relied upon the judgments in which the effect of directions given in Suo Motu Writ Petition were considered. They were considered either by learned Single Judge or by a Division Bench. In some of the judgments, considering the guidelines in Suo Motu Writ Petition, the delay was condoned. Whereas, in some others, it was not condoned. In some of them, the issue about member of Local Authority is involved. Whereas, in one of the judgments, the issue about not taking steps under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and effect of guidelines in Suo Motu Writ Petition was considered.

Guidelines during Covid period

7. Before going into the contentious issues, it will be material to consider various guidelines issued by Hon'ble Supreme Court from time to time. They are as follows :-

Guideline dated : 23.3.2020

Period of limitation in proceedings in respective Courts / Tribunals ; whether it is prescribed under general law or special law ; whether condonable or not ; shall stand extended with effect from 15.3.2020 until further order.

Guideline dated : 6.5.2020

All periods of limitation prescribed under

-- the Arbitration and Conciliation Act, -

--1996

and

---under Section 138 of the Negotiable Instruments Act, 1881, shall be extended with effect from 15.3.2020 until further orders.

Guideline dated : 10.7.2020

Order dated 23.3.2020 and 6.5.2020 shall apply for extension of time limit for ---passing arbitral award under Section

29A

and

--Section 23(4) for completion of statement of claim and defence. The period for completing the process of compulsory pre-litigation, mediation and settlement under Section 12A of the Commercial Courts Act, 2015 was also extended.

Guideline dated : 27.4.2021

The period for suit, appeal, application or proceeding from 15.3.2020 till 14.3.2021 is excluded.

Judgments delivered by Division Bench

8. There are two judgments delivered by Division Bench of this Court. One is relied upon by the Petitioner :

It is in case of Mandakani Kachru Kokane @ Mandakani Vishnu Godse V/s. State of Maharashtra and Others [2021 (3) Mh. L. J. 221].

Whereas, another Division Bench judgment is relied upon by contesting Respondents in case of :

Farida Noormahamad Mujawar V/s. State of Maharashtra and Others [Writ Petition No.3566 of 2021 : 12th August, 2021 : Bombay High Court].

9. The judgment in case of Mandakani was delivered on 27th October, 2020. Whereas, judgment in case of Farida Mujawar was delivered on 12 th August, 2021. According to learned Advocate Shri.Patil, the view expressed by the Division Bench earlier, will prevail. In order to buttress his submission, he relied upon a judgment in case of Shri.Prakash Gobindram Ahuja V/s. Ganesh Pandharinath Dhonde and Ors. [(2016) 6 Bom CR 262]. In that judgment, Issue No. V was dealt with. It reads thus :-

“(V) Whether the observation in para (13) of the judgment in Vasant Tatoba Hargude v. Dikkaya Muttaya Pujari (AIR 1980 BOMBAY 341) that in the event of there being conflict, the decision of later Bench would bind only lays down that judgment later in point of time as explaining the earlier judgment would bind?”

10. In the light of judgment of Hon’ble Supreme Court, Division Bench observed :

“in case of conflict between the decisions of Co-ordinate Benches, it is not the later but the earlier one in point of time, which should be followed and applied by the Subordinate Courts to the facts and circumstances of a case before it, unless, of course, earlier decision is considered and explained in the later decision.” (Para 177).

11. According to learned Advocate Shri.Patil, when Division Bench of this Court decided the Writ Petition filed by Farida Mujawar, it has not dealt with the observations by the Division Bench of this Court in Mandakani’s case. Learned Advocate Shri.Patil is right in his submission. But, I am not agreeing to his submission fully. It is for the reason that the issues involved in both the Petitions should be similar. If they are different, there is no question of binding effect of the views expressed either by the earlier Bench or later Bench. I say so because issues involved in Mandakani’s case are different from the issues involved in Farida Mujawar’s case.

