

(2012) 01 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 547 of 2012

Santosh Namdev Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Constitution of India, 1950 — Article 15

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Article 243D, 12, 12A, 18

Citation : (2012) 2 BomCR 576

Hon'ble Judges : Mohit S. Shah, C.J.;Roshan Dalvi, J

Bench : Division Bench

Advocate : S.V. Gavand in WP/547/2012, Mr. A.B. Borkar in WP/550/2012, Mr. P.D. Patil in WP/551/2012, Mr. Laxman Deshmukh in WP/552/2012, WP/553/2012 and WP/554/2012, Mr. H.G. Wakshe and Abhiman Patil in WP/555/2012, Mr. A.M. Kulkarni with V.R. Gaihiway in WP/556/2012, 557/2012, 558/2012, 560/2012, 441/2012 and 561/2012, Mr. S.B. Deshmukh in WP/562/2012, Mr. Amit Sale in WP/563/2012, 564/2012 and 565/2012, Mr. J.B. Choudhary in WP/569/2012, Mr. B.D. Joshi in WPL/94/2012, Ms. M.S. Parasnis in WPL/95/2012, Mr. C.G. Patil in WPST/1796/2012, WP/1795/2012, Mr. S. Sakhare in WPST/1739/2012, Mr. Y.R. Mishra in WPST/1773/2012, WPST/1752/2012, Mr. P.B. Kulkarni in WPST/1759/2012, Mr. H.S. Venegavkar in WP/608/2012, WP/607/2012, Mr. P.M. Arjunwadkar in WPST/1735/2012, Mr. V.V. Mohite in WPST/1692/2012, Mr. I.M. Vohra in WPST/1698/2012, Mr. J.B. Choudhary in WPST/1721/2012, Mr. S.B. Deshmukh in WPST/1708/2012, Mr. P.S. Bhavake in WPST/1707/2012, Mr. Vikas Kolekar in WP/574/2012, Mr. Amit Sale in WPST/1710/2012, WPST/1709/2012, Mr. S.M. Gorwadkar in WPST/1706/2012, Mr. Virendra Pethe in WP/573/2012, Mr. Anant Vadgaonkar in WP/575/2012 and Mr. D.H. Pawar in WP/576/2012, for the Appellant; Vijay Patil, Government Pleader, a/w Ms. Uma Palusule Desai, AGP, for the State and Mr. S.B. Shetye for State Election Commission, for the Respondent

Judgement

Chief Justice Roshan Dalvi, J.—In this group of writ petitions, the petitioners have challenged the circulars dated 20.9.2011, 7.10.2011 and 17.11.2011 issued by the Social Justice and Special Assistance Department of the State Government

by which the State Government has stipulated the cut-off date for making applications for verification of caste certificates issued by the competent authority under 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 (Maharashtra Act No.XXIII of 2001) (hereinafter referred to as the 'caste verification act'), for the purpose of verification of caste certificates of the candidates willing to contest for elective posts in local authorities.

2. Section 3 of the Caste Verification Act, 2000 (Maharashtra Act No.XXIII of 2001) provides that any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category required to produce a caste certificate in order to claim the benefit of any reservation provided to such castes, Tribes or Classes either in public employment or for admission to any educational institution or any other benefit under any special provisions made under clause 4 of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the cooperative Societies; or for purchase or transfer of land from a tribal landholder or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issue of a caste certificate.

3. While any person aggrieved by an order of rejection of such an application has a right to file an appeal to the appellate authority, the person who succeeds in obtaining a caste certificate from the competent authority has to further obtain a caste validity certificate to be issued by a scrutiny committee constituted u/s 6 of the Act. Section 6 insofar as is relevant for the purpose of the present petition reads as under:

6(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) ...

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

4. The Act further provides for consequences of obtaining a false caste certificate.
5. Section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, in conformity with the provisions of Article 243D provides for reservation for backward classes in seats in the Zilla Parishads and Panchayat Samitis.
6. Section 12A is relevant for the purposes of the present controversy. Section 12A was inserted in 2006 by the Maharashtra Zilla Parishads and Panchayat Samitis Amendment Act 2006, which reads as under:

12A. 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, alongwith 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, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination paper but who has not received the Validity Certificate on the date of filing of the nomination paper shall submit, alongwith the nomination paper,

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

(ii) an undertaking that he shall submit, within a period of four months from the date of his election, the Validity Certificate issued by the Scrutiny Committee:

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

7. Subsequently by Maharashtra Act No.5 of 2009, both the provisos came to be deleted w.e.f. 1.8.2009. The consequence of the above amendment deleting the provisos is that a candidate submitting his nomination form for election to a reserved seat in Zilla Parishads and Panchayat Samitis is required to submit alongwith the nomination form the caste certificate issued by the competent authority and also a caste validity certificate issued by the Caste Scrutiny Committee in accordance with the provisions of the Caste Verification Act.

