

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2983 OF 2017

SHIVGANGA SHANKAR KADAM AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Undre Vikram S.
AGP for Respondents 1 to 4 : Shri Yadav-Lonikar S.R.
Advocate for Respondent 5 : Shri Madke D.A. h/f Shri Barate A.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 13, 2018

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PER COURT :-

1. This matter involves the issue of the compliance of Section 10(1A) and the proviso thereunder, by which, the Caste Validity Certificate is to be submitted within six months from the date of the election.

2. While issuing notice on 3.3.2017, this Court had protected the petitioners from they being disqualified as the District Collector had already disqualified them and the Divisional Commissioner had refused interim protection while entertaining the appeal, which is still pending.

3. The issue involved in this petition is no longer res integra in view of the Full Bench judgment of this Court in Anant H. Ulahalkar Vs. Chief Election Commissioner and others [2017 (1) Mah. L.J. 437],

concluding that the proviso enabling the elected candidate to submit his Caste / Tribe Validity Certificate within six months from the date of election, is mandatory in nature. This judgment and several other orders passed by this Court under the Maharashtra Village Panchyats and Maharashtra Zilla Parishads and Panchayat Samities Act were assailed in several matters before the Honourable Supreme Court. By judgment in Shankar Raghunath Devre (Patil) Vs. State of Maharashtra - SLP(C) Nos.29874-29875 of 2016, delivered on 27.6.2018], the Honourable Apex Court has sustained the view taken by the learned Full Bench. As such, the proviso to Section 10(1A) prescribing six months' period is considered to be a mandate.

4. On 11.10.2018, the Maharashtra Government has introduced Maharashtra Ordinance No.XXI of 2018, dated 11.10.2018, thereby replacing the words 'six months' in the two proviso below Section 10(1A) and similar proviso to Section 9A of the 1965 Act and Section 12A of the Maharashtra Village Panchayat and Zilla Parishads Act, with the words 'twelve months' making it applicable from 31.3.2016 in so far as Maharashtra Village Panchayat Act is concerned.

5. Learned counsel for petitioner No.2 - Sou. Geetabai submits that

her Caste Validity Claim has been invalidated. On behalf of petitioner No.1, it is contended that though her elections were held on 7.8.2015, she received the Caste Validity Certificate on 24.5.2017. She had submitted the said Certificate to the Tahsildar and the Block Development Officer on 16.6.2017. It is, therefore, prayed that the 2018 Ordinance would not affect her and Clause 8 of the Ordinance would rescue her.

6. This issue has been dealt with in extenso in the order passed by this Court in Writ Petition Nos.2688 of 2017 and 2883 of 2017 on 10.12.2018, concluding that a candidate has to be covered by Clause (2) of the Ordinance, which is made applicable only from 31.3.2016 and elections held prior thereto, are not covered. It is also held that Clause (8) of the Ordinance will not assist those candidates, whose date of elections are prior to 31.3.2016.

7. For all the reasons set out in the said judgment dated 10.12.2018, this petition is dismissed as petitioner No.1 cannot be protected in view of the law crystallized by the Honourable Apex Court, the learned Full Bench of this Court and in view of the interpretation of Clauses (2) and (8) of the Ordinance 2018 in the order dated 10.12.2018.

8. Consequentially, the pending Appeal No.CR-44 of 2017, filed by petitioner No.1 Sau. Shivganga would not survive and is rendered infructuous. The same, therefore, stands disposed off. Needless to state, the appeal preferred by petitioner No.2 Sau. Geetabai also stands disposed off since her caste claim has already been invalidated.

(RAVINDRA V. GHUGE, J.)

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