

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1790 OF 2015

Kalpana Bhausahab Kshirsagar ... Petitioners

Versus

The State of Maharashtra and others ... Respondents

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Mr. V.B. Anjanwatikar, Advocate for the petitioner

Mr. K.M. Suryawanshi, A.G.P. for respondent Nos. 1 & 2

Mr. S.P. Brahme, Advocate for respondent No. 3

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th FEBRUARY , 2015

PER COURT :

1. I have heard Shri Anjanwatikar, learned Advocate on behalf of the petitioner, Shri Brahme, learned Advocate on behalf of respondent No. 3 and Shri Suryawanshi, learned A.G.P. on behalf of respondent Nos. 1 & 2.

2. Having considered the submissions of the learned Advocates and in view of the ratio laid down by the Division Bench of this Court in the case of *Dadasaheb Arjun Gulve Vs. State of Maharashtra and others*, reported at 2008 (2) Bom.C.R. 712, (**Coram :- S.B. Mhase and D.G. Karnik, JJ**), the petitioner cannot be held responsible for the delay caused by the caste

scrutiny Committee in considering the caste claim and issuing the validity certificate on 02-08-2014.

3. The petitioner was elected as a member of Anakwadi Grampanchyat. She had contested from the Other Backward Class (OBC) category. She had submitted her nomination papers on 06-02-2013 along with a copy of her caste validity certificate and the token that she had received from the scrutiny committee, evidencing that her caste claim was submitted for validation by the said committee under the Maharashtra Act No. XXIII of 2001 namely 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.

4. Respondent No. 3 herein had filed Grampanchayat dispute application No. 37 of 2014 seeking disqualification of the petitioner under Section 10 (1-A) of the Maharashtra Village Panchayat Act, (MVP Act), on account of having faltered in submitting the caste validity certificate within the prescribed time frame.

5. Having received the caste validity certificate dated 02-08-2014, the petitioner submitted its copy to the concerned Tahsildar on 05-08-2014. By the judgment dated 28-01-2015 the District Collector, Dhule has allowed the complaint filed by the third respondent and disqualified the petitioner under Section 10 (1-A) of the MVP Act.

6. In the case of *Dadasaheb Arjun Gulve* (supra), the Division Bench of this Court has held in paragraph Nos. 16, 17 and 21 as under :-

"16. If we hold that period of 4 months for production of caste validity certificate as mandatory, the consequence would result in frustration of constitutional mandate of reservation for backward classes contained in Articles 243D and 243T of the Constitution of India. That is impermissible. We are of the view that the period of 4 months is directory.

17. It is trite to say that when a statute requires anything to be done by a statutory authority or a government officer within a prescribed period and the citizen has no control over the statutory authority or the government officer requiring him to do the thing within the specified time, the provision of a statute or rule requiring the thing to be done within the specified time must be held to be directory. This is because the citizen has no control over the statutory authority or the government officer and he cannot suffer from the negligence of the statutory authority or the government officer in failure to perform the duty within the specified time. This principle was enunciated by the Constitution Bench of the Supreme Court in *Dattatraya Moreshwar v. The State of Bombay*, wherein Das J. observed:

"In my opinion, this contention of the learned Attorney-General must prevail. It is well settled that generally speaking the provisions of a statute

creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.”

21. Aims and object of section 5-B and the provisos thereto is that while persons belonging to backward classes get the benefit of reservation of seats, persons who do not belong to a backward class do not illegally usurp the benefit of reservation in favour of backward classes. The real intention of the legislature is to ensure that the candidate elected to a reserved seat belongs to a backward class. The period of 4 months for production of caste validity certificate is merely a procedural requirement. It cannot supplant the constitutional mandate and even invalidate the election of a person who belongs to a backward class. We, therefore, hold that the period of 4 months prescribed for production of caste validity certificate by proviso to section 5-B of the MMC Act and the BPMC Act, section 9-A of the Municipalities Act, section 12-A of the Zilla Parishads Act and section 10-A of the Village Panchayats Act is merely directory. However, by holding it to be directory we do not mean to say that the elected candidate can go on seeking adjournments before the Scrutiny Committee at the time of hearing and continue to hold the post of a councillor. An impostor and a fraudster, who does not belong to a backward class, would always try to seek adjournments before the Scrutiny Committee so as to continue to reap the benefits of reservation. In such a case, the appropriate authority would not be powerless to declare his election to be terminated retrospectively on his failure to produce caste validity certificate within a reasonable time (which in no case can be shorter than the statutory period of 4 months). If, however, for no fault of his the Scrutiny Committee is unable to decide on the validity of his caste certificate and actually decides his claim say after about 5-6 months instead of 4 months, the period of 4 months cannot be held to be mandatory. If, however, the Scrutiny Committee invalidates the caste claim of the elected candidate and /or cancels the caste certificate obtained from the competent authority by him, then the election shall stand terminated forthwith on the decision of the Scrutiny Committee.”

7. In the light of the above, the fact remains that the caste validity certificate was produced by the petitioner before the passing of the impugned order. In the light of the same and in view of the observations of the Division Bench in the case of *Dadasaheb Arjun Gulve* (supra), the impugned order dated 28-01-2015 is quashed and set aside. Consequentially, the Grampanchayat application No. 37 of 2014 stands rejected. Writ Petition is, therefore, allowed.

(**RAVINDRA V. GHUGE, J.**)