8. The grievance of the petitioners in this group of petitions is that the final notification declaring seats reserved for backward classes in Zilla Parishads and Panchayat Samitis was issued on 18.11.2011 but the State Government through

the Social Justice and Special Assistance Department issued the impugned circulars dated 20.9.2011, 7.10.2011 and 17.11.2011 stipulating 5.10.2011, 20.10.2011 and 21.11.2011 as the cut-off dates for making applications to the said Scrutiny Committees constituted under the notification dated 30.7.2011 respectively i.e. the initial cut off date of 5.10.2011 came to be finally extended upto 21.11.2011. It is submitted that after issuance of the above notification the petitioners applied to the competent authorities for caste certificates and all the petitioners have been granted the caste certificates certifying that the candidates belong to backward classes covered by Caste Verification Act 2000. Some of the candidates had already secured such caste certificates even prior to 18.11.2011. However, by the time the petitioners could find out about availability of reserved seats in their respective constituencies, the cut off date of 21.11.2011 had already gone and therefore they have been prevented from applying for caste validity certificate for no fault of the petitioners. It is contended that the petitioners have a constitutional and statutory right of contesting for the seats reserved for the respective backward classes to which the petitioners belong and the petitioners also have the caste certificates issued by the competent authorities, but without the caste validity certificates to be issued by the Caste Scrutiny Committees constituted under subsection (1) of section 6, the petitioners cannot submit their nomination papers for elections to the Zilla Parishads and Panchayat Samitis.

9. Similar grievance is being made by the petitioners, who are desirous of contesting seats reserved for backward classes in municipal corporations. A final notification reserving seats for backward classes in different constituencies of the municipal corporations in the State was issued on 5.11.2011. It is submitted that when the petitioners came to know about the reservation of seats for backward classes in their respective constituencies, they had to apply for caste certificates before competent authorities and after obtaining such caste certificates they had to apply for caste validity certificates before the caste scrutiny committee. It is therefore submitted that the cut-off date being 21.11.2011, the time limit was too short for making such applications.

10. The learned Counsel for the petitioners have basically raised the legal contention that under the Caste Verification Act, it is only the State Government acting in the name and by order of Governor which can exercise the statutory power under sub-section (2) of section 6 to prescribe any time limit or cut-off date for making an application to the caste scrutiny committee for caste validity certificate. It is submitted that the impugned circulars are issued by the State Government without having any statutory power under subsection (2) of section 6. It is submitted that the impugned circulars are mere guidelines and they cannot be treated as statutory directions or rules under subsection (2) of section 6 of the Act.

11. The petitions have been opposed by Mr.Patil, the learned Government Pleader, appearing for the State Government and the Collectors of the respective

districts as well as Mr.Shetye, the learned Counsel for the State Election Commission. It is submitted that the election programmes have already been declared and that for elections to Zilla Parishads and Panchayat Samitis, the nomination forms alongwith the caste certificates and caste validity certificates are required to be submitted between 18.1.2012 and 23.1.2012 (both days inclusive) and therefore the petitioners have approached this Court very late. It is submitted that as per the settled legal position, this Court would not interfere with the election process after commencement of the election process. Similarly it is submitted that the election programme for the municipal corporations has also been declared on 3.1.2012 and that for elections to the municipal corporations also, the nomination papers alongwith the caste certificate and caste validity certificates (that is for the reserved constituencies) are required to be submitted between 23.1.2012 and 30.1.2012 (both days inclusive).

12. Apart from the aforesaid preliminary objections, the learned Counsel for the respondents have supported the impugned circulars and have submitted that since subsection (2) of section 6 itself provides that any person desirous of availing of the benefits or concessions provided to the backward classes for the purpose of contesting the elective post in any local authority is required to make an application, well in time, it is open the State Government to stipulate the cut off date and that the impugned circulars have therefore been issued in exercise of the said power. It is submitted that even in absence of any such statutory provision, the State Government would be well within its rights in stipulating a cut off date, otherwise it would be impossible for caste scrutiny committees constituted under notification dated 30.7.2011 to consider the applications for caste validity certificates before the elections. It is also submitted that the Collectors in the respective districts are the Electoral Officers for the concerned districts and therefore if they have to decide such applications at the last moment, it would be impossible for them to hold proper enquiries and to issue caste validity certificates. It is also submitted that if a person has made an improper claim for caste validity certificate and if the Collector is rushed into considering such application and an ineligible person is granted the caste validity certificate erroneously, the person who really does not belong to backward class will get the benefit of reservation defeating the very object of constitutional reservations as provided in Article 243D and in section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and similar provisions in the Mumbai Municipal Corporation Act and BPMC Act.

