

**(2020) 01 BOM CK 0005**

**In the Bombay High Court**

**Case No : Writ Petition No. 7735, 7736 Of 2019**

Savita And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

**Date of Decision : 03-01-2020**

**Acts Referred:**

Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 — Section 12A  
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 — Section 2(b), 3, 4, 6,  
6(1), 6(2), 6(4), 4(1), 7(2), 18(1)  
Maharashtra Scheduled Tribes (Regulation Of Issuance And Verification Of) Certificate  
Rules, 2003 — Rule 4, 4(12), 7, 11, 11(1), 12  
Constitution Of India, 1950 — Article 15(4)

**Citation : (2020) 01 BOM CK 0005**

**Hon'ble Judges : R.K. Deshpande, J; Milind N. Jadhav, J**

**Bench : Division Bench**

**Advocate : P.S. Khubalkar, Geeta Tiwari**

**Final Decision : Dismissed**

## **Judgement**

R.K. Deshpande, J

1. Rule. Heard the learned counsels appearing for the parties. Since the subject-matter of challenge in both these petitions is identical, these petitions are being disposed of finally by this common judgment.

2. Both the petitioners claim that they belong to "Mannerwarlu, Scheduled Tribe", which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order, 1950. They were desirous of contesting the election on 23-2-2017 as the Members of the Zilla Parishad and Panchayat Samiti against a post reserved for Scheduled Tribe category.

3. The provision of Section 12A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short, "the Act of 1961"), as it stood on the date of the

election on 23-2-2017, dealing with the submission of caste certificate and validity certificate along with the nomination papers, for election to a seat reserved, is reproduced below:

"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, 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 Councillor."

3.1. In terms of the aforesaid provision, every person desirous of contesting the election to a seat reserved for Scheduled Tribe candidate was required to submit along with the nomination papers the 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 (for short, "the Act of 2000").

3.2. The first proviso grants some relaxation from submission of the caste validity certificate at the time of filing of the nomination papers, subject to the condition that a person desirous of contesting such election 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. In order to make this condition evident, the first proviso requires furnishing a true copy of the application preferred by such person to the Scrutiny Committee for issuance of the validity certificate or any other proof of having made such application to the Scrutiny Committee. The additional requirement is of furnishing an undertaking that such person 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.

3.3. The second proviso states 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 Councillor. The period of six months was subsequently enhanced to twelve months, by way of an amendment.

4. Both the petitioners did not possess the caste validity certificates as a candidate belonging to the Scheduled Tribe category, though they wanted to contest the election on 23-2-2017 against a seat reserved for it. Hence, both of them forwarded their separate proposals on 20-1-2017 and 23-1-2017 to the Scrutiny Committee at Aurangabad for verification and issuance of the caste validity certificate for "Mannerwarlu, Scheduled Tribe" and produced the acknowledgment to that effect before the Returning Officer at the time of submission of their nomination papers. Since the claims of the petitioners were pending for verification before the Scrutiny Committee, both of them were permitted to contest the election as a Member of the Zilla Parishad and Panchayat Samiti on 23-2-2017, upon furnishing an undertaking that they shall submit the caste validity certificate within a period of six months. Both were ultimately declared elected and occupied the position as the Members of the Zilla Parishad and Panchayat Samiti against a post reserved for Scheduled Tribe candidate.

5. The petitioners failed to produce such caste validity certificate within a period of six months initially prescribed under the second proviso below Section 12A of the Maharashtra Zilla Parishad and Panchayat Samitis Act, subsequently enhanced by way of amendment to twelve months, which expired on 23-2-2018. Therefore, both of them were disqualified from holding the post on 14-1-2019 and the appeals preferred by them were dismissed on 3-9-2019. Hence, both these orders are the subject-matter of challenge in these petitions.

6. We may take judicial notice of the practice adopted in accepting the nomination papers of the persons desirous of contesting an election to a post reserved for any of the backward class categories. The caste certificates issued by the Executive Magistrates prior to coming into force of the Act of 2000 are accepted as valid in compliance with the provision of Section 12A of the Act of 1961. Similarly, a copy of the application preferred to the Scrutiny Committee few days prior to filing of the nomination papers for issuance of validity

certificate is accepted in compliance of clause (i) in the first proviso below Section 12A of the Act of 1961.

