

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9180 OF 2016

Kamal Uttamrao Shinde,
Age : Major, Occ. Household
R/o. Gundgaon, Tq. Pathri,
Dist. Parbhani.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra
through its Secretary
Rural Development Department,
Mantralaya, Mumbai-32.
- 2] The District Collector,
Collector Office, Parbhani,
Tq. And Dist. Parbhani.
- 3] The Returning Officer/Election Officer,
Tahsil Office, Pathri, Tq. Pathri,
Dist. Parbhani.
- 4] The Tahsildar, Tahsil Office,
Pathri, Tq. Pathri, Dist. Parbhani.
- 5] The Divisional Caste
Certificate Verification Committee,
Aurangabad Region, Aurangabad,
through its Member.
- 6] Krishna s/o. Madanrao Sable,
Age Major, Occ. Agriculture,
R/o. Gundgaon, Tq. Pathri,
Dist. Parbhani.

.. RESPONDENTS.

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Advocate for Petitioner : Mr. Nilkanth R Pawade
AGP for Respondent Nos. 1 to 5: Mr. K.N. Lokhande
Advocate for respondent No.6 : Mr. M.P. Kale.

**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.**

DATE : 18TH OCTOBER, 2016.

ORAL JUDGMENT [PER R.M. BORDE, J] :-

1] Heard. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final disposal at the admission stage.

2] The petitioner was elected as member of the Village Panchayat in the year 2015 as against a seat prescribed for OBC category. The caste certificate of the petitioner is referred to the Scrutiny Committee for verification and the claim for verification of the caste certificate of petitioner is stated to be pending with respondent No.5 Committee. In the meanwhile, during the pendency of the proceedings before the Scrutiny Committee, on the basis of the complaint lodged by respondent No.6, the Collector issued an order terminating the election of the petitioner retrospectively and he has been held to be disqualified for being a member.

3] It is not a matter in dispute that the Caste Certificate Verification Claim of the petitioner is pending with the Scrutiny Committee. The Division Bench of this Court in the matter of ***Dadasaheb Arjun Gulve Vs. The State of Maharashtra and others, reported in 2008(2) BCR 712***, has held that the proviso to Section 10-1A of the Maharashtra Village Panchayat Act (hereinafter referred to as, “ the said Act”) in respect of submission of validation certificate within the stipulated period as directory

whereas, another Division Bench in the matter of ***Sangita Sanjay Lakhote vs. State of Maharashtra and others reported in 2011(3) Mh.L.J. 899***, has taken a different view and held that the said Proviso is required to be complied with scrupulously. The Division Bench, considering the two different views expressed in the above matters, has referred the issue for consideration to a Larger Bench. As on today, the view expressed by the Division Bench in the matter of ***Dadasaheb Arjun Gulve (supra)*** holds the field. It is beyond the reach of the applicant to secure a decision from the Scrutiny Committee within the stipulated period. In such circumstances, the elected candidate cannot be put to disadvantage for the alleged lapse, which is not possible to be cured by such candidate. In this view of the matter, the order passed by the Collector, terminating the election of the petitioner retrospectively, deserves to be set aside.

4] Counsel for respondent referring to provision of Section 14(1)(K) of the said Act contends that no person shall be a member of a Panchayat continue as such, who is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed. It is further contended that there is a remedy of appeal under Section 16 of the Act provided against the order passed under Section 14(1)(k). As such, in view of the availability of the alternate remedy the instant petition cannot be entertained.

5] Section 16 of the said Act relates to disability from continuing as a member. Section 16(1) provides that if any member of a Panchayat,

during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant. Sub-Section (2) provides that, if any question whether, a vacancy has occurred under this Section, is raised by the Collector *suo-motu* or on an application made to him by any person in that behalf, the Collector shall decide the same as far as possible in 60 days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within 15 days from the date of such decision, appeal to the State Government and the orders passed by the State Government shall be final.

6] In the instant matter, the disqualification referred to under clause (k) of Section 14(1) of the said Act cannot be equated with termination of election of candidate on account of his failure to submit validation certificate within the meaning of second Proviso to Section 10-1A of the said Act. Proviso to Section 10-1A of the said Act, is a deeming provision whereunder a person, who tenders nomination paper alongwith an undertaking to submit the validation certificate within the stipulated period of six months, if fails to abide by the undertaking, his election shall be deemed to have been terminated retrospectively. The effect of Section 10-1A is of termination of election of an elected candidate retrospectively, and as such, the remedy of appeal, as contended by the respondent as

provided under Section 16 (2) of the said Act, cannot be said to be an alternate remedy for redressal of the grievance of such candidate. The objection raised in relation to availability of alternate remedy is devoid of substance.

7] In the result, we pass the following order :-

[a] Writ petition is allowed;

[b] The order passed by the Collector dated 23.8.2016 is quashed and set aside;

[c] Respondent No.5 - Scrutiny Committee is directed to decide the Caste Certificate Verification Claim of the petitioner, as expeditiously as possible and preferably within 8 months;

[d] Petitioner undertakes to cooperate in expeditious disposal of his caste certificate verification claim, pending before the Committee;

[e] Rule made absolute in above terms. There shall be no orders as to costs.

[K.K.SONAWANE]
JUDGE

[R.M. BORDE]
JUDGE

grt/-