IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10461 OF 2015

Fakir Alamshah Ahmedshah,
age : Major Occ.: Labour,
R/o.: Chambhar Colony,
Ward No.4, Muktai nagar,
Tal. Muktai Nagar,
Dist. Jalgaon .. Petitioner

Vs.

1. State of Maharashtra,
Through its Secretary,
Caste Claim Department, Mantralaya,
Mumbai

2. The Caste Certificate
Scrutiny Committee,
Nashik Division, Committee No.2,
Dhule. Dist. Dhule

3. The Collector, Jalgaon
Tal.: Jalgaon,
Dist. Jalgaon

4. Deputy Commissioner, Nashik
Division, Nashik
Dist. : Nashik

5. Sayyed Tarik Sayyed Liyakat,
Age : Major Occu. Nil,
R/o.: House No. 142, Shani Peth,
Jalgaon,
Tal and Dist. Jalgaon .. Respondents

Mr. Girish Nagori, Advocate for the petitioner
Mr. S.N. Kendre, A.G.P. for respondent nos. 1 to 4
Mr. S.G. Rudrawar, Advocate for the respondent no. 5

CORAM : SUNIL P. DESHMUKH, J.
DATE : 28-04-2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. Aggrieved by decision dated 21-09-2015 by the Additional Commissioner, Nashik in Appeal No.11 of 2015 arising out of the order dated 20-02-2015 passed by the Additional Collector, Jalgaon, in Application Case No.69 of 2014, the petitioner is before this court, whereunder petitioner stands disqualified from continuing as member of Muktainagar gram panchayat.

3. The facts, as would emerge are that the petitioner was elected from O.B.C. category on 24-12-2012 as a member of the Muktainagar gram panchayat and, thereafter, about two years down, a notice appears to have been issued to the petitioner, upon a complaint by respondent no.5, that the petitioner having incurred disqualification to continue as member of the gram panchayat, having not submitted requisite caste/ class validity certificate within the stipulated period, as referred to in section 10(1-A) of the Maharashtra Village Panchayats Act (for short

"the MVP Act"), prescribing furnishing of the same either alongwith the nomination paper or in the absence of such furnishing, within a period of six months from the date of election wherever an application to the scrutiny committee for verification of the caste before the date of filing of nomination paper had been pending.

4. The factual position, which does not appear to be in dispute is, petitioner was elected as member of Muktainagar gram panchayat on 24-12-2012 as a candidate belonging to O.B.C. category. While filling up the nomination, the petitioner along with the same had annexed a receipt depicting that certificate of his caste/tribe has been submitted for validation of his claim of belonging to O.B.C. category. Said claim appears to have been decided on 20-08-2013 finding the certificate/claim of petitioner to be valid and accordingly the tribe/caste validity certificate had been issued to the petitioner in August 2013. The petitioner has stated that the declaration validating his claim to be belonging to O.B.C. category and the certificate depicting the same had been intimated and communicated by presenting copies of validity certificate to the Tahsildar Muktainagar, Block Development Officer, Muktainagar and Village Development Officer, Gram Panchayat, Muktainagar, around December, 2013.

5. Therefore, petitioner's continuance as member of Muktainagar gram panchayat purportedly has been questioned by respondent No.5 on account of non furnishing of validity certificate within a period of six months from the date of election with reference to Section 10(1-A) of the MVP Act. The petitioner had explained that a bogus complaint in the name of one Prashant Ashok Tonge had been filed before the scrutiny committee and quite a lot of time had been consumed in making communications to him and producing him before the committee. Ultimately, it turned out that Prashant Ashok Tonge had not complained to the committee suspecting the claim of the petitioner and as a matter of fact, it was respondent No.5, who had been behind making such bogus complaint in the name of Prashant Tonge. Accordingly, said Prashant Tonge had filed an affidavit before the committee stating that he had never filed any complaint in respect of the O.B.C. claim of the petitioner. As such, committee took some time to decide the claim of the petitioner and has decided the same in August, 2013 and thereafter, had communicated the same to the petitioner and accordingly, copies of the validity certificate had been furnished to the authorities referred to hereinabove.