12. On minute perusal of the judgment in case of Mandakani, one may find that the Petitioners claim for caste validity was rejected by Caste Scrutiny Committee. She applied for validity on 28th May 2019 i.e. earlier to winning the election on 26th June 2019 and refusal on validity was after one year. That is why, she has approached Division Bench of this Court. Her main relief was challenging correctness of the order dated 25th June 2020 passed by Caste Scrutiny Committee, Nashik and issue direction to issue validity certificate. In addition to that, she has prayed for issuing direction to the State Government to extend the time limit for submitting the caste validity certificate under Section 30(1A) of the Maharashtra Village Panchayat Act, 1958. The submissions for not getting the validity certificate in time on account of COVID, were reproduced in Para No.4. In addition to that, the Division Bench has also framed question No.18(iii) about entitlement to extension on account of COVID pandemic.

13. Learned Advocate Shri.Chetan Patil is right in his submission that Division Bench has not dealt with the issue about what is effect of COVID restrictions on not getting the decision within one year from the date of declaration of result. Division Bench has also considered the consequences recorded by Hon’ble Supreme Court in case of Benedict Denis Kinny V/s. Tulip Brian Miranda & Ors. [Civil Appeal Nos.1429-1430/2020 (Arising out of SLP (C) Nos. 13703-13704 of 2019)] in Para Nos. 43, 44 and 45. In that case, the issue was about the power of High Court to issue Writ under Article 226 of the Constitution of India, interdicting a legal fiction engrafted in a State Amendment. It was held that if Writ Petition is filed under Article 226 of the Constitution prior to expiry of one

year period, certainly High Court is having power to pass interim orders.

14. If we read the final directions given in Mandakani's case, we may find that prayer for setting aside the order was rejected. However, all District Caste Scrutiny Committees were directed to dispose of the matters of validity by fixing the time limit. In nutshell, that Petition was predominantly for challenging the order rejecting the validity and the question of extension for submitting certificate on account of COVID guidelines was an incidental issue. Furthermore, learned Advocate Shri.Drupad Patil has not brought to my notice any observations made by Division Bench on the issue involved before this Court. Hence, I am not agreeable with the submission made by learned Advocate Shri.Drupad Patil that view expressed by Division Bench in Mandakani's case will hold the field. So, the issue needs to be considered on the basis of facts and other judgments relied upon by respective parties.

Other judgments

15. It is true that Division Bench of this Court (Nagpur Bench) in case of Niranjana Mahadevrao Raout V/s. The State of Maharashtra and Others [Writ Petition No.1211 of 2021 : 22nd April, 2022] has refused to grant extension of time as per Suo Motu guidelines in case of matter arising out of Section 127 of the Maharashtra Regional and Town Planning Act, 1966. There are consequences provided if no steps are taken as per Section 127 of the MRTP Act. The Division Bench differentiated in between extending the period of limitation (under general law) and not the period which was statutorily prescribed for doing particular acts.

16. It is true that there are consequences provided if steps are not taken under Section 127 of the MRTP Act. A person whose land is reserved and no steps are taken within prescribed period, he gets right to ask for de-reservation.

17. Whereas, Hon'ble Supreme Court in case of S. Kasi V/s. State Through The Inspector of Police Samaynallur Police Station Madurai District [2020 SCC OnLine SC 529] was pleased not to extend the benefit of directions given by Hon'ble Supreme Court issued during COVID pandemic. In that case, the issue was whether ; in view of COVID guidelines, the period of filing of a charge-sheet also can be extended. It was not accepted. The reason is accused gets indispensable right to pray for bail irrespective of merits of the matter. There, the Hon'ble Supreme Court considered personal liberty guaranteed under the Constitution.

