

(2012) 02 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 1101 of 2012

The Returning Officer, Hingoli, Zilla Parishad Hingoli and
Panchayat Samittee, Basmatnagar, Hingoli

APPELLANT

Vs

Kantabai Balaji Suryawanshi

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2008 —
Section 9AA
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 9A
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 12A

Citation : (2012) 3 ALLMR 848 : (2012) 2 BomCR 18 : (2012) 3 MhLj 204

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : Uday S. Malte, for the Appellant; A.B. Dhongade, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—Heard learned Counsel for respective parties. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner is raising exception to the order passed by District Judge1, Basmathnagar on 30.01.2012 in Election Appeal No. 12/2012, whereby appeal presented by the Respondent came to be allowed and direction is issued to the Returning Officer to accept nomination paper of the appellant/Respondent herein on the condition of furnishing undertaking that the concerned candidate should submit caste validity certificate within three months from the date on which the concerned candidate is declared elected. If in the event the concerned appellant before the District Court/Respondent herein fails to submit caste validity certificate within prescribed period, her election shall be deemed to have been terminated retrospectively and she shall be disqualified for being a member. The appellant before District Court/Respondent herein belong to backward caste and

is desirous of contesting election to the Zilla Parishad. She tendered nomination paper within prescribed time. However, her nomination paper came to be rejected by the Returning Officer on the ground that she has failed to tender caste validity certificate issued by the competent authority along with her nomination paper. Appeal was presented by the Respondent herein which came to be allowed by the District Court. As such, instant petition is presented.

3. Section 12A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 reads thus:

S.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, 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)

4. The statutory provisions mandate that every person desirous of contesting election to a seat reserved for Scheduled Castes or Scheduled Tribes or as the case may be, shall tender along with his nomination paper, Caste Certificate and Validity Certificate issued by the Competent Authority. The statutory provisions contained in Section 12A of the Act have not been complied with by the Respondent herein and as such the Returning Officer was justified in rejecting her nomination paper. There was challenge raised to the provisions of Section 12A of the Act in Writ Petition No.999/2012. However, the petition came to be dismissed by the Division Bench of this Court by order dated 30.01.2012.

5. Similar provisions find place in Maharashtra Municipal Corporations and Municipal Councils (Amendment Act) 2008. Section 9AA of the Maharashtra Municipal Corporations and Municipal Councils Act has been deleted by virtue of Amendment Act with effect from 12.05.2008. Under similar circumstances, contesting candidates desirous of contesting elections to Municipal Council challenged the order of rejection of their nomination papers in Writ Petition Nos. 2174/2008 and 2181/2008 before the Division Bench of this Court at Bombay. While dismissing the petitions, the Division Bench observed that after deletion of proviso to Section 9AA with effect from 12.05.2008, it became mandatory for the candidate contesting election from reserved category to annex caste certificate issued by the competent authority and validity certificate issued by Caste Scrutiny Committee along with nomination forms as required by provisions of Section 9A. Similar view has been expressed by the Division Bench of this Court while dealing with Writ Petition Nos.324/2010, 500/2010, 274/2010 and 269/2010 decided on 28.01.2000. It is observed in paragraph no.16 of the judgment thus:

So long as Section 9A remains on the Statute Book, only such nomination papers which are accompanied by caste certificate and validity certificate can be presented as valid nomination of the candidate intending to contest election for reserved seat." It is further observed in paragraph no.19 of the judgment thus: "So long as the said Section is on the Statute Book, it mandates presentation of Caste Certificate and Validity Certificate along with the nomination paper.

6. Provisions of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 are identical to the provisions of Section 12A of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. In view of the opinion expressed by the Division Bench in the matters referred to above and in view of the mandatory nature of provisions of Section 12A of the Act, I am of the view that nonobservance of provisions of the Statute shall entail in rejection of nomination paper and no deviation from observance of the provisions of the Statute is permissible. Order dated 30.01.2012, passed by learned District Judge1, Basmathnagar in Election Appeal No. 12/2012, directing acceptance of nomination paper of the contesting candidate/respondent herein is on the face of it erroneous and liable to be quashed and set aside.

7. In the result, writ petition is allowed. Order dated 30.01.2012, passed by learned District Judge1, Basmathnagar in Election Appeal No.12/2012, is quashed and set aside.

8. Rule is made absolute accordingly with no order as to costs.