

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11942 OF 2016

Suresh S/o Dagadu Pathare
Age : 45 years, Occu.: Agri,
R/o. Ralegan Sidhi, Tq. Parner,
District Ahmednagar

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The Collector, Ahmednagar,
Dist. Ahmednagar
3. The Commissioner, Nashik
Division, Nashik
4. The State Election Commissioner,
New Administrative Building,
Infront of Mantralaya,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai

.. RESPONDENTS

AND

WRIT PETITION NO. 11944 of 2016

Hira W/o Bhimrao Pote
Age : 48 years, Occu.: Agri,
R/o. Ralegan Sidhi, Tq. Parner,
Dist. Ahmednagar

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai

2. The Collector, Ahmednagar,
Dist. Ahmednagar
3. The Commissioner,
Division, Nashik
4. The State Election Commissioner,
New Administrative Building,
Infront of Mantralaya,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mumbai

.. RESPONDENTS

Mr. Vikram R. Dhorde, Advocate for the Petitioner
in both the petitions

Mr. A.V. Deshmukh, A.G.P. for respondent nos.1 to 3

Mr. S.T. Shelke, Advocate for respondent no.4

**CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.**

DATE : 2nd December, 2016

ORAL JUDGMENT (PER : R.M. BORDE, J.):

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petitions are taken up for final hearing and disposal at the stage of admission.

2. The petitioners contested election for the posts of Member of Village Panchayat, Ralegan Siddhi,

Tal. Parner, District Ahmednagar, in the year 2015 and the candidature of the petitioners was as against the reserved vacancies. At the time of presentation of the nomination papers, the petitioners had tendered proof regarding pendency of their caste verification claims with the competent Scrutiny Committee. The petitioners were under obligation to tender caste/tribe validation certificate within six months from the date of election. However, as a result of pendency of the proceedings before the caste/tribe Scrutiny Committee and since the proceedings were not disposed of within a period of six months, they could not produce the caste/tribe validation certificates within the stipulated period.

3. The Additional Collector, Ahmednagar, after completion of six months' period from the date of election, took up suo-moto proceedings in respect of disqualification and disqualified the petitioners from continuing as Members of the Village Panchayat and set aside their election with retrospective effect from the date of nomination, by an order dated 17th September, 2016. The caste/tribe verification claims of the petitioners, pending with the Scrutiny Committee, were

disposed of and the caste certificates issued to the petitioners were held to be valid and the validity certificates in the prescribed proforma came to be issued.

4. The petitioners have also challenged the order, passed by the Additional Collector, Ahmednagar declaring them to be disqualified to continue as members of the Village Panchayat, by presenting appeals before the Additional Commissioner, Nashik Division, Nashik.

5. The learned counsel for the petitioners submits that the petitioners have now received their respective caste/tribe validity certificate and therefore, the impugned orders may be quashed and set aside.

6. Since the petitioners are in receipt of the caste/tribe validity certificates, issued by the competent Scrutiny Committee, the orders dated 17th September, 2016, passed by the Additional Collector, Ahmednagar, holding the petitioners disqualified to continue as Members of the Village Panchayat, deserve to be quashed and set aside.

7. It should be borne in mind that the petitioners cannot have control over the proceedings of the Scrutiny Committee and it is not within their powers to secure favourable orders within stipulated time. This time limit prescribed in the relevant provision, requiring the candidate elected as against reserved vacancy to submit caste/tribe validity certificate, has been construed as directory and not mandatory, in the matter of **Dadasaheb Arjun Gulve Vs. State of Maharashtra and others, 2008(2) Bom.C.R. 712**. The Division Bench of this Court has observed in paragraph nos.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. Considering the above principle, the relevant provisions requiring the elected candidate belonging to a reserved category to tender the caste/tribe validation certificate within the stipulated period, shall have to be construed as directory.

9. Although a contrary view has been expressed by another Division Bench in the matter of **Popat Vithal Pund and others Vs. Divisional Commissioner, Nashik Division, Nashik and others (Writ Petition No.9628 of 2010, decided on 5th September, 2011)** and the matter has been referred to the Full Bench for consideration, there is no finality attached. However, the view expressed by the Division Bench in the matter of **Dadasaheb Arjun Gulve** (Supra) has not yet been disturbed. In this view of the matter, in our considered opinion, the impugned orders passed by the Additional Collector, Ahmednagar, holding the petitioners disqualified to continue as

Members of the Village Panchayat, on account of their failure to tender Caste Validity Certificates within stipulated period, deserve to be quashed and set aside and the same are accordingly quashed and set aside.

10. In view of quashment of orders passed by the Additional Collector, Ahmednagar, the appeals preferred by the petitioners before the Additional Commissioner, Nashik Division, Nashik, shall stand disposed of.

11. Rule is made absolute in the above terms. There shall be no order as to costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE