

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 65 OF 2017

SAVITA VILAS TELANGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri V.M.Humbe
AGP for Respondents 1 to 4 : Smt. A.V.Gondhalekar
Advocate for Respondent 5 : Shri A.S.More

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CORAM : PRASANNA B. VARALE & RAVINDRA V. GHUGE, JJ.
Dated: September 10, 2018

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PER COURT :-

1. Heard learned counsel for the petitioner.
2. The petitioner submits that respondent No.6 has contested the election for the Gram Panchayat Mankeshwar, Taluka Bhoom, District Osmanabad and though it was the requirement for a candidate contesting the election as a Member of the Reserved Category and claiming such benefit, to submit the Validity Certificate within the stipulated period, such certificate was not submitted.
3. The petitioner, on this premise, prayed for allowing the Writ Petition in terms of prayer clauses (B). He further submits that he is not pressing the other prayers, including prayer clause (H) and only concentrating on prayer clause (B).

4. This Court (Coram : V.M.Kanade and Sangitrao S. Patil, JJ.) has issued notices to the respondents, making it returnable on 19.1.2018. The petitioner was also permitted to serve respondent Nos.5 - Gram Panchayat and respondent No.6 - the candidate, whose disqualification is sought for by way of present petition, by Hamdast. Shri More, learned Advocate appeared on behalf of respondent No.5. However, inspite of notice being duly served on respondent No.6, none appeared for respondent No.6 nor respondent No.6 is present in the Court. We have formed an opinion that respondent No.6 is not interested in contesting this petition.

5. Apart from this, the petitioner has relied upon the latest decision of the Honourable Supreme Court in Petitions for Special Leave to Appeal (C) Nos. 29874-29875 of 2016 (Shankar Raghunath Devre Vs. State of Maharashtra and others), dated 23.8.2018. The Honourable Apex Court, while considering the decision of the Full Bench of this Court in Writ Petition No.5686 of 2016 dated 2.9.2016 and in Review Petition No.201 of 2016 dated 1.10.2016, has observed thus:-

" 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."

(Emphasis supplied).

6. Considering these facts, we are of the clear opinion that no other course is open for us, except to allow this petition in terms of prayer clause (B).

7. Accordingly, Writ Petition is allowed in terms of prayer clause (B).

(RAVINDRA V. GHUGE, J.)

(PRASANNA B. VARALE, J.)

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