

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

WRIT PETITION NO. 2377 OF 2015

Smt. Narmadabai w/o Shivaji Chidmalwad ... Petitioner

Versus

The State of Maharashtra
& others ... Respondents

.....
Mr. P.B. Rakhunde, Advocate for petitioner
Mr. K.M. Surayawanshi, AGP for respondents / State
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 9th MARCH, 2015

PER COURT :

1. The petitioner claimed to belong to the Scheduled Tribe (ST). She contested elections for Village Grampanchayat Mavli, Tq. Mukhed, Dist. Nanded on 24-04-2010 and was elected on 25-10-2010 as member of the Grampanchayat from the ST category. Later on she became Sarpanch of the Village Panchayat as the position was reserved for ST women.
2. I have heard the learned Advocate for the petitioner for quite some time.
3. The petitioner has submitted an undertaking along with the nomination form that she would submit her tribe validity certificate

within six months from her election. Her Tribe claim was rejected by order dated 24-11-2011. The learned Division Bench of this Court by oral judgment dated 07-03-2013 in Writ Petition No. 4033 of 2012 had issued directions to the petitioner to appear before the Scrutiny Committee and cooperate in the proceedings in relation to her Tribe claim which was being considered afresh for the second time.

4. The petitioner's tribe claim was rejected on 18-04-2013 taking into account that the petitioner had indulged in a fraudulent act of staking a tribe claim on the basis of her maiden surname and not her marital surname.

5. In the proceedings before the Additional Collector, Nanded wherein respondent No. 4 had sought the disqualification of the petitioner under section 10-1 (a) read with Section 14 and 16 of the Maharashtra Village Panchayat Act, the Additional Collector, concluded that the tribe claim of the petitioner was rejected and therefore, she stood disqualified under Section 10-1 (a).

6. This Court (Full Bench), in the case of *Sujit Vasant Patil Vs. State of Maharashtra*, reported at 2004 (4) ALL MR 537, has laid down the law that the rejection of a caste or tribe claim would lead to an instant disqualification of the concerned

person from the office to which he / she is elected. Separate order on proceedings are not required to be passed in such a situation.

7. Observations of the Full Bench in paragraph Nos. 7,9, 12A, 12B, 12C, 18 and 19 of the *Sujit Vasant Patil* judgment (supra) read as under :-

“7. The Government Resolutions which we have referred to above do not provide as to what the Collector has to do after receiving the decision from the scrutiny committee. However, it is clear to our mind that in case the decision of the scrutiny committee is that the social status certificate of a particular returned candidate is invalid, the Collector would either exercise his own power under the relevant law to remove that candidate or he may forward the decision to other authorities which may be competent to do so in accordance with the provisions of the relevant law. As the Government Resolutions referred to above do not provide that the Collector shall on the basis of the report of the scrutiny committee remove the returned candidate, there is no scope of there being any conflict between the scheme of the Government Resolutions referred to above and the scheme of the various Local Self-Government Acts. The Division Bench has also made reference to the provisions of Articles 243-O and 243-ZG of the Constitution. Article 243-O lays down that election of a candidate as a member of Panchayat can be called in question only by an Election Petition presented to the authority designated by the State Legislature. Article 243-ZG contain identical provisions in relation to candidate elected to a seat in a Municipal Council. We do not see any conflict between the provisions of Article 243-O and Article 243-ZG and the Government Resolutions. To our mind it appears that as the Government

Resolutions do not provide for removal of the elected candidate whose caste certificate has been found to be invalid by the scrutiny committee there is no question of there being any conflict between the provisions contained in various legislations relating to the Local Self-Government and Articles 243-O and 243-ZG of the Constitution. The whole purpose of the Government Resolutions appears to be to get the social status certificate used to the candidates who have been elected to the reserved seat scrutinised by the scrutiny committee and in case the scrutiny committee finds that the certificate is invalid then use that material for initiating action against the concerned candidate in accordance with the provisions of the various Local Self-Government Legislations. It is to be noted here that as observed above, in all local self-government legislations there are two types of procedure provided for removal of an elected candidate. First type of procedure that is provided is that either the rival candidate or voter files an election petition in accordance with the Act before the competent Court or authority and in that election petition the elected candidate's election can be set aside, either because he was not holding requisite qualification or because he was disqualified or because he was guilty of any corrupt practice. Second type of procedure provided is that if the competent authority finds that an elected candidate is disqualified either for being a member of the Council or a panchayat or for continuing to be a member of such Council or Panchayat, the authority issues a show cause to the concerned candidate and on being satisfied that he is so disqualified, removes him from the office. To our mind it appears that the Government Resolutions referred to above were issued by the State Government so that the Collector after receiving decision from the scrutiny committee takes action to trigger mechanism provided in Local Self-Government Act for removal of the elected candidate whose social status certificate has been found to be invalid by the scrutiny committee, and in this view of the matter, we do not find that there is any scope of there being any possibility of

