

(2018) 12 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 2688 Of 2017

Satish Babruvan Dede And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 9A, 10(1A)
Maharashtra Municipal Corporations Act, 1949 — Section 5B
Constitution of India, — Article 14, 15, 16, 226

Citation : (2018) 12 BOM CK 0124

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : S. S. Panale, N. S. Jaju, P. N. Kalani, S. R. Yadav Lonikar, B. M. Dhanure

Final Decision : Dismissed

Judgement

1. Both these petitions are being taken up together for adjudication in view of an identical issue involved. In both these matters, the petitioners, who are elected representatives of their respective villages in the Grampanchayats, have contested the Grampanchayat elections from such constituencies that have been reserved for the Scheduled Castes/ Scheduled Tribes. These elections were held on 25/04/2015 and 07/08/2015 to the Grampanchayat Gondegaon, Taluka and District Latur and to the Grampanchayat Bhogaon (Sable), Taluka and District Parbhani, respectively. It is equally undisputed that none of these petitioners have tendered their Caste/Tribe Validity Certificates as required under Section 10-1A of the Maharashtra Village Panchayats Act and the proviso thereunder. As such, they incurred disqualification.

2. In the first petition, respondent No. 5 Gram Sevak, Gram Panchayat Gondegaon has not caused appearance though served. In the second petition, respondent Nos. 2 and 3, though served, have not caused an appearance.

3. This a peculiar case where the law needs to be adverted to first before considering the submissions of the learned Advocates for the respective sides.

4. The learned Full Bench of this Court, in the matter of Anant H. Ulahalkar Vs. Chief Election Commissioner and others, 2017 (1) Mh.L.J. 431, has dealt with the issue of submitting the Caste Validity Certificate within six months from the date of the declaration of the election results in view of Section 9A of the Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Three specific issues were referred to the learned Full Bench. By judgment dated 09/12/2016 the learned Full Bench concluded that a provision requiring submission of the Caste/Tribe Validity Certificate was mandatory and not directory. Since Section 10-1A of the Maharashtra Village Panchayat Act is identical to Section 9A of the Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the view taken in Anant Ulahalkar Case (Supra) is being applied to such cases as the law prescribes a similar mandate.

5. Several judgments were delivered by this Court in various matters under both the Acts referred to above. A large group of Special Leave Petitions were filed before the Honourable Apex Court. In the said group of matters, the Honourable Apex Court has delivered its judgment on 23/08/2018 in Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra and others in petitions for Special Leave To Appeal Nos. 29874-29875/2016 and all connected matters. The Honourable Apex Court sustained the view taken by the learned Full Bench and has observed in its order dated 23/08/2018 as under :-

" The following questions were referred for the opinion of a full bench of the High Court of Bombay :

(i) Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected councilor is mandatory in nature ?

(ii) Whether the failure on the part of person elected as councilor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect ?

(iii) Whether the validation of caste claim of elected Councilor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councilor with retrospective operation ?

The same were answered against the petitioners (s) by holding the provisions of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 to be mandatory.

Aggrieved, the present special leave petitions have been filed for leave to appeal against the aforesaid order of the full Bench. Several other connected matters which challenge a similar view taken by numerically similar Benches of the High

Court have also been tagged and have been heard together.

In view of the elaborate arguments that have been advanced, we have thought it proper to briefly indicate the reasons for our conclusion.

Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act (Act No. 59 of 1949) require a member of the Scheduled Castes, Scheduled Tribes or other Backward Classes to enclose with the nomination for election his/her Caste Certificate issued by the Competent Authority and also the Validity Certificate issued by the Caste Scrutiny Committee.

A proviso to the aforesaid main provision of the statute was brought in subsequently which permitted a candidate to file his/her nomination even in the absence of the validity certificate provided he/she encloses with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit, within a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.

There is a second proviso which contemplates that on the failure of the concerned person (s) to produce the validity certificate within the time frame stipulated his election "shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor".

We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case (s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be negatory.

Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely, that the legislative intent was to make the provisions of the statute mandatory irrespective of individual hardships.

We, therefore, are of the view that the High Court of Bombay was perfectly justified in coming to the impugned conclusion on the basis of the reasoning that was adopted, which we hereby affirm. Consequently, we dismiss all the special leave petitions and pending applications." [Emphasis supplied]

6. It is, therefore, crystallized law that since Section 9A of the 1965 Act, Section

5B of the Maharashtra Municipal Corporations Act and Section 10-1A of the Maharashtra Village Panchayats Act required a validity certificate at the time of the elections, the proviso introduced under these provisions protected the elected candidates for a period of six months and they were under the mandate of law to submit their validity certificates within six months, which was the extended period granted by the newly introduced proviso.

7. Pursuant to the above, the Maharashtra Government introduced the Maharashtra Village Panchayats Act and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance No. XXI of 2018 on 11/10/2018. By the said Ordinance, where ever the words 'six months' appeared, insofar as the mandate of tendering the validity certificates is concerned, they have been substituted by the words 'twelve months' and such substitution was specifically made effective from 31/03/2016. For ready reference, Clause 2 of the Maharashtra Village Panchayats Ordinance applicable to these petitions in hand, is reproduced as under :-

"2. In Section 10-1A of the Maharashtra Village Panchayats Act (hereinafter in this Chapter referred to as "Maharashtra Village Panchayats Act"),--

(a) in the first proviso, in clause (ii), for the words "six months" the words " twelve months" shall be substituted and shall be deemed to have been substituted with effect from 31st March 2016 ;

(b) in the second proviso, for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 31st March 2016 ;

(c) after the second proviso, the following proviso shall be added namely :--

"Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months".

8. The learned Advocates for the respective sides have also relied upon Clause 8 of the Ordinance which reads as under :-

"Any person, who has obtained the Caste Certificate and Validity Certificate, but has not filed such certificate prior to the date of commencement of this Ordinance, shall not be deemed to be disqualified under the provisions of the relevant Panchayat law, if he submits such certificate within a period of fifteen days from the date of commencement of this Ordinance :

Provided that, the provisions of this section shall not apply where the State Election Commission has already prior to the date of commencement of this Ordinance held elections to fill the vacancy of such person or declared the

programme for holding of such election".

9. The admitted position in these two petitions in hand, is that none of these petitioners have tendered their validity certificates within the prescribed limit of six months as the law stood earlier and they have tendered their validity certificates only when their disqualification proceedings reached the Divisional Commissioner at the appellate stage. As such, they have not tendered such validity certificates to the appropriate authority, but when they incurred disqualification and their Appeals reached the appellate stage, that they have tendered them before the Commissioner in the legal proceedings.

10. In view of the above, following legal contentions are canvassed by the learned Advocates for these petitioners :-

(a) Though the period of six months is now substituted with the period of twelve months from 31/03/2016, Clause 2(c) under Chapter II of the Ordinance reproduced above would indicate that with whichever nomination forms, these elected candidates have given their undertakings to submit their validity certificates within six months, all those undertakings will be deemed to be applicable for a period of twelve months. Since Clause 2(c) does not specify that such twelve months would operate from which date, the third proviso under Clause 2(c) would be applicable with retrospective effect notwithstanding that the ordinance has been made effective only from 31/03/2016.

(b) Clause 8 would protect these petitioners as they have tendered their validity certificates in the appellate proceedings before the Divisional Commissioner.

(c) Since they have deposited these validity certificates, though in legal proceedings, it has to be presumed that they were submitted even before the introduction of the Ordinance on 11/10/2018.

11. The learned AGP and the learned Advocate appearing on behalf of the individuals have strenuously contended that the Court is only an interpreter and cannot assume the role of a legislator. If the period of twelve months instead of six months, for tendering the validity certificates, is made applicable with retrospective effect from 31/03/2016, it needs to be accepted that the legislature in its wisdom finds that the period should be made effective only from 31/03/2016. The first and the second proviso to Section 10-1A, as is mentioned in Clause 2 of the Ordinance, would indicate that the period of twelve months shall apply to elections held on 31/03/2016 and not there before. Hence, the third proviso will have to be read along with the two proviso which have also suffered the amendment, but from 31/03/2016.

