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

WRIT PETITION NO. 2603 OF 2017

Vaishali W/o Vijay Narwade & Anr. Petitioners...

Versus

The State of Maharashtra & Ors. Respondents...

.....
Mr Ravindra V. Gore, Advocate for the petitioners
Mrs A. V. Gondhalekar, AGP for respondent/State
Mr Y. V. Kakade, Advocate for respondent No. 4
.....

WITH
WRIT PETITION NO. 2431 OF 2017

Nirmala W/o. Bhaginath Jadhav Petitioner...

Versus

The State of Maharashtra & Ors. Respondents...

.....
Mr S. S. Thombre, Advocate for the petitioner
Mr C. S. Kulkarni, AGP for respondent/State
Mr Rajesh Mewara, Advocate for respondent No. 4
.....

CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.

DATE : 06TH OCTOBER, 2018.

ORAL ORDER:-

1. Heard Mr Ravindra V. Gore, learned counsel for the petitioners, Mrs A. V. Gondhalekar, learned Assistant Government

Pleader for respondent/State and Mr Yuvraj v. Kakade, learned counsel for respondent No. 4.

2. The petitioner was before this Court challenging the order dt. 17.02.2017 passed by the District Collector, Aurangabad, thereby disqualifying the petitioner on the ground that the petitioner failed to submits her caste validity certificate within a period of six months from the date on which she has elected as a member of Gram Panchayat. As the issue was *sub judice* before the Hon'ble Apex Court, the petitioner was protected by this Court vide order dt. 27.02.2017.

3. In ***Petition (s) for Special Leave to Appeal (C) Nos.29874-29875 of 2016 (Shankar Raghunath Devre (Patil) vs. State of Maharashtra and others)***, the Hon'ble Supreme Court vide order dt. 13.02.2017, while dealing with a group of petitions, had stayed the judgment of the Full Bench of this Court in ***Anant H. Ulahalkar and another vs. Chief Election Commissioner and others, 2017(1) Mh.L.J. 431 (FB)*** and such candidates, who have failed to submit their caste/tribe validity certificates within six months, were protected.

4. Now, the Hon'ble Apex Court in the order dt. 23.08.2018 passed in ***Petition (s) for Special Leave to Appeal (C) Nos.29874-29875 of 2016*** *(supra)* observed thus:

> *"In view of the elaborate arguments that have been advanced, we have thought it proper to briefly indicate the reasons for our conclusion.*
>
> *Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act (Act No.59 of 1949) require a member of the Scheduled Castes, Scheduled Tribes or other Backward Classes to enclose with the nomination for election his/her Caste Certificate issued by the Competent Authority and also the Validity Certificate issued by the Caste Scrutiny Committee.*
>
> *A proviso to the aforesaid main provision of the statute was brought in subsequently which permitted a candidate to file his/her nomination even in the absence of the validity certificate provided he/she encloses with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit, within a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.*
>
> *There is a second proviso which contemplates that on the failure of the concerned person(s) to produce the validity certificate within the time frame stipulated his election "shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor".*
>
> *We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be negatory.*

> *Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely, that the legislative intent was to make the provision of the statute mandatory irrespective of individual hardships.*
>
> *We, therefore, are of the view that the High Court of Bombay was perfectly justified in coming to the impugned conclusion on the basis of the reasoning that was adopted, which we hereby affirm. Consequently, we dismiss all the special leave petitions and pending applications.*"

5. In view of the aforesaid position, the petitions fail and accordingly the same are dismissed. Needless to state that, in view of the dismissal of these petitions, interim relief stands vacated automatically.

[MANISH PITALE]
JUDGE

[PRASANNA B. VARALE]
JUDGE

Punde