18. However, when such issue has arisen before learned Single Judge and before Division Bench of this Court in case of adhering to mandatory period of producing caste validity certificate by returned candidate, the benefit of COVID guidelines was given. It is in case of Kalmati Ramkrupal\ Yadav V/s. Chandrapur City Municipal Corporation [2021 (6) Mh.L.J. 651] and in case of Farida Noormahamad Mujawar V/s. State of Maharashtra and Others [Writ Petition No.3566 of 2021 : 12th August,

2021 : Bombay High Court]. According to learned Advocate Shri.Drupad Patil, in

Kalmati Yadav case, learned Single Judge considered the peculiar facts and then granted the benefit and there are no peculiar facts in case before this Court. In Kalmati Yadav's case, there was an application for grant of caste validity when nomination paper was filed. However, within a period of twelve months, validity could not be produced and hence, she was disqualified. Learned Single Judge considered the proceedings of Caste Validity Committee and observed that there was no deliberate delay on account of the petitioner.

Facts of the present case.

19. In case before us, the Petitioner applied for caste validity on 7th March, 2019 and he was granted the same on 29th October, 2020 i.e. after the period of twelve months from the date of declaration of result on 25th March, 2019. On factual aspects, the Respondent No.1 relied upon minutes of meeting dated 20th March, 2020 before Caste Validity Committee. The Chairman of the Committee is for Mumbai Suburban District and he was having additional charge for Kolhapur. However, on 20th March, 2020, he could not travel for Kolhapur due to COVID restrictions and hence, the meeting was adjourned in presence of Secretary and Member of the Committee. The facts stated in the minutes cannot be disputed. There is no challenge to those facts as fraudulent or bogus. It is also true that the COVID guidelines are in force from 15th March, 2020 to 14th March, 2021. It means, during the material period of twelve months for obtaining validity, those guidelines were in force. It is true that the Full Bench of this Court in case of Anant, has observed that the period for submitting validity has to be followed scrupulously and if the validity is not produced, it amounts to automatic disqualification. According to learned Advocate Shri.Patil, COVID guidelines do not help the Respondent No.2 to come out of the observations by the Full Bench.

20. Learned Single Judge in Kalmati Yadav case has laid more emphasis on the expression "all other proceedings used by Hon'ble Supreme Court" in the order dated 23rd March, 2020. Whereas, Division Bench has also considered the expression "all other proceedings". After considering the provisions of Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and after considering the guidelines, was pleased to give benefit. It was for the reason that the factors were completely beyond the control of the petitioner akin to the factors like force majeure or act of god.

21. It is true that in case of Fakira s/o Devram Sansare V/s. Collector, Ahmednagar and Others [2022 (2) Mh.L.J. 782], though this point was raised, there was no observations to that effect. Ultimately, learned Single Judge observed that consequences must follow for not adhering to mandatory provisions.

22. After taking overall view of all above judgments, it can be said that this Court as well as the Hon'ble Supreme Court has dealt with the effect of COVID guidelines under different situations. Some occasion, it was considered on the background of personal liberty. On some occasion it was considered on the

background of dealing with a disqualification plea and on other occasion, it was considered on the background of right to property and Also in case of de-reservation contingency. In case before us, learned Single Judge and Division Bench has already granted benefit in a situation similar to situation involved before this Court. It is true that learned Collector has refused the objection merely for the reason that though belatedly validity certificate was produced, he was not right in taking that decision in view of the view expressed by the Full Bench.

23. The issue of benefit of COVID guidelines was raised before this Court. Hence, this Court has dealt with this issue. Here, right to hold a particular post is in issue. The factors prevailing due to COVID pandemic were beyond the control of Respondent No.2. In normal circumstances, the Respondent No.2 could have approached this Court when validity is not granted within 12 months. However, he cannot be blamed for not approaching in view of COVID pandemic. The objection taken learned Advocate Shri.Drupad Patil in that respect is not accepted. For the above discussion, this Court is not inclined to accept all the contentions of learned Advocate for the Petitioner and thereby upset the decision taken by the learned Collector.

24. There is no merit in the Petition. Hence, it is dismissed.