12. The learned AGP then points out that one WP No. 13044/2018 was filed by Gangubai Sahebrao Khetmalis Alias Gangubai Baburao Anandkar and others Vs. The State of Maharashtra and others, before the learned Division Bench of this Court. The prayers put forth by the concerned petitioners has been reproduced in paragraph 2 of the order of the said Bench dated 29/11/2018 which reads as

under :-

"2 This writ petition under Article 226 of the Constitution of India, is filed with following substantive prayers :-

"B. To declare the Government Resolution dated 11- 10-2018 and amended provision in Section 10-1(C) of the Act of 1958 to the extent of its retrospective effect applicability from dated 31-03-2016 is unconstitutional and ultra-virus to Article 14, 15, and 16 of the Constitution of India by issuing writ of Mandamus or any other writ or direction.

C. To kindly be direct the respondent No.1 to decide the representation dated 31-10-2018 seeking for applicability of G.R. dated 11.10.2018 from the Members of village Panchayat who have been elected in 2015 election by issuing writ of mandamus or any other writ or direction."

13. The learned AGP, therefore, submits that by the order dated 29/11/2018, the learned Division Bench dismissed the petition and concluded that the amendment with retrospective effect from 31/03/2016 cannot be faulted and the will of the State of making it effective only from 31/03/2016, cannot be questioned. The said provisions, therefore, will not be made applicable with retrospective effect from the introduction of Section 10-1A on 21/12/2006.

14. The conclusions of learned Division Bench in Gangubai (supra), read as under :-

"3. Learned counsel appearing for the petitioners submits that respondents may be directed to apply amended provisions in section 10 (1)(C) of the Bombay Village Panchayats Act, 1958 (for short "Act of 1958") with retrospective effect from 31st March, 2016 instead of 11th October, 2018. According to learned counsel appearing for petitioners, said amended provision, since not applied with retrospective effect, therefore, same be declared as unconstitutional, ultra-virus to Articles 14, 15 and 16 of the Constitution of India. He further submits that if said provision is made applicable with retrospective effect to the case of the petitioners, in that case, the petitioners as a member of the Gram Panchayat would get protection.

4. Learned AGP submits that no mandatory direction can be issued to the Legislature to make an aforesaid amendment applicable with retrospective effect.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for parties and also perusal of the Government Resolution dated 11-10-2018 and also aforesaid amended provision under Act of 1958. It is abundantly clear that State Government intended to apply the said amendment prospectively. On plain reading of the aims and objects and amended provisions of the said Act, there is nothing to indicate that State Government intended to apply said amendment with retrospective effect.

6. It is not for the Court to embark / encroach upon the field occupied by the

Legislature, keeping in view the concept of 'separation of powers' existing under the Constitution of India. No any special circumstances have been brought to our notice so as to invoke extra-ordinary writ jurisdiction under Article 226 of the Constitution of India. For the aforesaid reasons, we are unable to persuade ourselves to grant relief as prayed in the petition. In the circumstances, the writ petition deserves to be rejected. Accordingly, writ petition stands rejected. No costs."

15. In view of the above, the first contention of these petitioners that the third proviso introduced below Section 10- 1A would indicate that it was made applicable from the time Section 10-1A was introduced in 2006, has to be negated.

16. Section 10-1A prior to its amendment on 11/10/2018 read 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, 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, 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 shall submit, alongwith 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".

