

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10478 OF 2014

Anant Hanumant Ulahalkar and anr. .. Petitioners

Vs.

Chief Election Commissioner and ors. .. Respondents

Mr.P.D. Dalvi i/b Mr.Balasaheb Deshmukh, for the Petitioners.

Mr.S.B.Shetye, for Respondent No.1.

Ms.R.A.Salunkhe, AGP for State.

Mr.L.M. Acharya i/b Mr.Anish Khandekar, for Respondent No.4.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

19th DECEMBER, 2016

PC. :

. Rule, returnable forthwith. Heard finally by consent
of the parties.

2. The petitioners pray for following substantive
reliefs : -

(a) Be pleased to issue appropriate writ, order, direction declaring the election of the respondent No.4 is deemed to have been terminated retrospectively and further be declared that the respondent No.4 is disqualified for being a Councilor of respondent No.3 herein for non compliance of the mandatory provision of section 9A of the Act of 1965

and further be pleased to direct the respondents to hold the election qua Ward No. 2 of respondent No.3 for the reasons and circumstances mentioned hereinabove.

(b) During the pendency and final disposal of the above Writ Petition, be pleased to restrain the respondent No.4 herein from discharging her duty as a Councilor of respondent No.3 for the reasons and circumstances mentioned hereinabove.

(c) Ad-interim reliefs in terms of prayer clause (d) above.

(d) any other just equitable and consequential relief/order may kindly be passed in favour of the petitioner as this Hon'ble Court may deem fit and proper in the interest of justice.

3. It is an admitted position that respondent No.4 – Manisha Vithal Shinde got elected as a Councilor of Bhore Municipal Council, District - Pune in respect of seat reserved for woman from the backward class of citizen. She had contested the election on the basis of caste certificate issued in her favour as belonging to 'Dhangar(29)'. Admittedly, respondent No.4 obtained caste validity certificate issued from the Caste Certificate Scrutiny Committee No.3, Pune Division, Pune on 29/01/2014.

4. The respondent No.4 was declared elected on 23/06/2013. The validity certificate was issued on 29/01/2014

which was issued beyond the prescribed period of 6 months as contemplated under Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (for short 'Act').

5. By an order dated 11/08/2015, the Division Bench of this Court (Coram : Naresh H.Patil & V.L.Achliya, JJ.) framed certain issues and directed the Registrar (Judicial - I) to place the matter for consideration of the Hon'ble the Chief Justice for appropriate direction for referring the issues to a larger Bench. Accordingly, the issues were referred to a larger Bench.

6. We have perused the judgment of larger Bench pronounced on 09/12/2016. In paragraph 100, larger Bench held as under :

“100] In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is *mandatory*.

Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated

retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councilor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly.”

7. Learned Counsel appearing for the petitioners submits that in view of the pronouncement made by larger Bench, the Petition is required to be allowed in terms of prayer clause (a).

8. Learned Counsel appearing for respondent No.4 seeks 2 week's interim protection as the election of the respondent No.4 shall be deemed to have been terminated retrospectively and she would be disqualified for being a Councilor. Learned Counsel submits that this is a case where respondent No.4 had secured a certificate of validity, but the same was issued beyond the period of 6 months.

9. In view of the pronouncement of judgment of larger Bench on the issues referred and more precisely, in view of the opinion expressed in paragraph 100 of the judgment

pronounced on 09/12/2016, we do not find it reasonable and proper to grant further protection in favour of respondent No.4.

O R D E R

(a) The Petition stands partly allowed. The election of respondent No.4 - Manisha Vithal Shinde as a Councilor of the Municipal Council, Bhore, District – Pune stands terminated retrospectively.

(b) Respondent No.4 is declared as disqualified to be a member of the Bhore Municipal Council for non compliance of mandatory provisions of Section 9A of the Act.

10. Rule is partly made absolute in the above terms.

11. At this stage, learned Counsel appearing for respondent No.4 submits that the operation of the order passed by this Court shall be stayed for a period of 2 weeks so that respondent No.4 would approach the Apex Court for raising appropriate issues.

12. Request is opposed by the learned Counsel appearing for the petitioners in view of the pronouncement made by

larger Bench.

13. In view of the pronouncement made by larger Bench and opinion expressed on the issues framed, we are not inclined to stay the operation of the order passed by us. Request stands rejected.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)