

(2018) 09 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 10530 Of 2016

Vishwanath Gahininath Thore

APPELLANT

Vs

Collector/Additional Collector Ahmednagar And Others

RESPONDENT

Date of Decision : 01-09-2018

Acts Referred:

Maharashtra Village Panchayat Act, 1960 — Section 10(1A)
Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
— Section 9A
Constitution of India, 1950 — Article 243T

Citation : (2018) 09 BOM CK 0002

Hon'ble Judges : RAVINDRA V. GHUGE, J

Bench : Single Bench

Advocate : Bolkar Yogesh B, Yadav-Lonikar S.R, Darak B.A.

Final Decision : Allowed

Judgement

1. Heard learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The petitioner is aggrieved by the order dated 18.8.2016, passed by the Additional District Collector, by which, he has rejected the application filed by the Tahsildar seeking disqualification of these two respondents under Section 10(1A) of the Maharashtra Village Panchayat Act.Â The Tahsildar had moved the Additional Collector for disqualification of these respondents since they had failed to submit their Caste/Tribe Validity Certificate within six months of the date of their elections, which was a mandate of law.
5. It is not in dispute that respondents 3 and 4 were declared elected on

6.8.2015 as Members of the Village Panchayat. They were obliged to submit their Tribe Validity Certificate on/or before 6.2.2015. Such validity certificates were not tendered and hence the Tahsildar had moved the Collector seeking their disqualification. The Additional Collector rejected the contention of the Tahsildar on the ground that these respondents had actually received their Tribe Validity Certificates on 17.10.2015, before the expiry of the six months, but they had failed to tender the said certificates with the competent authority within the prescribed limit of six months.Â This has happened due to their ignorance of law.

6. Learned counsel for the petitioner submits that the petitioner is an aggrieved person as he is also an elected Member of the said Grampanchayat.

As these two respondents did not submit their Tribe Validity Certificates, the Additional Collector should have disqualified them under Section 10(1A)

of the said Act, without showing any sympathy and much less on the ground that they were ignorant persons.

7. The learned Advocate for the two respondents submits that it is a different case altogether if an elected candidate does not have a validity

certificate. The fact that both these respondents had received their validity certificates within the period of six months. They cannot be unseated

merely because they did not tender validity certificates within the prescribed six months.

8. The learned Full Bench of this Court has delivered a judgment in the matter of Anant H. Ulahalkar Vs. Chief Election Commissioner and others

[2017 (1) Mah. L.J. 431]. Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, ("Act of 1965")Â

mandates that a candidate should furnish his caste certificate and a caste validity certificate along with his nomination papers. NonÂfurnishing of such

a validity certificate within six months of his election would lead to the automatic disqualification of the elected candidate, as per the proviso.

9. Section 9A of the 1965 Act reads as under:Â?

â??Section 9A : Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.

Every person desirous of contesting election to a seat reserved for the 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.

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2013, in

accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the

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, alongwith the nomination paper,â

(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.

10. Section 10(1A) of the Maharashtra Village Panchayat Act reads as under:â

10A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificateâ 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, 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 paper shall submit, along with the nomination paper :Â?

(i) a true copy of the application preferred by him to theScrutiny Committee for issuance of the Validity Certificate or any other proof for having made

such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period ofthree months front the date of his election, the Validity Certificate issued by the Scrutiny

Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of three months from the date of his election, his election

shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.

11. As such, the issue under Section 9A and under Section 10(1A) being identical, the judgment in Anant's case (supra), would be squarely applicable

to this case.

12. It is noteworthy that the judgment in Anant's case (supra) was subjected to a judicial review before the Honourable Apex Court in a bunch of

cases filed by several aggrieved persons. The Honourable Apex Court had initially stayed the judgment of the learned Full Bench and had protected

the disqualified members.Â By judgment dated 23.8.2018, delivered by the Honourable Apex Court (Three Judges' Bench) in Special Leave to

Appeal Nos. 29874Â29875 of 2016 [Shankar Raghunath Devre (Patil) Vs. The State of Maharashtra and others] and in several cases, it was

concluded that the view taken by the learned Full Bench of the Bombay High Court in Anant's case (supra), was correct and proper.

