
(2016) 09 BOM CK 0216
In the Bombay High Court
Case No : Writ Petition No. 5686 of 2016

Shankar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 10-1A

Citation : (2017) 2 ALLMR 676 : (2017) 2 MhLJ 368

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

Bench : Single Bench

Advocate : Shri. D.S. Bagul, Advocate, for the Petitioner; Shri. S.R. Yadav, Assistant Government Pleader, for the Respondent Nos. 1 to 4; Shri. A.S. Sawant, holding for Shri. C.V. Bhadane, Advocates, for the Respondent No. 5

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The petition is filed to challenge the order of disqualification made by the learned Collector Dhule and also the decision given by the Additional Commissioner Nasik Division, Division in Village Panchayat in Appeal No.3/2016 filed against the said decision. Both the sides are heard.

2. The petitioner had contested the election to village panchayat from reserved category, Other Backward Class Category. He had produced caste certificate with the nomination form. He had produced token of receipt of the amount deposited with the Caste Scrutiny Committee for obtaining validity certificate in respect of his caste. The petitioner got elected on 26-12- 2013. As he could not file validity certificate within the period of six months i.e. before 26-5-2014 proceeding was started for disqualification by his political rival, present respondent No.5. The Collector held that within prescribed period the validity certificate was not produced and so present petitioner stood disqualified. The finding is confirmed by the Additional Commissioner.

3. It is the case of the petitioner that subsequently validity certificate was issued

to him and it was issued in the month of December 2014 and he had produced the said certificate before the authority on the next day of the date of issue but this circumstance is not considered. Learned counsel for the petitioner submitted that the relevant provision, the proviso to section 10-1A of the Maharashtra Village Panchayats Act 1958 is not mandatory in nature and the proviso which prescribes the period of six months for production of validity certificate is held to be directive in nature by the Division Bench of this Court in the case reported as 2008(2) Bom.C.R. 712 (Dadasaheb Arjun Gulve v. State of Maharashtra). On the other hand learned counsel for the contesting respondent placed reliance on the case reported as 2010(1) Mh.L.J. 497 (Gita Rupchand v. State of Maharashtra) in which it is held that after expiry of the period fixed in said provision, disqualification occurs automatically and the order which needs to be made by the authority like Collector is only formal declaration as such declaration is necessary in view of the procedure.

4. It appears that the proviso to this section was first time introduced in the year 2006. Then the amendment was made in the year 2007, then for some time in the year 2009 this proviso was deleted and then the proviso was again introduced in the year 2011. The period was changed and now the proviso as per amendment runs 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, Denotified 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 2015, 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 paper 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."

5. The submissions show that there are two decisions of the Division Bench of this Court on the same point. In one case it is held that disqualification occurs automatically due to legislative provisions and the disqualification cannot be removed due to any subsequent circumstances like issue of caste validity certificate. As there are two decisions on the same point and there is wording like "election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member" this Court holds that the meaning of every word of this proviso needs to be given effect and it needs to be implemented as it is. If person from reserved category wants to enter politics and he wants to contest the election, he needs to first know the eligibility conditions. If he was not prepared with the record like validity certificate he could contest the election as the concession was given to him by aforesaid provision provided that he was able to produce caste certificate with the nomination form and record to show that proceeding was started prior to the date of nomination for getting validity certificate. This concession was governed by the remaining portion of the legal provision that he needs to produce the caste validity certificate within a period of six months from the date on which he is declared elected. If he was not having validity certificate on the date of nomination, it needs to be presumed that he has taken risk and he did anticipate that he may not get validity certificate for any reason. If any other interpretation is made of this proviso then the legal provision will become redundant. In view of this position of law, this Court holds that it is not possible to interfere in the decision given by the Collector which is confirmed by the Appellate Authority. In the result, the petition stands dismissed.