

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5746 OF 2015

Digambar Rajaram Farakte : Petitioner
versus
The Kolhapur Municipal Corporation
Through the Commissioner and ors. : Respondents.

Mr. S R Ganbavale for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 2nd July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 2/5/2015 passed by the learned Civil Judge, Senior Division, Kolhapur by which order the Election Petition filed by the Respondent No.4 herein being Election Petition No.2 of 2010 came to be allowed and resultantly the order dated 14/10/2010 passed by the Returning Officer No.4 rejecting the nomination of the Respondent No.4 came to be set aside. Consequently the election of the Petitioner was set aside and the Court directed that fresh elections to be held for Ward No.21.

2 The elections to the Municipal Corporation of Kolhapur took place in the year 2010. The Respondent No.4 had sought to contest from an open category seat. At the time of scrutiny, the Returning Officer rejected the nomination of the Respondent No.4 on the ground that his caste validity

certificate had been invalidated and resultantly his election to the Municipal Corporation for the earlier term i.e. 2005-2010 came to be set aside and therefore the Respondent No.4 was dis-entitled to contest the present elections. It is required to be noted that for the earlier term the Respondent No.4 had contested from a seat meant for the OBC, as he claimed to belong to “Kunbi” caste which falls in OBC, however, for the elections for the term 2010-2015 as stated earlier the Respondent No.4 had sought to contest from an open category seat.

3 The Returning Officer No.4 whilst rejecting the nomination of the Respondent No.4 placed reliance on Section 10(1C)(a) and 10(1C)(b) of the Maharashtra Municipal Councils and Nagar Parishads Act 1965. In so far as Subsection (1C)(a) is concerned, it provided that upon decision of the Caste Verification Committee invalidating the caste certificate, the councillor shall be deemed to have vacated his office and in so far as sub-section (1C)(b) is concerned, it provided that after the seat becomes vacant, the State Government shall by notification in the Official Gazette, dis-qualify such person for being elected or being a councillor for a period of six years from the date of such order. Hence in so far as sub-section (1C)(b) is concerned, it postulates that an order being passed by the State Government disqualifying the councillor for six years on the ground that his caste certificate has been invalidated.

4 It is required to noted that the aforesaid provisions i.e. sub-sections (1C)(a) and (1C)(b) have been deleted by an amendment carried out in the year 2006 i.e. on 1/10/2006 to the said Act. However, notwithstanding the said amendment, the Returning Officer possibly being oblivious of the said fact rejected the nomination of the Respondent No.4 in the year 2010.

5 In so far as the Election Petition is concerned, it is required to be noted that the Petitioner did not file any reply to the Election Petition. The Election Petition was tried by the learned Civil Judge, Senior Division, Kolhapur and as indicated above by the impugned order dated 2/5/2015 allowed the same. The gist of the reasoning of the Trial Court is that the Returning Officer has erroneously proceeded on the basis of the provisions which have been deleted in the year 2006 itself. The Trial Court thereafter tested the case of the Respondent No.4 on the assumption that Sub-sections (1C)(a) and (1C)(b) are still on the statute book, the Trial Court held that since no order has been passed under sub-section (1C)(b) by the State Government, the Respondent No.4 could not have been disqualified for a future election and has accordingly allowed the Election Petition.

6 The learned counsel appearing on behalf of the Petitioner Shri Ganbavale fairly conceded that sub-sections (1C)(a) and (1C)(b) have been

deleted from the Statute Book in the year 2006, but the learned counsel for the Petitioner sought to place reliance on Section 10(4) of the Maharashtra Scheduled Caste, 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, and submitted that the rejection of the nomination can still be sustained having regard to Section 10(4) of the said Act.

7 In my view, the reliance placed on Section 10(4) of the said Act is totally misconceived as the said Section itself postulates that the election which the person has contested as a candidate belonging to the reserved categories shall be deemed to have been terminated retrospectively on the invalidation of the caste certificate, it is therefore the said election which would stand set aside and hence the disqualification which is postulated in sub-section (4) cannot be carried forward to the subsequent election. The impugned order therefore does not suffer from any error, infirmity or illegality. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. At this stage the learned counsel for the Petitioner requests for stay of the instant order. In the facts and circumstances of the present case, the prayer is rejected.

[R.M.SAVANT, J]