7. After getting elected against such post, the matter is either deliberately prolonged before the Scrutiny Committee by the elected candidates or the Scrutiny Committee fails to decide the matter within a period of six months from the date of filing of the nomination papers. Before expiry of the period of six months from the date of getting elected to the posts reserved, the writ petitions are filed seeking direction to the Scrutiny Committee to decide the claim of issuance of validity certificate and the interim orders are sought to continue the persons holding the posts till the Committee decides the matter. It is projected that the elected candidate is not at fault, but it is the Scrutiny Committee, which has shown its inaction in deciding the matter within the stipulated period. In many cases, it is observed that such candidates successfully complete the tenure without producing the caste validity certificate and the ulterior purpose of grabbing the seat is attained.

8. The aforesaid mischief is evident in the present case also. The practice adopted, needs to be curbed by suppressing the mischief and advancing justice. We, therefore, propose to consider the following two questions:

(1) Whether the petitioners were eligible to contest the election as the Members of the Zilla Parishad and Panchayat Samiti?, and

(2) Whether the disqualification of the petitioners was proper?

9. The eligibility or entitlement to contest the election as a Member of the Zilla Parishad and Panchayat Samiti against a post reserved for any of the backward class categories, including the Scheduled Tribe category, is governed by Section 12A of the Act of 1961, already produced. The submission of the caste certificate issued by the "Competent Authority" and the validity certificate issued by the "Scrutiny Committee" thereunder, in accordance with the provisions of the Act of 2000 along with the nomination papers is the mandatory, so as to become eligible or entitled to contest the election to a seat reserved for any of the backward class categories, including the Scheduled Tribe category. The relaxation in submission of it, is permissible, only if the condition of pendency of claim for issuance of caste validity certificate on the date of submission of nomination papers is satisfied. The satisfaction of such condition has to be looked in the light of the provisions of the Act of 2000.

9.1. The Maharashtra Scheduled Caste, 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 was brought into force on 23-5-2001, when it was published in the Maharashtra Government Gazette after receiving the assent of the President of India. The date of enforcement of this Act is specified as 18-10-2001. The Act provides for the regulation of the issuance and verification of the caste certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes

(Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto, and it operates prospectively.

9.2. Section 3 of the Act of 2000 deals with an application for a caste certificate, which is reproduced below:

"3. Application for a Caste Certificate.

Any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or 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 any public employment or for admission into 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 Co-operative Societies; or for purchase or transfer of land from a tribal land-holder 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."

In terms of the aforesaid provision, any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category required to produce a caste certificate for the purpose of contesting for elective post in any local authority, is required to apply in such form and in such manner, as may be prescribed, to the Competent Authority for the issue of a caste certificate.

9.3. The "Competent Authority" is described under Section 2(b) of the Act of 2000 as under:

"2(b). "Competent Authority" means a officer or authority authorised by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise."

By issuing several notifications in the Official Gazette, the Government has prescribed the officer or the authority competent to issue a caste certificate.

9.4. Section 4 of the Act of 2000 deals with the caste certificate to be issued by the Competent Authority, and sub-section (1) therein being relevant, is reproduced below :

"4. Caste Certificate to be issued by Competent Authority.

(1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and the following the

procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing."

In terms of the provision of sub-section (1) of Section 4 above, the Competent Authority, upon receipt of an application under Section 3 and after satisfying itself about genuineness of the claim, has to issue the caste certificate within such time and in such form and in such manner, as may be prescribed, after following the procedure prescribed for that purpose.

9.5. In exercise of the power conferred under sub-section (1) of Section 18 of the Act of 2000, the Rules are framed called as "The Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003", brought into force with effect from 4-6-2003. Rule 4 therein prescribes the procedure to be followed by the Competent Authority for grant of the certificate or rejection of the application for the Scheduled Tribe certificate. Sub-rule (12) under Rule 4 prescribes the period of forty-five days for passing of the order either accepting or rejecting of the application for issuance of the caste claim made to the Competent Authority.

9.6. Section 6 deals the verification of caste certificate by the Scrutiny Committee, and it reads as under:

"6. Verification of Caste Certificate by Scrutiny Committee.

(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 or 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.

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

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 or Special Backward Category for the purposes mentioned in Section 3 has to make an application well in time in such form and in such manner as is prescribed under sub-section (2) of Section 6, to the

concerned Scrutiny Committee constituted under sub-section (1) therein, for the verification of such caste certificate and issue of a validity certificate. The Scrutiny Committee so constituted, has to follow such procedure in terms of sub-section (4) of Section 6 above, for verification of the caste certificates and adhere to the time-limit for verification and grant of validity certificate, as prescribed.

9.7. Rule 7 of the Rules deals with the complaints, and sub-rules (1) and (2) therein being relevant, are reproduced below:

"7. Complaints.

