

(2019) 12 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 3619 Of 2019

Sou. Vidya And Ors

APPELLANT

Vs

Dilip Vinayk Jivtode And Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 8(2), 10(1A)
Maharashtra Zilla Parishads And Panchayat Samitis (Amendment) Ordinance, 2019 —
Section 4, 8

Citation : (2019) 12 BOM CK 0046

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : P.D. Randive, H.N. Bhondge, D.P. Thakare

Final Decision : Dismissed

Judgement

Vinay Joshi, J

1] Rule.

The learned counsels appearing for the respondents waive service of notice.

Heard finally by consent of the learned counsels appearing for the parties.

The facts of the case in chronological events need to be stated.

2] The petitioner was elected on 07.08.2015 as a member of Gram Panchayat, Musalgaon, Tq.- Kuhi, District - Nagpur, against the seat reserved for ladies belonging to reserved category of Other Backward Class. The petitioner was permitted to contest the election on the basis of the caste certificate furnished by her, showing that she belongs to Other Backward Class category and the question of issuance of caste validity certificate was pending before the Scrutiny Committee.

3] As per the provision of Section 10-1A of the Maharashtra Village Panchayats Act, 1958, as it existed on the date of election, the petitioner was required to

submit caste validity certificate within a period of 6 months from the date of declaration of the result of the election. The period of 6 months in the present case expired on 07.02.2016, but the petitioner could not submit the caste validity certificate, as the claim for it remained pending and undecided by the Scrutiny Committee.

4] On 27.10.2016, an application was filed by the Respondent No.1 - Dilip Vinayak Jivtode seeking disqualification of the petitioner for failure to submit caste validity certificate within a period of 6 months, as required by the aforesaid provision. During the pendency of this proceeding, the Scrutiny Committee validated the claim of the petitioner and issued caste validity certificate dated 22.02.2017 for Other Backward Class category. The petitioner submitted the validity certificate on 10.03.2017. Thereafter, the Collector dismissed the application for disqualification of the petitioner by an order dated 22.09.2017.

5] Aggrieved by the order dated 22.09.2017, respondent No.1 preferred Writ Petition No. 510 of 2018 before this Court, seeking disqualification of the petitioner. The learned Single Judge after taking into consideration the legal position and the Full Bench decision of this Court in case of Anant H. Ulahalkar and another Vs. Chief Election Commissioner and others, reported in 2017 (1) Mh.L.J. 431, allowed the writ petition holding that provision of Section 10-1A of the said Act is mandatory and therefore, the petitioner had incurred the disqualification. The order of the Collector passed on 22.09.2017, impugned in this petition, was set aside. The petitioner filed Misc. Civil Application No. 52 of 2019 for review of the judgment. However, the same was dismissed on 17.01.2019. Special Leave Appeal (C) Nos.8196-8197 of 2019 was also dismissed by the Apex Court.

6] In the aforesaid background, this petition came to be filed on 10.05.2019, placing reliance upon Section 4 of the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance, 2019, published on 26.02.2019, to urge that the position of the petitioner as the elected member of Gram Panchayat is Gram Panchayat is protected and therefore, the relief is sought to allow the petitioner to hold and continue as a member of Gram Panchayat, Musalgaon, Tq. Kuhi, Distt. Nagpur, till the completion of the tenure.

7] The question is whether the petitioner is entitled to benefit of Section 4 of the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance, 2019, to protect him for disqualification.

8] The provision of Section 4 of the Legislative Assembly Bill No. 5 of 2019 brought into force with effect from 26.02.2019, reads as under;

"4. Section 8 of the amendment Act, shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, following sub-section shall be added, namely:-

"(2) Notwithstanding anything contained in sub-section (1), any person who has obtained Caste Certificate or Validity Certificate after the 26th March 2015, but has not filed such certificate within the stipulated period as per provisions of the Maharashtra Village Panchayats Act, shall not be deemed to be disqualified under the provisions of the Maharashtra Village Panchayats Act, if he has already submitted the Validity Certificate to the Competent Authority after expiry of such stipulated period but before the 14th February 2019, being the date of publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019 in the Official Gazette or if he submits such certificate within a period of three months from the date of such publication of said Ordinance, in the Official Gazette:

Provided that, the provisions of this section shall not apply where the State Election Commission has already prior to the 14th February 2019, being the date of publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019, in the Official Gazette has been held elections to fill the vacancy of such person or declared the programme for holding of such election."

9] In terms of the aforesaid sub-section (2), any person who has obtained caste certificate or validity certificate after 26.03.2015, but has not filed such certificate within the stipulated period as per the provisions of the Maharashtra Village Panchayats Act, shall not be deemed to be disqualified under the provisions of the Maharashtra Village Panchayats Act, if he has already submitted the validity certificate to the competent Authority after expiry of such period but before 14.02.2019, being the date of publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019, in the official Gazette, or if he submits such certificate within the period of three months from the date of such publication of the Ordinance in the official Gazette.

10] The proviso below sub-section (2) above, carves out an exception and it states that provision of sub-section (2) shall not apply where the State Election Commission has already prior to 14.02.2019, being the date of publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019, in the official Gazette has held the elections to fill the vacancy of such person or declared the programme for holding of such election.

11] In the present case, the petitioner has obtained the caste validity certificate on 22.09.2017 i.e. after 26.03.2015 and has submitted it on 10.03.2017. The petitioner normally would be covered by the protection under sub-section (2) of Section 8 of the Maharashtra Village Panchayats Act, introduced on 26.02.2019. The case of the petitioner is also not covered by the proviso, namely that the elections have been held to fill in the vacancy or that the programme of election has been declared prior to 14.02.2019. The petitioner, therefore, does not fit in an excepted category under the proviso.

12] Undisputedly, the Ordinance of which the petitioner is claiming the benefit or protection, was published in the Official Gazette on 26.02.2019 and the protection is extended to those who submitted caste validity certificate before 14.02.2019. However, before the Ordinance was brought into force, the disqualification of the petitioner as per the judgment dated 11.01.2019 delivered in Writ Petition No. 510 of 2018 attained the finality. Even the Review Petition filed against it was dismissed on 17.01.2019 prior to coming into force of the Ordinance. In our view, the deeming fiction under sub-section (2) of Section 8 of the Ordinance will not cover the cases, having effect of nullifying the decision rendered inter-party, having binding nature. There is no provision under the Ordinance to reinstate the person already disqualified or to grant deemed continuation in the post from which the person is disqualified. Merely because the petitioner does not fall in the excepted category carved out under the proviso below sub-section (2) of Section 8, he cannot claim reinstatement or continuation on the post. The deeming fiction in sub-section (2) of Section 8 of the Ordinance, would not cover the case of factual disqualification which has been concluded and attained the finality by the judgment rendered by this Court.

13] In view of above, the writ petition is dismissed. No order as to costs.