

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.1035 OF 2017

Shri. Kishor Tanaji Pawar and others

..Petitioners

Versus

Shri. Ajay Ramesh Bharati and others

..Respondents

Mrs. Mugdha J. Patil for the Petitioners.

Mr. Pratap Patil for the Respondent No.1.

Mrs. V. S. Nimbalkar, AGP for the Respondent Nos.2 to 4.

CORAM : R. M. SAVANT, J.

DATE : 25th JANUARY, 2017

PC.

1 The order dated 26.12.2016 passed by the Additional Commissioner, Konkan Division, allowing the Appeal filed by the Respondent No.1 herein and thereby setting aside the order dated 12.11.2014 and consequently disqualifying the Petitioners as members of the Gram Panchayat, Mankivali, Taluka Khalapur, District Raigad is taken exception to by way of the above Petition. The said disqualification is under Section 10-1A of the Maharashtra Village Panchayats Act (For short "the MVP Act"). The said provision postulates that a person who has contested election to a seat reserved for the Scheduled Castes, Scheduled Tribes or Backward Class, as the case may be, has to produce his Caste Validity Certificate within a period of six months from the date on which he is declared as elected. In fact he is required to submit an undertaking

to the said effect at the time of filing his nomination. The proviso to Sub Section (ii) to the said Section posits that if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.

2 Since the provision was silent as regards who has to take the action in terms of the said proviso, the State Government has vide resolution dated 04.08.2016 has clarified that it would be the Collector of the District who has required to take the action as posited in the proviso.

3 In view of the fact that the Petitioner Nos.1 and 4 herein who contested the seats meant for Scheduled Tribes, and the other Petitioners in the seats meant for OBC and NT and since they had not produced their Caste Validity Certificates as mandated by Section 10-1A of the MVP Act as also since the Collector Raigad has not taken any action in terms of the said proviso that an application came to be moved by the Respondent No.1 herein for the disqualification of the Petitioners under the said provision. In view of the fact that the Petitioners were issued Caste Validity Certificates by the concerned Caste Scrutiny Committees which certificates they had produced albeit beyond the period prescribed in the

said provision, the Additional Collector, Raigad, rejected the application filed by the Respondent No.1 by order dated 12.11.2014.

4 The Respondent No.1 thereafter filed an Appeal under Section 16(2) of the MVP Act against the said order passed by the Additional Collector. The Appellate Authority i.e. Additional Commissioner, Konkan Division, has by the impugned order allowed the Appeal filed by the Respondent No.1 and thereby set aside the order passed by the Additional Commissioner dismissing the application filed by the Respondent No.1. The Appellate Authority was of the view that the Petitioners have fallen foul of the said provision in view of the fact that they have not complied with the same in the matter of producing their Caste Validity Certificates within the time stipulated in the said provision. The Additional Commissioner has relied upon the judgment of the Full Bench of this Court rendered in Writ Petition No.10478 of 2014 now reported in 2017(1) Mh.L.J. 431 in the matter of Anant H. Ulhalkar. and another Vs. Chief Election Commissioner and others, wherein the Full Bench has held that the said provision would have to be strictly construed and if a person who has contested a seat meant for the reserved category does not produce the Caste Validity Certificate within the time stipulated in the said provision, then the corollary to the same would be the automatic disqualification under the said provision. The

Additional Commissioner therefore as indicated above, has by the impugned order allowed the Appeal filed by the Respondent No.1.

5 It was sought to be contended on behalf of the Petitioners by the Learned Counsel that the Appeal filed before the Additional Commissioner more than six months after the order came to be passed by the Additional Collector and that without condoning the delay, the Appeal was allowed. In my view, it is not possible to accept the said contention, as indicated hereinabove, if there is a non-compliance of the requirement of Section 10-1A of the MVP Act by a person who has contested on a seat meant for the reserved category, the Collector has to take action by disqualifying the Petitioners retrospectively from the date of his election. However, since this was not being done that the Respondent No.1 had stepped in and filed an application for disqualification of the Petitioners. Hence even if there was some delay in filing the Appeal, the same would not be of any aid to the Petitioners in view of the fact that the Petitioners have not complied with the mandate of Section 10-1A of the MVP Act. Having regard to the judgment of the Full Bench of this Court in *Anant H. Ulhalkar's case (supra)*, wherein the Full Bench has held that the said provision would have to be strictly construed and since the Petitioners have admittedly not produced the Caste Validity Certificates within the time stipulated in Section 10-1A of

the MVP Act, the necessary consequence of the same would have to follow on the date when the six months period had got over and therefore, merely because the Appeal was filed by the Petitioners more than six months of the order being passed by the Additional Collector would not in any way aid or assist the Petitioners. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]