any conflict between the Government Resolutions, various Local Self-Government Act as also the provisions of Article 243-O and Article 243-ZG of the Constitution of India. This was the position before Maharashtra Act No. XXIII of 2001 was enacted. Now, because of Section 10 of the Maharashtra Act No. XXIII of 2001 the position has changed. Section 10 reads as under :--

10. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or co-operative Society against a post reserved for such Castes, Tribes, or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.

Now consequence of cancellation of a social status certificate by the Scrutiny committee is that the elected candidate automatically loses his seat.

9. So far as second question referred by the Division Bench is concerned, before us submissions were not advanced even on this point. Perusal of Maharashtra Act No. XXIII of 2001 shows that it incorporates the provisions for cancellation of the election of a person who has been elected against a reserved seat either on municipal council or on panchayat on his caste certificate being found invalid by the scrutiny committee. So far as Maharashtra Act No. XXIII of 2001 is concerned, it incorporates in various Local Self-Government Act a "disqualification". It provides that if a person is elected to a reserved seat and his caste claim is found to be invalid by the scrutiny committee then he will be disqualified. It also provides for removal of that person from the seat that he holds on a finding being recorded by the competent authority that the caste certificate on the basis of which he filed his nomination paper is invalid. Both these legislations have been enacted by the same Legislature, namely the Legislature of the State of Maharashtra. It is nobody's case that there is likelihood of lack of legislative

competence to enact both these legislations. Perusal of the legislations shows that first Maharashtra Act No. XXIII of 2001 was enacted and thereafter in order to give effect to the provisions of that Act amendments were thought necessary in various Local Self-Government Acts and therefore Act No. XXIII of 2001 was enacted. We do not see any repugnancy in the provisions of two Acts. In any case at the hearing, as observed above, this question was not argued by the learned Counsel appearing for the Petitioner. No repugnancy was pointed out to us.

12A. Thus, the scheme of the various Local Self-Government Act in relation to the filing of the nomination papers and their scrutiny and the scheme of the Maharashtra Act No. XXIII of 2001 appears to be that in case a person desires to contest an election to a reserved seat, it is obligatory on his part to get a caste certificate from the competent authority and then immediately apply to the Scrutiny Committee to get a validity certificate. Therefore, normally as the candidate is required to make an application to the scrutiny committee as soon as he receives a caste certificate from the competent authority, with the result that in many cases his application before the scrutiny committee for validity certificate would be pending when his nomination paper is accepted on the basis of the caste certificate. If his nomination paper is accepted on the basis of caste certificate issued by the competent authority and as the caste certificate itself is valid subject to the grant of validity certificate, obviously acceptance of his nomination paper as valid will also be subject to the grant of validity certificate by the scrutiny committee. Therefore, once the scrutiny committee refuses to issue a validity certificate the nomination cannot survive and if the nomination cannot survive, election cannot survive. Therefore, cancellation of the election of such a candidate is a natural consequence of his caste certificate being found invalid.

12B. Thus the scheme is that a person who obtains a caste certificate has to himself apply to the Scrutiny Committee for scrutiny of his caste certificate, so that he can secure a valid certificate from the Scrutiny Committee, and it is only after the Scrutiny Committee issuing a valid certificate that the caste certificate issued in favour of the person by the competent authority becomes final. In our opinion, the scheme of Sub-section (2) of Section 6 is that any candidate who desires to avail of any benefit available to backward class has to get a caste certificate as also the validity certificate before he makes a claim for the benefits. But if a candidate chooses to make claim to the benefits on the basis of a tentative certificate namely a certificate issued by the competent authority, he takes the risk of his losing the benefits that he has claimed and obtained and also being visited with penal consequences on the refusal of the Scrutiny Committee to validate his caste claim. The Act contemplates conscious decision being made by a person at the time of claiming benefits. The Legislature expects a person to claim the benefits only after obtaining the validity certificate, but the Legislature also permits a person to claim the benefits on the basis of a tentative certificate issued by the competent authority, if he is willing to take the risk mentioned above. In our opinion, therefore, the validity certificate is one of the essential ingredient of the candidate being qualified to contest for the reserved seat. It may be pointed out here that nobody can doubt the necessity of power being vested in an authority for issuance of caste certificate. If it is necessary to vest the power in an authority to issue a caste certificate, then in view of various types of claims being made, it is equally necessary to provide for scrutiny of those certificates. The determination of a caste is a job for the expert. Therefore, definitely there is a need of appointing an authority which is competent to issue caste certificates, which can be accepted by the returning officer at their face value. In our opinion, therefore, in the face of the provisions of the Act, the nomination papers which

have been accepted on the basis of certificate issued by the competent authority gets rejected on the refusal by the Scrutiny Committee to issue validity certificate and therefore the candidate loses his title to the seat against which he has been elected. There is no question of the election of that candidate being set aside by the Scrutiny Committee. The job of the Scrutiny Committee is of either issuing the final caste certificate or refusing to do so. If the Scrutiny Committee refuses to issue a final caste certificate, then the caste certificate issued by the competent authority ceases to exist. With the result, there is no caste certificate filed at scrutiny of the nomination papers and therefore the nomination papers itself becomes infirm and incomplete, and therefore, the returned candidate loses qualification to contest the seat and therefore he has to vacate his seat. In our opinion, in view of this scheme of the Act, even in the absence of Sub-section (4) of Section 10, the consequences in law of the Scrutiny Committee refusing to issue valid caste certificate would be vacation of seat by the elected candidate.

12C. In our opinion, therefore, reference to provisions of Article 243-ZG, which lays down that no election to any Municipality shall be called in question except by election petition presented to such authority and in such manner as is provided by or under the law made by the State Legislature is not relevant. In the proceedings before the Scrutiny Committee, the election of the candidate is not in question, what is done by the Scrutiny Committee is that it scrutinises the caste certificate on the basis of which the candidate has contested the election. Nobody calls the election in question before the Scrutiny Committee. The candidate himself files an application to get a validity certificate. In our opinion, the scheme of the Act is that the election of a person from a reserved seat who has contested on the basis of tentative certificate issued by the competent authority is itself provisional. Nomination papers and the

election become final on the issuance of validity certificate and it gets cancelled on the refusal to issue a validity certificate. In our opinion, therefore, there is no question of there being any conflict with the provisions of Article 243-ZG. So far as the competence of the State Legislature to make such provisions is concerned, in our opinion, the State Legislature gets competence to make such provisions because it has the competence to make reservation of the seats.

18. *One more aspect that is to be seen is that the Scrutiny Committee will not make an order setting aside the election of the candidate. The order that the Scrutiny Committee makes is either the caste certificate issued to the candidate is valid or invalid. Consequence of declaration by the Scrutiny Committee that the caste certificate is not valid is provided by Section 10(4) of the Maharashtra Act No. XXIII of 2001. If the contention on behalf of the Petitioner is accepted, then the elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee will continue to occupy the office to which he has been elected till the election petition filed challenging his election is decided. It is further pertinent to note here that Sub-Section (2) of Section 7 of the Maharashtra Act No. XXIII of 2001 lays down that the caste certificate issued by the Scrutiny Committee shall be final and shall not be challenged before any authority or Court except this Court in a petition under Article 226 of the Constitution of India. Thus, take a case that where the returned candidate's election is challenged by a voter in a Election Petition on the ground that the returned candidate does not belong to the caste or tribe for which the seat is reserved, during the pendency of that Election Petition the Scrutiny Committee passes an order holding caste certificate issued in favour of the candidate on the basis of which his nomination paper was accepted to be invalid, the order of the Scrutiny Committee cannot be challenged by the returned candidate in any Court except this Court*

in a petition filed under Article 226. Therefore, so far as the Court hearing the Election petition is concerned, the order will be binding. We do not understand as to what useful purpose will be served by allowing the candidate to continue in the seat till the election petition is decided, if the election petition is bound to be decided on the basis of the decision of the Scrutiny Committee. If Section 10(4) of the Act is not on the statute book, an elected candidate whose caste certificate has been held to be invalid by the Scrutiny Committee, will continue to occupy the seat, even though the decision of the Scrutiny Committee is upheld by this Court in case a voter or other contested candidate does not file an election petition. It is, thus, absolutely clear that the necessity of enacting the provision like Sub-section (4) of Section 10 is implicit in the legislative scheme itself.