(1) Any complaint or allegation that a person to whom a Scheduled Tribe Certificate has been issued, is not belonging to that tribe shall be enquired into by the concerned Scrutiny Committee.

(2) The concerned Scrutiny Committee shall decide all such complaints within a period of six months from the date of receipt of the complaint. The decision of the Scrutiny Committee shall be communicated to the Competent Authority who has issued the said Scheduled Tribe Certificate for taking suitable action against the applicant."

Any complaint or allegation that a person to whom a Scheduled Tribe certificate has been issued, does not belong to that tribe, can be enquired into by the concerned Scrutiny Committee, which has to decide all such complaints within a period of six months from the date of receipt of such complaints.

9.8. Rule 11 of the Rules deals with the verification of Scheduled Tribe certificate by the Scrutiny Committee, and sub-rule (1) therein states that after obtaining the Scheduled Tribe certificate from the Competent Authority, any person desirous of availing the benefits or concessions provided to the Scheduled Tribes for the purposes mentioned in Section 3 of the Act shall make an application well in time in Form E to the concerned Scrutiny Committee for the verification of such certificate and issue of validity certificate. Rule 12 deals with the procedure to be followed by the Scrutiny Committee for verification of the tribe claim and issuance of validity certificate.

10. In our view, the provision of Section 12A of the Act of 1961, introduced on 21-12-2006, will have to be read along with the provisions of the Act of 2000 in respect of any election to a seat reserved for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, in any local authority. The provisions of the Act of 2000 operate prospectively, and from the date of coming into force of this Act from 18-10-2001, no person can contest the election to a seat reserved for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category, in any local authority in terms of Section 3 therein, without producing a caste certificate issued by the "Competent Authority", as defined under Section 2(b) of the Act of

2000, and the validity certificate from the "Scrutiny Committee" constituted under sub-section (1) of Section 6 of the Act of 2000. The requirement is mandatory.

11. The relaxation under the first proviso below Section 12A of the Act of 1961 is only in respect of submission of caste validity certificate on the date of filing of the nomination papers and not in respect of caste certificate from the "Competent Authority" under Section 2(b) of the Act of 2000. The nomination form for election against any post reserved for any of the backward class categories cannot be accepted, except upon submission of a caste certificate issued by the "Competent Authority" under Section 2(b) of the Act of 2000, subsequent to 18-10-2001, i.e. the date on which the Act of 2000 came into force. The requirement is mandatory. The nomination form cannot be accepted upon submission of the caste certificate from the Executive Magistrate or the authority other than the "Competent Authority", as defined under Section 2(b) of the Act of 2000.

12. In terms of sub-section (2) of Section 6 of the Act of 2000, after obtaining the caste certificate from the Competent Authority, any person desirous of contesting for elective post in any local authority, which is one of the purposes mentioned in Section 3 therein, has to make an application well in time in such form and in such manner, as is prescribed, to the concerned Scrutiny Committee for verification of such caste certificate and issue of a validity certificate. After following the procedure prescribed under Rule 12 of the Rules, the Scrutiny Committee decides either to accept or to reject the claim for issuance of validity certificate. Though there is no time limit prescribed, the procedure laid down, consumes at least six months' period. The expression "well in time" used under sub-section (2) of Section 6 of the Act of 2000 and under sub-rule (1) of Rule 11 of the Rules, will have to be understood as the minimum period of six months required to follow the procedure, which is evident from the requirement of sub-section (2) of Section 7 of the Act of 2000. Even otherwise, the minimum period of six months is to be considered as reasonable. The Scrutiny Committee has to adhere to it, as far as possible.

13. The first proviso below Section 12A of the Act of 1961 grants relaxation in submission of a caste validity certificate along with the nomination form for the purposes of contesting for elective post reserved for any of the backward class categories, if an application is submitted to the Scrutiny Committee for verification of his caste certificate, before the date of filing of the nomination papers. In our view, such requirement can be said to be fulfilled only and only if it is made evident by producing documents or a proof, as contemplated by clause (i) under the first proviso, that such application was made to the Scrutiny Committee for verification of his caste claim, at least six months prior to the date of submission of nomination papers. This requirement is mandatory and has to be construed very strictly. The reasons are two-fold that - (i) the Act of 2000 does not permit to contest the election against the post reserved, without

production of caste validity certificate, and (ii) the procedure for issuance of caste validity certificate prescribed under Rule 12 of the Rules requires at least six months' period for the Scrutiny Committee, to render its decision at the earliest.

