

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

WRIT PETITION NO. 6371 OF 2017

**BIBI BI MAHMOOD PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Shri A. S. Bayas
AGP for Respondent Nos. 1, 2 and 7 : Shri S. R. Yadav
Advocate for Respondent No. 5 : Shri S. N. Lute

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 13th AUGUST, 2018.**

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PER COURT :

1. I have heard the learned Advocate for the petitioner, the learned AGP on behalf of respondent Nos. 2 and 7 and the learned Advocate on behalf of respondent No.5. Rest of the respondents though served, have not entered an appearance.

2. The petitioner is before this Court against as interlocutory order passed by the Additional Divisional Commissioner, Aurangabad dated 20/04/2017, by which, an interim protection against the order of disqualification issued by the District Collector dated 17/03/2017, has not been granted.

3. It is obvious that the Appeal preferred by the petitioner is still pending before the Additional Divisional Commissioner. The said Appeal has to be heard and adjudicated upon.

4. Since the Appeal is pending I am refraining from going into the merits of the contentions of the petitioner, which are to be gone into while dealing with the Section 10-1A proceedings under the Maharashtra Village Panchayats Act, 1958 (Act).

5. The learned Full Bench of this Court in ***Anant H. Ulahalkar and another Vs. The Chief Election Commissioner [2017(1) Mh.L.J.431]***, observed that when an elected candidate does not tender his Caste/Tribe Validity Certificate within six months from the date of the results of the elections, would render him disqualified and the election would stand set aside from the date of the results.

6. In the instant case, the issue is not simplicitor with regard to non production of the Validity Certificate. The issue is also with regard to the Caste Certificate which is said to have

been acquired by the petitioner and the District Collector as well as the Additional Divisional Commissioner have noticed that the origin of the Caste Certificate is itself doubtful. The Caste Certificate may not have been issued by a competent authority, which led to the conclusion that the Caste Certificate could be bogus or a manufactured document. Since the District Collector as well as the Additional District Collector found the Certificate to be suspicious, interim relief was not granted by the Divisional Commissioner.

7. I have gone through the order passed by this Court (Coram : M. S. Sanklecha, J.) dated 04/05/2017. I find that the petitioner has not drawn the attention of this Court to the sanctity of the Caste Certificate. This Court relied upon the order of the Honourable Supreme Court dated 23/01/2017 in Special Leave Petition Nos. 29874-29875/2016 and granted ad interim relief to the petitioner.

8. It is not humanly possible for any judge to read every page of the Writ Petition, threadbare. There are more than 100 matters on the daily board. The Court always relies upon

the assistance of the learned Advocates. The petitioner should have fairly pointed out to this Court that there is a suspicion in this case with regard to the sanctity of the Caste Certificate. This should have been brought to the notice of this Court when ad interim protection was granted on 04/05/2017.

9. The learned Advocate for respondent No. 5 places on record a communication from the Tahsildar dated 07/11/2015 addressed to him. Same is marked at Exhibit 'X' for identification. It appears from the said communication that the Tahsildar informs that this petitioner was never granted any certificate bearing the number. The register from the said office indicates that the Certificate presented by this petitioner is not issued by the concerned office.

10. Considering the above, since this Court has already granted relief on 04/05/2017, in view of the order passed by the Honourable Apex Court, the said relief is being continued and this petition is disposed off subject to the following directions :-

(a) The Additional District Divisional Commissioner

while deciding the Appeal No. CR 71/2017 filed by this petitioner, shall consider as to whether, a competent authority had issued the Caste Certificate.

(b) In the event it is concluded that the Caste Certificate tendered is bogus or fictitious, said authority shall pass appropriate orders in the pending Appeal, keeping in view the order passed by the Honourable Apex Court dated 23/01/2017.

(c) The Additional Commissioner would be at liberty to forward the copy of its order to the Divisional Caste Certificate Scrutiny Committee, Aurangabad, with whom the claim of the petitioner is said to be pending, for issuance of the Caste Validity Certificate. The said committee while independently deciding the claim of this petitioner, would also consider the observations of the Additional Divisional Commissioner.

(d) The petitioner as well as respondent No. 5 shall appear before respondent No. 7 on 27/08/2018 at 11.00 a.m. They shall not seek an adjournment.

(e) The petitioner shall produce a copy of this order before respondent No.7.

(f) Respondent No. 5 is at liberty to place the copy of the document Exhibit 'X' before respondent No.7.

(g) Considering the peculiar facts of this case and since this Court has granted ad interim protection on 04/05/2017, respondent No. 7 shall proceed to decide the Appeal of the petitioner with urgency and shall conclude the hearing and pass a reasoned order on or before 30/09/2018.

(RAVINDRA V. GHUGE, J.)

shp/-