19. It is further to be seen here that even if it is assumed that Section 10(4) attaches disqualification for continuing as a member of Local Self Government, in our opinion, in view of the provisions of Article 243-V of the Constitution, competence of the State Legislature to enact such a law cannot be disputed. Article 243-V of the Constitution reads as under:--

243V. Disqualifications for membership.-- (1) A person shall be disqualified for being chosen as, and for being a member of a Municipality --

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that; no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age, of twenty-one years;

(b) If he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in

Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Article 243-V empowers the State Legislature to prescribe disqualification for a person to continue to be a member of the Local Self Government. Section 10(4) says that in case a person who has been elected to a seat reserved for backward class of citizens shall be disqualified to continue to occupy that seat if the caste certificate issued by the Competent Authority in his favour is held to be invalid by the Scrutiny Committee. Article 243-V also empowers the State Legislature to constitute an authority to decide this question. We find that the view that has been taken by the Division Bench of this Court in the case of Dattatraya Ramrao Thorat v. The State of Maharashtra and Ors., 2003(5) Mh.L.J. 539 = 2002(4) All MR 807 is correct.

8. This Court has also considered the said ratio in the matter of *Kailas Vilas Mane Vs. Grampanchayat, Jamkhed, Dist. Ahmednagar and others* in Writ Petition No. 1425 of 2015 decided on 09-02-2015. Paragraph Nos. 15 & 16 read thus :-

“15. In the case of Aziz Ahmad (supra), the Division Bench of this Court placed reliance upon the Full Bench judgment in the case of Sujit Vasant Patil (supra) and came to a conclusion in paragraph No.10 that the moment the caste claim of an elected Corporator is rejected, the election is automatically nullified. When such an election is nullified, there is no election which remains to be set aside. An election petition filed on the basis of such rejection of caste claim for setting aside the election becomes untenable since the jurisdictional part for an election is itself extinguished.

16. Paragraph No.10 of the Division Bench judgment of this Court in the case of Aziz Ahmad (supra) is therefore reproduced hereinbelow :-

“10. *It is settled law, vide two Full Bench decisions of this Court that in such a case a candidate, whose caste certificate has been invalidated, ipso facto loses his seat and such a loss has nothing to do with a challenge to the election of the candidate in an election petition.*

In Sujit Vasant Patil ..vs.. State of Maharashtra and ors. 2004 (3) Mh. L. J. 1109 (Full Bench), a case which arose under the provisions of the Maharashtra Act No. XXIII of 2001, the Full Bench, after referring to Section 10 of the Maharashtra Act No. XXIII of 2001 including sub section (4) thereof, observed as follows:

"7.

Now consequence of cancellation of a social status certificate by the Scrutiny committee is that the elected candidate automatically loses his seat."

The Full Bench rejected the contention of the returned candidate that the bar enacted by Article 243 (ZG) of the Constitution of India, which prohibits an election from being questioned, except by way of an election petition, would protect an election from being nullified due to the invalidation of a caste certificate by the Scrutiny committee. It was observed that an election is not called in question before a Scrutiny Committee and this Committee only scrutinizes and pronounces upon the validity of a caste certificate on the basis of which an election is contested. It is, thus, clear that the validity of a caste certificate on the basis of which an election is contested is within the domain of a Scrutiny Committee and where that is invalidated, the election is automatically nullified vide Section 10 (4) and the second proviso to Section 5 (B) of the BPMC Act. When an election is nullified, there is no election which remains to be set aside. An election petition already instituted to set aside such an election becomes untenable since the jurisdictional part for an election is itself extinguished."

9. In the light of the above, I do not find that the Impugned order could be termed as erroneous or perverse. The petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)