

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

WRIT PETITION NO. 2607 OF 2017

SHOBHA MANOJ RATHOD @ SHOBHA VINAYAK PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Karad Murlidhar S.
Addl.GP for the Respondents/ State : Mrs.A.V.Gondhalekar.
Advocate for Respondent 5 : Shri Kiran O. Jadhav a/w Shri Vishwas D.
Solanke.

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**CORAM: PRASANNA B. VARALE
AND
RAVINDRA V. GHUGE, JJ.**

DATE :- 12th September, 2018

Per Court :-

1 Heard the learned Advocate for the Petitioner, the learned AGP for the State Authorities and the learned Advocate for Respondent No.5.

2 The Petitioner is before this Court challenging the order passed by the District Collector, Aurangabad dated 09.02.2017.

3 The Petitioner was Respondent No.1 in the proceedings before the Collector. The election of the Petitioner was challenged by Respondent No.5 and the application was submitted under Section 10-1A of the Maharashtra Village Panchayats Act. The Collector on hearing the parties and by assigning the reasons, passed the order thereby, the present

Petitioner, who was Respondent No.1 before the Collector, was held disqualified from acting as the Sarpanch of the Village Panchayat, Parundi Tanda, Taluka Paithan, District Aurangabad in view of the provisions of Section 10-1A of the Maharashtra Village Panchayats Act.

4 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 Honourable Supreme Court vide order dated 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.

5 Relying on the said interim order dated 13.02.2017 passed by the Honourable Supreme Court, the learned Advocate for the Petitioner prayed for interim relief. As such, while issuing notices on 27.02.2017, the Division Bench of this Court was pleased to grant interim stay to the order impugned in this petition. The Division Bench then made it clear that in case the claim of the Petitioner is invalidated, then interim relief shall stand vacated.

6 The learned Advocate for Respondent No.5 submits that now the position of law is crystallized in view of the final order of the Honourable Supreme Court dated 23.08.2018 in *Petition (s) For Special*

Leave to Appeal (C) Nos.29874-29875 of 2016 (Shankar Raghunath Devre (Patil) vs. State of Maharashtra and others), whereby, the Honourable Supreme Court has upheld the view taken by the learned Full Bench of this Court in *Anant H. Ulahalkar (supra)*. He, therefore, submits that this writ petition fails in view of the final order of the Honourable Supreme Court and as such, prays for the dismissal of the petition.

7 Our attention was also invited to the order dated 23.08.2018, which is placed on record. Relevant observations of the Honourable Supreme Court in the order dated 23.08.2018 read 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."

8 On perusal of the order of the Honourable Supreme Court, we find considerable merit in the submissions of the learned Advocate for Respondent No.5. In view of the aforesaid authoritative pronouncement of the Honourable Supreme Court, the only course open for us is to dismiss the petition. Accordingly, this Writ Petition is dismissed.

9 Needless to state that in view of the dismissal of this petition, interim relief stands vacated automatically.

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(RAVINDRA V. GHUGE, J.)

(PRASANNA B. VARALE, J.)