

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

WRIT PETITION NO. 10699 OF 2018

**SHESHERAO BAJIRAO GADADE
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER, AURANGABAD AND
OTHERS**

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Advocate for the Petitioner : Shri Vishal A. Bagal Patil.
AGP for Respondents 1 to 3 : Shri B.A.Shinde.
Advocate for Respondent 4 : Shri A.S.Kakade h/f Shri V.D.Salunke.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th September, 2018

Per Court:

1 The Petitioner/ original Complainant is aggrieved by the order of the District Collector dated 21.03.2017 thereby, rejecting his complaint against Respondent No.4, who was elected as a member of the Village Panchayat from the ward, which was reserved for the "Other Backward Class" category. The Petitioner is also aggrieved by the order of the Additional Divisional Commissioner dated 21.07.2017 by which, his appeal has been rejected.

2 The learned Advocate for the Petitioner has submitted that the results of the village panchayat elections were declared on 03.11.2015 wherein, Respondent No.4 was elected from the ward, which was meant

for the above reserved category. Respondent No.4 was, therefore, bound to furnish her caste validity certificate on or before 03.05.2016. Failing to submit such a validity certificate, would result in her disqualification under Section 10-1A of the Maharashtra Village Panchayats Act.

3 The learned Advocate further submitted that the District Collector failed to appreciate the said aspect and has rejected the complaint filed by the Petitioner on the ground that this Court has passed the order on 18.10.2016 in ***Writ Petition No.9180/2016 (Kamal Uttamrao Shinde vs. The State of Maharashtra and others)*** that a candidate cannot monitor the pace of adjudication of his caste claim by the Caste Scrutiny Committee constituted under 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 (Maharashtra Act No.XXIII of 2001) and hence, such a candidate cannot be held responsible for the delay caused in tendering the validity certificate. For similar reasons, the Additional Divisional Commissioner has rejected the appeal of the Petitioner.

4 The learned Advocate for the Petitioner has placed reliance upon the judgment of the Honourable Supreme Court in ***Petition (s) For Special Leave to Appeal (C) Nos.29874-29875 of 2016 (Shankar Raghunath Devre (Patil) vs. State of Maharashtra and others)*** and a

group of cases decided on 23.08.2018 by which, the Honourable Supreme Court has upheld the view taken by the learned Full Bench of this Court in the matter of *Anant H. Ulahalkar and another vs. Chief Election Commissioner and others, 2017 (1) Mh.L.J. 431 (FB)*.

5 It is submitted that Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 is identical to Section 10-1A of the Maharashtra Village Panchayats Act and the view taken by the learned Full Bench of this Court and the Honourable Supreme Court would *pari materia* apply to the cases under Section 10-1A of the Maharashtra Village Panchayats Act.

6 The learned Advocate for Respondent No.4 has strenuously defended the impugned orders. He submits that both the Authorities below have concurrently concluded that Respondent No.4 cannot be held responsible for the delay caused in the scrutiny of her caste validity claim. It is not within her means to have the caste claim decided out of turn expeditiously when hundreds of candidates are standing in queue for validation of their claims. Respondent No.4 had submitted the proof of her pending validity claim while submitting her nomination papers and as such, both the Authorities below have rightly protected her.

7 The learned AGP appearing on behalf of Respondent Nos.1, 2 and 3 submits that as the judgment of the learned Full Bench of this Court in *Anant H. Ulahalkar* (supra) was stayed by the Honourable Supreme

Court and in view of the directions of the learned Division Bench of this Court vide order dated 08.06.2017 in *Writ Petition No.4090/2017 (Smita Pandurang Lad vs. The State of Maharashtra and others)* and other connected matters, such pending litigations were to be adjourned sine die till the Honourable Supreme Court would decide the pending appeals. However, now that the Honourable Supreme Court has delivered its judgment in *Shankar Raghunath Devre (Patil)* (supra) on 23.08.2018 and since the view of the learned Full Bench of this Court in *Anant H. Ulahalkar* (supra) has been sustained, Respondent No.4 cannot survive the clutches of Section 10-1A of the Maharashtra Village Panchayats Act.

8 I find that the date of election results being 03.11.2015, Respondent No.4 was bound to submit her caste validity certificate to the competent authority by tendering it on or before 03.05.2016. The fact that she has furnished the validity certificate dated 13.05.2016 before the competent authority on 30.05.2016, would clearly exclude the case of Respondent No.4 from the protection of Section 10-1A of the Maharashtra Village Panchayats Act.

9 In the light of the above and in view of the observations of the learned Full Bench of this Court in paragraphs 61 to 70 and 99 of the *Anant H. Ulahalkar* judgment (supra), Respondent No.4 has incurred the disqualification from the date of her election. In *Shankar Raghunath*

Devre (Patil) (supra), the Honourable Supreme Court has considered the three issues framed by the learned Full Bench and which are reproduced on page 5 of the order dated 23.08.2018. On these three issues, the Honourable Supreme Court has concluded that the learned Full Bench of this Court has taken an appropriate view.

10 In view of the above, this Writ Petition is allowed. The impugned orders dated 21.03.2017 and 21.07.2017 are quashed and set aside. The complaint filed by the Petitioner on 16.06.2016 before the District Collector, Jalna stands allowed. Respondent No.4 has, therefore, incurred the disqualification under Section 10-1A of the Maharashtra Village Panchayats Act and therefore, stands disqualified from the date of her election.

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(RAVINDRA V. GHUGE, J.)

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