13. Having heard the learned Counsel for the parties, we have given our anxious consideration to the rival submissions.

14. As regards the preliminary objection submitted by the learned counsel for the respondents, we make it clear that we do not propose to interfere with the election process which has already commenced. In case of elections to Zilla Parishads and Panchayat Samitis, the nomination papers are required to be submitted between 18.1.2012 and 23.1.2012. We do not propose to interfere with

the said dates and therefore 23.1.2012 continues to be the last date for submitting the nomination forms, including the nomination forms to be submitted by the candidates for the seats reserved for backward classes. Similarly, we do not propose to interfere with the election programme for the elections to the municipal corporations for which 23.1.2012 to 30.1.2012 is the period during which the nomination forms have to be submitted. At present what we propose to examine is the legality of the impugned circulars dated 20.9.2011, 7.10.2011 and 17.11.2011 by which the State Government initially stipulated 5.10.2011, as the last date for making such applications and went on extending the cut-off date and the last such extension was granted upto 21.11.2011. While subsection (2) of section 6 does confer power on the State Government to stipulate the last date by which the such an application could be made in the context of the ensuing elections to a local authority, the impugned circulars do not purport to have been made in exercise of such powers under subsection (2) of section 6. Of course, it is well settled that even if an order does not indicate the source of power in exercise of which the order is issued, such exercise can be upheld notwithstanding the absence of reference to the source of power. However, subsection (2) of section 6 provides that the State Government may prescribe the form and the manner in which the application is to be made. It further provides that an application has to be made well in time. Accordingly the State Government also has the power to prescribe or to stipulate the time limit within which the application must be made in the context of ensuing elections to the local authority but the exercise of such power is circumscribed by the words "as may be prescribed". Section 2(i) defines the word "prescribed" as under:

Prescribed means prescribed by Rules made by the Government under this Act.

15. Section 18 provides that the Government may, subject to previous publication by notification in the official gazette make rules to carry out all or any of the purposes of the Act and that every rule made in the Act shall be laid before each House of the State Legislature, while it is in session for a total period of thirty days. The Rules have effect only in such modified form as both Houses agree or be of no effect if both the Houses do not agree to have such rules. In other words, the Caste Verification Act confers powers on the State Government to prescribe the form and the manner in which the applications may be made under subsection (2) of section 6 of the Act as well as the time limit within which such applications will have to be made but these powers can be exercised only by the State Government as the rule making authority exercising powers under subsection (2) of section 6 r/w section 18 of the Act. Such rules may specify in general terms as to within how many days, applications can be made u/s 6(2) of Caste Verification Act for the purpose of election to an elective post in a local authority eg., after notification of seats reserved for backward classes or how many days before expiry of the current term of a local authority.

16. There is nothing on record to show that the impugned circulars have been issued in exercise of the above statutory powers. In fact the circulars have been

purported to have been issued by the Government of Maharashtra and admittedly no rules have been produced stipulating any such cut-off date. The impugned circulars must therefore be struck down as without authority of law.

17. The next question is what relief should be granted to the petitioners. Having regard to the fact that the election process has already commenced and even the last date for submitting the nomination forms for elections of the Zilla Parishads and Panchayat Samitis is 23.1.2012 and the last date of submitting such nomination forms for elections to the Municipal Corporation is 30.1.2012 even while declaring the impugned circulars as illegal, we do not propose to issue any further directions to the Collectors.

18. Hence, the following order is passed:

ORDER

(i) In the result, we hold that the impugned circulars dated 20.9.2011, 7.10.2011 and 17.11.2011 of the State Government in the Social Justice and Special Assistance Department stipulating cut off dates for making applications under subsection (1) of section 6 of the Caste Verification Act, 2000 (Maharashtra Act No.XXIII of 2001) are illegal.

(ii) However, since the petitioners have approached the court very late and the election process has already commenced, we decline to give any consequential directions, but we do clarify that in case the Collector of the concerned district accepts any such application made under subsection (2) of section 6 of the Caste Verification Act, 2000 it is for the concerned Collector to decide whether, having regard to the paucity of time and the various election duties with which the Collector is entrusted, he would consider such applications at this stage within any time frame. Since the Collector is the Officer entrusted by the Election Commission with various onerous and emergent duties, we would not issue any further directions to the Collectors of the respective districts except that in case a Collector decides to consider any applications which he may receive for any such caste validity certificates from prospective candidates, the Collector shall consider such applications by following the rational norms and not pick and choose any application arbitrarily.

(iii) We further make it clear that the ad-interim order passed on 13.1.2012 in Writ Petition Nos.383 of 2012, 384 of 2012 and 385 of 2012 on 13th January 2012 as well as the other orders passed thereafter will have to be read in light of the above final directions.

(iv) The petitions are disposed of in the aforesaid terms.