

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

**WRIT PETITION NO. 2068 OF 2015
WITH
CIVIL APPLICATION NO. 1696 OF 2016**

Balkrushna Sopan Mahandule

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr.A.N.Sabnis, Advocate h/f Mr.S.B. Rajebhosale, Advocate for petitioner.

Mr. A.P. Basarkar, A.G.P. for Respondent Nos.1 to 3.

Mr. R.S. Sadaphule, Advocate for Respondent No.4.

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CORAM : T.V. NALAWADE, J.

DATED : 21st OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Additional Divisional Commissioner, Nashik in Appeal No. 1030 of 2015 and also the order made by Additional Collector, Ahmednagar. The Dispute Application No. 95 of 2015 is allowed by Additional Collector and the said decision is confirmed by Additional Commissioner. The dispute proceeding was filed on the ground that the caste validity certificate was not produced within the prescribed period by present petitioner who had contested the election to village panchayat Rui, Tahsil Rahata, District Ahmednagar from reserved category. Both sides are heard.

2. The petitioner contested the election to village panchayat for the term 2013-18. Alongwith the nomination form, he had filed record to show that he had started proceeding for getting the caste validity certificate from Caste Scrutiny Committee. He was declared elected as member of village panchayat on 29th March, 2013 and become Sarpanch on 23rd April, 2013. After that disqualification proceeding was started against him by four persons of his village under aforesaid provision. They contended that caste validity certificate was not produced within six months from the date of election and so the order of disqualification needs to be made against him. After giving opportunity to both sides, the Additional Collector made order of disqualification against the petitioner. Before the Additional Collector, present petitioner contended that the proceeding was still pending and he was not at fault for pendency of the proceeding and so he cannot be disqualified.

3. Learned Counsel for petitioner placed reliance on some reported cases of this Court which include 2008 (2) Bom.C.R. 712 (Division Bench) (Dadasaheb Arjun Gulve Vs. State of Maharashtra and Others) and unreported order in Writ Petition No. 10238 of 2010 (Jibhau So ZagaPawar Vs. State of Maharashtra and Others) and other connected petitions decided on 07th January, 2001. By placing reliance on

aforesaid Division Bench case, the learned single Judge held that the production of validity certificate is not mandatory. Similar observations are made by other single Judge in Writ Petition No. 1176 of 2013 (Jagdish Laxman Dhonde Vs. State of Maharashtra and Others) by referring the same decision of Division Bench. Learned Counsel for petitioner produced copy of order made by Division Bench of this Court in Writ Petition No. 9628 of 2010 (Popat Vithal Pund and Others Vs. Divisional Commissioner, Nashik and Others) dated 05th September, 2011. The Division Bench considered other case of Division Bench decided at Nagpur by two other learned Judges of this Court in which it was held that procedure is mandatory in nature and if within prescribed time caste validity certificate is not submitted by Councilor as provided under Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the election of such candidate shall terminate automatically with retrospective effect and such candidate would stand disqualified for being a Councilor. This Court had requested the Hon'ble Chief Justice to refer the point to Larger Bench. It appears that Larger Bench is not yet constituted.

4. Learned Counsel for present petitioner submitted that as the matter is referred to Larger Bench, it is not desirable to take decision on

such matters till the decision of Larger Bench comes out. He placed reliance on some observations made by the Apex Court in 2014 Cri.L.J. 2245 (Supreme Court) (Sundeep Kumar Bafna Vs. State of Maharashtra and Another). It is laid down that if decision of High Court is not in consonance with the views of Supreme Court, the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is also laid down that when there are two decisions of Apex Court on same point, the judicial discipline requires that subsequent one is followed. There is no dispute over the proposition made by the Apex Court. This proposition is applicable when there is decision of Apex Court. When there are decisions of different Benches of same High Court, it is open to the Judges of the same Court to rely on one including one was earlier in time. Thus, these cases cannot help the petitioner to protract the decision of the present matter. In any case, such matters involving disqualification cannot be kept pending for indefinite period.

5. This Court had occasion to consider some arguments in the past and this Court has held that the decision given by Division Bench at Nagpur needs to be followed in such matters. This Court had discussed the purpose behind the legislation and it is held that if strict interpretation is not made of the provision which is only a concession given, the purpose

behind the reservation will be defeated.

6. The provision of Section 10-A of the Maharashtra Village Panchayats Act, 1958 shows that if a person wants to contest the election on the seat reserved for the backward caste as mentioned in that Section, it will be necessary for him to submit alongwith nomination paper caste certificate issued by the competent authority and validity certificate issued by the scrutiny committee in accordance with the provisions of Maharashtra Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This is the main provision. From time to time concession was given to candidates to contest the election on the basis of only caste certificate and proviso was added in the section to enable them to produce validity certificate within the period of six months from the date on which he is declared elected. The proviso is as under:

“Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December, 2017, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for 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 papers,-

(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 member.”.

7. In different years notifications were issued for continuation of this proviso and recent notification was issued in 2015. Thus proviso is giving the concession but the concession has limitation as mentioned in the proviso itself. The wording of second proviso shows that if a person fails to produce caste validity certificate within the aforesaid period, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member. This wording of the proviso shows that no further concession is available to such candidate and he cannot contend that proceeding is still pending before the caste scrutiny

committee. This Court is using the law laid down by the Division Bench of this Court in case reported as **2010(1) Mh.L.J. 49 (Gita Rupchand Vs. State of Maharashtra)**.

8. So this Court holds that the authority below has not committed any error in holding that present petitioner has incurred disqualification due to the absence of the caste validity certificate in his favour, it was not produced within the aforesaid prescribed period. In the result, petition stands dismissed. Civil application stands disposed of.

(T.V. NALAWADE, J.)

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