17. As such, the Act prescribed that the candidate, who has contested the elections from the reserved category, shall produce a true copy of the application indicating that his claim for validation is pending and he shall submit a validity certificate within a period of six months from the date on which he is elected. The undertaking, therefore, was that such a candidate would submit his caste validity certificate within six months. This provision was made applicable to all

such elections with reference to which the last date of the filing of nomination papers was on or before 31/03/2013. As such, all the elections in view thereof were covered by the relaxation introduced by the said amendment. The position of law, therefore, underwent a change. The mandate of having a validity certificate on the date of the election to be submitted along with the nomination papers, was diluted by the State in order to protect the elected candidates, who were given the time period of six months to submit such validity after the election results were declared. The said proviso prescribing an undertaking has to be read in tandem with the proviso that this would cover elections wherein nomination papers were to be filed on or before 31/03/2013.

18. In the above backdrop, the proviso was introduced by clause 2(c) of the 2018 Ordinance and the government has replaced the words "six months" with the words "twelve months" for all purposes. Naturally, when the two provisos below Section 10-1A were made applicable with retrospective effect from 31/03/2016, it would be un-assumable that the new proviso (third) below the two provisos replacing the words six months by twelve months with regard to the undertakings given, could have been made applicable from 21/12/2006. If that interpretation is accepted, it would virtually do violence to the amendments in the 2 proviso which apply the amendment from 31/03/2016. The undertaking that is to be tendered by the candidate along with the nomination papers has to reflect that the candidate would tender his validity certificate within twelve months and these twelve months have been granted by the 2018 Ordinance to the elections held on or after 31/03/2016. In view of this position, the third proviso now introduced is only clarificatory in nature and does not have an independent existence or applicability. It only indicates that the undertaking mentioning six months would now be deemed to be valid for twelve months.

19. My view is supported by the dismissal of Writ Petition No. 13044/2018 by the order of the learned Division Bench dated 29/11/2018. A specific relief sought in prayer clause 'C' to make the amendment applicable with retrospective effect so as to cover the elections held in 2015, has been rejected vide paragraphs 5 and 6 reproduced above.

20. In the present two cases, both the elections have been held prior to 31/03/2016 and naturally all the nomination forms filled in by these petitioners and their dates of election are events that have occurred prior to 31/03/2016. When the 2018 Amendment extends the period to submit the validity certificates from six months to twelve months with effect from 31/03/2016, the third proviso would apply only to those elections which were held on or after 31/03/2016. By way of an illustration, if the nomination papers were tendered on 25/03/2016 and if the elections were held on any date on or after 31/03/2016, from which date the period of twelve months would be applicable by the 2018 Amendment, elected candidates whose results were declared on or after 31/03/2016, would also be covered as the twelve months period has to be computed from the date of the declaration of the election results.

21. In view of the above, none of these petitioners would be entitled to the benefit of the 2018 Amendment to Section 10- 1A as their results were declared before 31/03/2016.

22. Insofar as the submission of the petitioners that they are covered by Clause 8 of the 2018 Ordinance is concerned, the law of interpretation would mandate that Clause 8 of the Ordinance will have to co exist in harmony with Clause 2 of the said Ordinance. The Honourable Apex Court and the Full Bench of this Court have sealed the fate of such candidates, who have failed to submit their caste validity certificates within six months from the date of their election results. The State of Maharashtra has made an attempt to protect such candidates from incurring disqualification by extending the period of six months to twelve month effective from 31/03/2016. The law crystallized by the Honourable Apex Court in Shankar Raghunath Devre (supra), while upholding the view taken in Anant Ulahalkar (supra), would apply with the same strictness as regards the period of twelve months to tender validity certificates.

23. However, there appears to be an anomaly while reading clauses 2 and 8. In my view, Clause 8 has to be interpreted in harmony with clause 2 so as to ensure that the purpose of Section 10-1A is not watered down or rendered negatory. If the contention of the petitioners is accepted that they have the validity certificates today and can tender them within fifteen days from 11/10/2018, it would then mean, that the twelve months period from 31/03/2016 will lose its meaning.

24. Since I am not required to deal with the interpretation of Clause 8 of the 2018 Ordinance in these cases as they are elected prior to 31/03/2016, this issue is left open to be considered in an appropriate proceeding.

25. In view of the above, these petitions being devoid of merit are, therefore, dismissed.