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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3482 OF 2017

Smt. Kamal Kailas Giri @ Kamal Bapu Bharti .. Petitioner

Versus

State of Maharashtra and ors. .. Respondents

Mr. Chitamani Bhangoji i/by Mr. R. K. Mendadkar for petitioner.
Mrs. R. A. Salunkhe, AGP for State.

CORAM: NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

APRIL 10, 2017.

P.C.

1. The petitioner contested election from a reserved seat. She claims herself to be belonging to Gosavi Nomadic Tribe (B). She was declared elected as a member from Ward No.2 of the Grampanchayat, Shindewadi on 7/8/2015. The caste validity certificate was granted to the petitioner on 4/4/2016. By an order dated 2/11/2016, the Collector, Satara, disqualified the petitioner as she failed to produce caste validity certificate within six months from the date on which she was declared elected.

2. The petitioner approached this court by filed Writ Petition No.

12594 of 2016 challenging the order dated 2/11/2016, dis-qualifying the petitioner for non-compliance of Section 10-1A of the Maharashtra Village Panchayat Act, 1959 (for short the Act of 1959). By an order dated 17/11/2016, said petition came to be disposed of in view of the availability of statutory remedy under Section 16(2) of the Act of 1959.

3. By an order dated 28/11/2016, the Divisional Commissioner, Pune granted stay till the next date i.e. 19/12/2016 (Exh. H-1). In view of the Full Bench decision of this Court in the case of **Anant H. Ulahalkar and anr. vs. Chief Election Commissioner and ors. [2017(1) Bom. C.R.230]**, the Divisional Commissioner, Pune, vacated the stay order on 19/12/2016. Present petition came to be filed 14/3/2017.

4. Learned counsel appearing for the petitioner submits that against the judgment of the Full Bench of this court in the case of Anant H. Ulahalkar (Supra), Special Leave Petition was filed. By an order dated 13/2/2017, the Apex Court passed following order :-

“ Heard the learned counsel for the petitioner and perused the relevant material.

Exemption from filing certified copy of the impugned order(s) granted.

Issue notice.

In the meantime, there shall be stay of the order of the High Court of Bombay dated 9th December, 2016 and dated 19th December, 2016 in Writ Petition No. 10478/2014.

Tag with Special Leave Petition (Civil) Nos. 29874-29875 of 2016.”

The Apex Court stayed the order of this court dated 9/12/2016 and dated 19/12/2016 in Writ Petition No. 10478/2014. Learned counsel for the petitioner, therefore, submits that the order of stay granted by the Divisional Commissioner, Pune, be restored.

5. The second proviso to Section 10-1A of the Act of 1959 reads as under :-

10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate -

.....

(i)

(ii)

Provided further 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 dis-qualified for being a member.

6. In view of the vacation of stay order in the month of December 2016 and the statutory provisions, we are not inclined to grant the relief as prayed for by the petitioner.

7. Petition is accordingly rejected.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(NARESH H. PATIL,J.)