14. Our attention is invited to clause (ii) under the first proviso below Section 12A of the Act of 1961 to urge that it terms contesting of election upon furnishing an undertaking that within a period of six months from the date on which the candidate is declared to be elected, a validity certificate issued by the Scrutiny Committee shall be submitted. The second proviso below Section 12A terminates the election and disqualifies the Councillor only if he fails to produce the validity certificate within a period of six months or twelve months, as the case may be, from the date on which he is declared elected. It is, therefore, urged that this requirement of submitting an application to the Scrutiny Committee for verification of caste certificate is directory and hence the petitioners cannot be disqualified if they are not at fault in failure on the part of Scrutiny Committee to decide the claim within a stipulated period.

15. In our view, the object of the requirement of six months or twelve months, as the case may be, under clause (ii) in the first proviso below Section 12A of the Act of 1961 is to provide a grace period, within which a person elected against a seat reserved can persuade the Scrutiny Committee to decide his claim for issuance of validity certificate. It is not the intention to relax the initial period of six months considered as reasonable. Under the garb of this provision, the nomination form of a person contesting the election to a post reserved for any of the backward class categories cannot be accepted, unless it is made evident that the application for issuance of validity certificate was made to the Scrutiny Committee at least six months prior to the submission of the nomination papers. The period of six months or as the case may be, twelve months is mandatory and there is automatic termination of election after expiry of this period, if caste validity is not produced.

16. In the present case, the nomination forms were filed by the petitioners to contest the election for the posts reserved for Scheduled Tribe category on 23-2-2017. Though the petitioners obtained the caste certificates from the Competent Authority on 5-3-2011 and 5-10-2012, the separate proposals were forwarded on 20-1-2017 and 23-1-2017 by the petitioners to the Scrutiny Committee at Aurangabad a month prior to filing of the nomination papers, for verification and issuance of caste validity certificates for "Mannerwarlu, Scheduled Tribe". In our view, this was not the compliance of Section 12A of the Act of 1961. The petitioners ought to have applied for issuance of validity certificate within a period of one month of getting the caste certificate. At any rate, the petitioners did not apply to the Scrutiny Committee for issuance of validity certificates prior to six months of the date of filing of the nomination papers. The petitioners were in fact not eligible and entitled to contest the election against a post reserved for Scheduled Tribe.

17. The grace period provided of twelve months to produce the caste validity certificate in compliance of an undertaking given in clause (ii) under the first proviso below Section 12A of the Act of 1961 expired on 23-2-2018. Though expiry of the period without producing the caste validity certificate results in automatic disqualification and termination of election retrospectively, the petitioners were continued till 14-1-2019, i.e. almost for a period of one year, and by these petitions they are further seeking continuation on the posts till the decision by the Scrutiny Committee. In our view, the disqualification of the petitioners is proper and no interference is called in it.

18. Before parting with this judgment, we would like to summarize the conclusions as under:

(1) After coming into force of the Act of 2000 on 18-10-2001, no person can be permitted to contest election against the post reserved for any of the categories of backward classes in terms of Section 3 therein, without producing a caste certificate obtained subsequent to 18-10-2001 from the "Competent Authority", as defined under Section 2(b) of the Act of 2000 and the caste validity certificate from the Scrutiny Committee constituted under sub-section (1) of Section 6 of the Act of 2000.

(2) The eligibility or entitlement of a person to contest the election as a member of Zilla Parishad and Panchayat Samiti against a post reserved for any of the backward class categories has to be judged on the basis of the submission of the caste certificate issued after 18-10-2001 by the "Competent Authority", as defined under Section 2(b) of the Act of 2000. The requirement is mandatory and there is no scope for any relaxation in respect of it. Any caste certificate issued prior to 18-10-2001 by the Executive Magistrate cannot be considered as the basis for accepting the nomination papers.

(3) In order to claim the benefit of relaxation from submission of validity certificate at the time of filing of nomination papers under Section 12A of the Act of 1961, it has to be shown that the application for grant of validity certificate was made to the Scrutiny Committee at least prior to six months of the date on which the nomination form is filed.

(4) For failure to submit the caste validity certificate within a period of six months or twelve months, as is contemplated under the second proviso below Section 12A of the Act of 1961, results in automatic termination of election and vacation of the office occupied by such person.

(5) The petitioners were neither eligible to contest the election as the members of the Zilla Parishad and Panchayat Samiti held on 23-2-2017 nor were entitled to hold and occupy the posts.

19. In the result, both these petitions are dismissed. Rule stands discharged. No order as to costs.

Later on (3-1-2020):

20. The copy of this judgment and order be forwarded to the Urban Development Department as well as the Rural Development Department of the State of Maharashtra for issuance of appropriate instructions to the concerned local authorities in terms of the decision of this Court.