

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11567 OF 2016

01 Allabaksh Amin Pathan,
age: 31 years, Occ: Social Service;

02 Gangubai w/o Nandu Shinde @
Manda D/o Ramesh Kamble,
age: 45 years, Occ: Household;

03 Kalpana w/o Sanjay Barde @
Kalpana D/o Karbhari Mali,
age: 46 years, Occ: Household;

All R/o Mendhwan, Tq.Sangamner,
District Ahmednagar.

Petitioners

Versus

01 Tahsildar, Sangamner,
District Ahmednagar.

02 The Additional Collector,
Ahmednagar.

03 Divisional Commissioner,
Nashik.

Respondents

Mr.P.B.Shirsat, advocate holding for Mr.S.S.Wagh, advocate for
petitioners.

Mr.S.B.Pulkundwar, A.G.P. for Respondents.

**CORAM : R.M.BORDE &
SANGITRAO S. PATIL, JJ.
DATE : 23rd November, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Leave to annex copies of the orders.

2 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 Petitioners are objecting to the orders passed by the Additional Collector, Ahmednagar, holding respective petitioners disqualified to continue in the office of Member of Village Panchayat Mendhwan, Tq.Sangamner, District Ahmednagar, on account of their failure to submit validity certificates within prescribed period.

4 Admittedly, petitioners have been elected as Members of the Village Panchayat as against vacancies earmarked for reserved category. In view of provisions of Section 10-1A of the Bombay Village Panchayats Act, 1958, it was incumbent upon petitioners to tender validity certificates within a period of six months from the date of presentation of nomination paper. Since petitioners failed to tender validity certificate, impugned action has been taken by the Additional Collector, Ahmednagar.

5 It is not disputed that proposals in respect of verification of caste certificates, issued in favour of petitioners, were pending with the competent Scrutiny Committee and the matters were not decided by the Scrutiny Committee within stipulated period. Petitioners do not have any control over the proceedings of the Scrutiny Committee and they cannot be put to any disadvantage on account of failure on the part of the Scrutiny Committee to decide the matters.

6 Petitioners contend that after issuance of orders by the Additional Collector, Ahmednagar, the Scrutiny Committee has taken decision on the proposals of the petitioners in respect of verification of caste certificates and validity certificates have been issued in favour of petitioners. The fact remains that petitioners do belong to reserved category and the competent Scrutiny Committee has issued validity certificates in their favour.

7 This Court, in the matter of **Dadasaheb Arjun Gulve Vs. State of Maharashtra and others**, reported in 2008 (2) Bom.C.R. 712, has taken a view that the relevant provisions, requiring the elected candidate to submit validity certificate within stipulated period, cannot be considered to be mandatory and shall have to be construed as directory. The Division Bench of this Court has observed in paragraphs no.16, 17 and 21 as follows:

"16 If we hold that period of 4 months for production of caste validity certificate as mandatory, the consequence would result in frustration of constitutional mandate of reservation for backward classes contained in Articles 243D and 243T of the Constitution of India. That is impermissible. We are of the view that the period of 4 months is directory.

17 It is trite to say that when a statute requires anything to be done by a statutory authority or a government officer within a prescribed period and the citizen has no control over the statutory authority or the government officer requiring him to do the thing within the specified time, the provision of a statute or rule requiring the thing to be done within the specified time must be held to be directory. This is because the citizen has no control over the statutory authority or the government officer and he cannot suffer from the negligence of the statutory authority or the government officer in failure to perform the duty within the specified time. This principle was enunciated by the Constitution Bench of the Supreme Court in Dattatraya Moreshwar Vs. The State of Bombay wherein Das, J. observed:

"In my opinion, this contention of the learned Attorney-General must prevail. It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would

work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

21 Aims and object of section 5-B and the provisos thereto is that while persons belonging to backward classes get the benefit of reservation of seats, persons who do not belong to a backward class do not illegally usurp the benefit of reservation in favour of backward classes. The real intention of the legislature is to ensure that the candidate elected to a reserved seat belongs to a backward class. The period of 4 months for production of caste validity certificate is merely a procedural requirement. It cannot supplant the constitutional mandate and even invalidate the election of a person who belongs to a backward class. We, therefore, hold that the period of 4 months prescribed for production of caste validity certificate by proviso to section 5-B of the MMC Act and the BPMC Act, section 9-A of the Municipalities Act, section 12-A of the Zilla Parishads Act and section 10-A of the Village Panchayats Act is merely directory. However, by holding it to be directory we do not mean to say that the elected candidate can go on seeking adjournments before the Scrutiny Committee at the time of hearing and continue to hold the post of a councillor. An impostor and a fraudster, who does not belong a backward class, would always try to seek adjournments before the Scrutiny Committee so as to

continue to reap the benefits of reservation. In such a case, the appropriate authority would not be powerless to declare his election to be terminated retrospectively on his failure to produce caste validity certificate within a reasonable time (which in no case can be shorter than the statutory period of 4 months). If, however, for no fault of his the Scrutiny Committee is unable to decide on the validity of his caste certificate and actually decides his claim say after about 5-6 months instead of 4 months, the period of 4 months cannot be held to be mandatory. If, however, the Scrutiny Committee invalidates the caste claim of the elected candidate and/or cancels the caste certificate obtained from the competent authority by him, then the election shall stand terminated forthwith on the decision of the Scrutiny Committee."

8 The contrary view has been expressed by another Division Bench in the matter of **Popat Vithal Pund & others Vs. Divisional Commissioner, Nashik Division, Nasik and others**, (Writ Petition No.9628 of 2010, decided on 5th September, 2011). While adopting contrary views, the matter has been referred for consideration to the Full Bench and the issue is still pending for consideration.

9 Considering the view of the Division Bench in the matter of **Dadasaheb Arjun Gulve Vs. State of Maharashtra and others**, reported in 2008 (2) Bom.C.R. 712, we are of the

considered opinion that the orders passed by the Additional Collector, Ahmednagar, holding the petitioners disqualified to continue in the office of Member of Village Panchayat on account of their failure to submit validity certificates within stipulated period, needs to be quashed and set aside.

10 It also must be observed that petitioners are possessed of validity certificates which have been issued belatedly by the Scrutiny Committee which fortifies their contention as regards caste status. Petitioners do belong to reserved category and as such, they cannot be put to any disadvantage on account of failure of the Scrutiny Committee to take decision in the matter within stipulated period. As has been recorded above, petitioners do not have any control over the proceedings of the Scrutiny Committee and in view of the fact that petitioners do possess validity certificates, the orders passed by the Additional Collector, Ahmednagar, holding the petitioners disqualified to continue in the office of Member of Village Panchayat, need to be quashed and set aside.

11 In the result, writ petition is allowed. The orders impugned in this petition, passed by the Additional Collector, Ahmednagar, holding the petitioners disqualified to continue in the office of Member of Village Panchayat, are quashed and set aside. It is informed that meeting for consideration of No Confidence

Motion moved against the Sarpanch is prescribed at 11.00 am today and petitioners have not been issued notice of meeting. Petitioners would be entitled to participate in the proceedings of the meeting. Learned A.G.P., appearing for Respondents, undertakes to telephonically communicate the order passed by this Court today to the Presiding Officer.

12 Rule is made absolute accordingly. No order as to costs.

SANGITRAO S. PATIL
JUDGE

adb/wp1156716

R.M.BORDE
JUDGE