

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO. 1440 OF 2018

Sultana Khatunbi Rasul Mujawar & Anr. ... Petitioner

VERSUS

The Election Commissioner,
State Election Commission, Mumbai & Ors. ... Respondents

.....
Mr G. J. Kore, Advocate for the petitioner
Mr S. G. Karlekar, AGP for respondent/State
Mr Shivaji T. Shelke, Advocate for respondent No. 1
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 06TH FEBRUARY, 2018.

ORDER:

1. The petitioners seek directions against respondent No. 5 to decide their tribe claims on or before 10.02.2018. The petitioners have filed the proposal on 29.01.2018 before Tahsildar and same is returned back. It appears that, the petitioners have not filed any proposal before the Scrutiny Committee. In absence of proposal being filed before the Scrutiny Committee, it will not be possible for us to issue any directions to the Scrutiny Committee.

2. In case the petitioners file proposal seeking verification of their caste claim in a proper form, then respondent no. 5 shall accept

the said proposal for verification and decide it as per law, expeditiously.

3. As far as the prayer of the petitioners of challenging condition no. 6 of the Election Program dt. 22.01.2018 is concerned, the said challenge may not be sustainable. Section 10(1)(a) of the Maharashtra Village Panchayat Act, 1959 reads thus :

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

Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Virnukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000] Mah. XXIII of 2001).

[Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December 2017, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination papers,—

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:

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 disqualified for being a member.].

4. The proviso to Section 10-1A was in force upto 31.12.2017.

As on date, the proviso is not in existence.

5. Bare perusal of Section 10-1A, it is manifest that a candidate who wants to file a nomination paper from a seat reserved for backward class or tribe has to submit validity certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. The statute itself mandates filing of validity certificate along with the nomination form. The condition no. 6 in the Election Program is in consonance with Section 10-1A. The proviso is no longer in force as contended by the respondents. The proviso permitted the candidate to file the caste certificate along with the nomination paper and to submit validity within six months. However, as proviso is no longer in force, Section 10-1A will have to be scrupulously adhered to.

6. The judgment relied by the learned counsel for the petitioners in a case of **Shrikant Chandrakant Saindane v State of Maharashtra and others** reported in **2012(1) Mh.L.J. 787**, would not be of any avail. The Division Bench of this Court in the aforesaid case was considering the condition of submitting validity certificate in cases of appointments i.e. in service matters. The present case is governed by the statutory provision in the form of Section 10-1A of the Act. Right to contest the election is a statutory right and it has to be exercised as per the statutory provision.

7. In light of the above, the prayer of the petitioner cannot be considered. The writ petition is, accordingly, disposed of. No costs.

[**A. M. DHAVAL**]
JUDGE

[**S. V. GANGAPURWALA**]
JUDGE

Punde