6. Learned counsel for the parties are not at loggerheads as far as these facts are concerned. The only ground for

disqualification is, there is non-submission of the validity certificate during the stipulated period under section 10(1-A) of the MVP Act.

7. It further appears that the person who had lodged the proceedings for disqualification had never attended to the same.

8. The Additional Collector under his order dated 20-2-2015 allowed the complaint considering that although the validity certificate has been furnished, yet it has been furnished beyond the period prescribed under section 10(1-A) of the MVP Act, and the order of Additional Collector is endorsed by his decision under the impugned order dated 21-09-2015 passed by the learned Additional Commissioner, Nashik.

9. Learned counsel Mr. Nagori appearing for the petitioner contends that the matter has been dealt with very technically by the authorities. The object and purpose underlying making the provision for submitting the validity certificate has been overlooked and had not been realized. It has been submitted that the requirement is to see that the persons genuinely belonging to reserved categories are only getting elected and spurious claimants are kept at away from such election or are disabled to continue to be member of gram panchayat. In the petitioner's case it can be said that all along his claim has been

genuine and it stands proved to be so. He further submits that the authorities have been oblivious of the prevailing legal provision, wherein in the case of application for scrutiny of the caste certificate has been filed, even before the nomination paper has been submitted, and validity certificate is not received within the stipulated period, it has been considered by the courts that the disqualification in given case would not be incurred for the reason that the scrutiny process for validity is not within the control of the petitioner. For said purpose, reliance is placed on a judgment of this Court in the case of *Alka Keshav Tayade @ Alka Namdeo Shirsat Vs. Kailash Pandurang Pawar and others* dated 26-3-2014.

10. In the present case, there is no dispute that the petitioner's caste/tribe certificate had been sent for scrutiny for validating the same even before the nomination had been filed by him contesting the election to the gram panchayat and that validity certificate has been issued in August, 2013. The same has also been furnished to authorities around December, 2013 itself in the proceedings.

11. In the present matter, it will have to be considered that the scrutiny of the caste certificate issued in favour of petitioner had been pending with the scrutiny committee for quite a while,

which consumed time more than six months after the date of election. The petitioner had explained the delay caused in decision by the committee which has been allegedly at the instance of respondent No.5. The petitioner has annexed certain documents in respect of the same. It further appears that the validity certificate had been issued in August, 2013 and the same has been submitted to quite a few offices, is also not in dispute. The petitioner cannot be imputed of causing deliberate delay in furnishing requisite document i.e. validity certificate. It may be considered in the facts and circumstances of this case, the delay caused, had been beyond his control. The genuinity of the claim or for that matter of the validity certificate does not appear to be disputed any further. The purpose underlying the provisions will have to be objectively looked at and technical and pedantic approach in the facts and the circumstances of the case would be required to be eschewed.

12. The situation arising in the present matter, to a considerable extent, is similar to one obtaining in a decision relied on behalf of petitioner in the case of *Alka Keshav Tayade @ Alka Namdeo Shirsat Vs. Kailash pandurang Pawar and others*, decision of Hon'ble Single Judge in *Writ Petition No. 8762 of 2013* on 26-03-2014, in which, the Hon'ble Judge has considered that petitioner therein having been issued the caste validity

certificate, the matter has been rendered purely academic.

13. In this case, having regard to aforesaid judgment, the decisions rendered by the Additional Collector as well as Additional Commissioner appear to be too pedantic and technical. The major requirement of genuineness of the category claimed and it being evidenced by validity certificate has been satisfied. In the circumstances, as stated herein above a pedantic approach requires to be eschewed and justice needs to be done to the petitioner.

14. In the circumstances, the order dated 20-2-2015 passed by the learned additional collector, Jalgaon in application case no. 69 of 2014 and order passed by additional commissioner in appeal no. 11 of 2015 dated 21-9-2015 have been rendered unsustainable. The same are accordingly quashed and set aside.

15. Rule is made absolute in terms of prayer clause (B) and writ petition is disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/sms