13. The Honourable Apex Court considered the following three issues that formed the questions, which were referred to the Full Bench of the High

Court of Bombay:Â?

(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?

14. The Full Bench in Anant's case (supra) held in paragraph Nos.68, 69 and 100, as under:Â?

68. This is not a case of some obvious causus omissus or some obvious drafting error. Rather, it is legitimate to proceed on the basis that the

legislature, in enacting Section 9A, was quite conscious of the consequences arising out of stipulating that the Validity Certificate must be produced

within six months from the date of the election. The statement of reasons and objects bears out that the legislature was conscious of the position of

matters before the Scrutiny Committees. The legislature, in such a situation, is presumed to be conscious of the hardships, inequities and trauma,

resulting from a situation where the Scrutiny Committee, after several years concludes that the elected candidate does not belong to the reserved

category and, therefore, is disentitled to the Validity Certificate. In such a situation, the elected candidate, who was in the first place, ineligible even to

contest the election to a reserved seat would have continued in Office for several months or on occasions, for several years to the detriment of not

only the defeated candidate, but also the electorate, which had the right to be represented by a candidate genuinely belonging to a reserved category.

Such a situation will also lead to the frustration of the constitutional mandate of Article 243T.

69. In such matters therefore, it is not safe to premise an interpretation based upon any alleged individual hardship or trauma. Rather, the only safe

guide to apply would be adherence to the statutory provisions, particularly where the statutory provision is clear, plain and unambiguous. Besides, the

significance of requiring the person who seeks to avail the benefit of exemption or concession under the first proviso to Section 9A to submit his

undertaking that he shall produce the Validity Certificate within the stipulated

period, cannot be lost sight of. This means that the legislature, despite, being aware of the pendency position before the Scrutiny Committees, intended to place the duty upon such private person, since, such private person wished to deviate from the general rule and avail an exemption or concession to contest without producing the Validity Certificate along with his nomination papers. There is reasonable certainty when it comes to election schedules to local authorities. Therefore, nothing really prevents a person desirous of contesting for elections to a reserved seat to apply well in advance of the election schedule for issue of the Validity Certificate. In fact, as noted by the Full Bench in case of Sujit Vasant Patil (supra), the legislature expects a person to claim benefits of reservation only after obtaining the Validity Certificate. Thus construed, this is not really a case of either impossibility in the compliance with the condition prescribed or a case of some insurmountable hardship as projected by the learned Counsel for Manisha.

100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

15. The Honourable Apex Court in Leave to Appeal (C) Nos.29874&29875 of 2016 (Shankar Raghunath Devre (Patil) Vs. State of Maharashtra and others), dated& 23.8.2018, has held as under:&

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 provision 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.

16. In the instant case, the respondents 3 and 4 would fall under question No.2.Â Though it is stated that these respondents had received their validity certificates within the six months' period, they had failed to tender the said certificates before the competent authority.Â They had, therefore, failed to produce the validity certificates within the period of six months from the date on which they were declared elected, irrespective of the facts and circumstances and eventuality beyond the control of such person to produce validity certificate. It cannot be ignored that these candidates are required to submit, in writing, that their caste / tribe claim is pending validation, while filing their nomination forms.Â They are required to submit a copy of their caste / tribe validity certificates. They had also given an undertaking that they would submit their validity certificate within six months from the dates of their elections. These respondents, therefore, were aware of the obligation that they had to produce the validity certificate within six months if they were to protect their elected position.

17. Considering the above, the impugned order, by which, the proceedings initiated by the Tahsildar were rejected, amounts to a perverse and erroneous order and an act of showing misplaced sympathy.

18. This petition is, therefore, allowed in terms of prayer clause (B), which reads as under:Â?

(B) By way of appropriate Writ, order or direction in the like nature, this Honourable High Court may kindly quash and set aside the impugned common judgment and order dated

18.8.2016 passed by the Ld. Additional Collector, Ahmednagar in Dispute Application No.158/2016 and 159/2016 to the extent of present respondent

Nos.3 and 4 and the present respondent Nos.3 and 4 may kindly be declared s disqualified from being members of the Pimpalgavhan Village

Panchayat, Tq. Pathrdi, District Ahmednagar.

19. Rule is made absolute in the above terms.