

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2213 OF 2017
WITH
CIVIL APPLICATION NO. 653 OF 2017

Purshottam Chhagan Chouhan. ... Petitioner.
V/s.
The Commissioner, Kalyan Dombivli
Municipal Corporation and others. ... Respondents.

Mr.Balkrishna G. Tangsali for the petitioner.
Mr.Prashant Kamble i/b. Mr.A.S.Rao for the respondent No.1.
Mrs.R.A.Salunkhe, AGP for the respondent Nos.2 to 4.
Mr.Mayur Jadhav i/b. Mr.Sachindra B. Shetye for the respondent No.5.
Mr.Akshay S. Deshpande i/b. Mr.Sagar A. Joshi for the applicant.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 20th June 2018.

P.C.:

Perused the order of the Apex Court dated 23rd April 2018. In view of the said order, out of turn priority is being given to the hearing of this petition.

2. The petitioner claims that he belongs to the caste which has been notified as a Scheduled Caste. The petitioner contested general ward elections of the Kalyan Dombivli Municipal Corporation (for short "KDMC") for Ward No.40 on a seat reserved for the Scheduled Caste. On

2nd November, 2015, the petitioner was declared as elected. The petitioner was granted cast validity certificate on 26th October 2016 by the Caste Certificates Scrutiny Committee. According to the case of the petitioner, the validity certificate was handed over to him on 28th November 2018.

3. In view of the second proviso to section 5B of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”), by an order 30th November 2016 passed by the State Government, the petitioner was declared as disqualified as he did not produce the caste validity certificate within the stipulated period of six months from the date of his election. On the basis of the said order, the Municipal Commissioner passed an order dated 8th December 2016 declaring that the petitioner's election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councilor. These are the two orders which are essentially challenged by the petitioner in this petition under Article 226 of the Constitution of India.

4. The first submission of the learned counsel appearing for the petitioner is that on 26th September 2015, the petitioner had applied to the Caste Scrutiny Committee for grant of caste validity certificate and for no fault on his part, the Caste Scrutiny Committee delayed the proceeding. He relied upon the Roznama of the proceeding maintained by the Caste Scrutiny Committee. He submitted that his application was pending on the date on which the general ward elections were declared in October 2015. He submitted that the caste validity certificate which was

eventually issued was submitted by the petitioner to the Municipal Commissioner on 1st December 2016.

5. The learned counsel for the petitioner submitted that the issue whether the requirement of producing caste validity certificate as per section 5B of the said Act of 1949 is mandatory or directory is not yet finally decided. He pointed out that by a judgment and order dated 9th December 2016 passed by the Full Bench of this Court in Writ Petition No.10478/2014, the Full Bench interpreted more or less similar provision contained in section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short “the said Act of 1965”) and held that the period of six months to produce the caste validity certificate is mandatory and the failure to produce caste validity certificate within the stipulated period of six months will render determination of the election of the elected councilor. He pointed out that the decision of the Full Bench has been stayed by the Apex Court in Special Leave Petition (SLP) while issuing a notice. The submission of the learned counsel for the petitioner is that till the disposal of SLP before the Apex Court, the petitioner may be protected.

6. We have considered the submissions. Section 5B of the said Act of 1949 reads thus:

“5B. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be

required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of 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.

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2017, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing the nomination papers but who has not received the validity certificate on the date of filing of the nomination papers shall submit, along with the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that he shall submit, within a period of six months from the date of his election, the validity certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the validity certificate within a period of six months from the date of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being Councillor.”

(underline supplied)

7. By the judgment and order dated 9th December 2016, the Full

Bench of this Court had an occasion to consider the provision of section 9A of the said Act of 1965 which reads thus:

“9A. Person contesting election for reserved seats to submit Caste Certificate and Validity Certificate:

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or (before the 31st December 2013), in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination paper,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that, he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee; Provided further that, if the person fails to produce the Validity Certificate within a period of six months from the date on which he is declared

elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.”

(underline supplied)

The questions which were to be answered by the Full Bench are in paragraph-2 of the said judgment which read thus:

“(i) Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councilor is mandatory in nature?

(ii) Whether the failure on the part of person elected as councilor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect?

(iii) Whether the validation of caste claim of elected Councilor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councilor with retrospective operation?”

In paragraph-100, the Full Bench answered the said questions. Paragraph-100 of the said judgment reads thus:

“100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to Section 9A if a

person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly.”
(underline supplied)

8. It is true that while issuing notice in SLP, the Apex Court has stayed the said judgment of the Full Bench. However, the law of precedents is very clear. So long as the said judgment of the Full Bench dated 9th December 2016 is not set aside, this Court will continue to be bound by the said judgment.

9. Thus, the provision incorporated by second proviso to section 5B of the said Act of 1949 is mandatory which has consequence of determination of election of a successful candidate with retrospective effect.

10. In the present case, the result of the election was declared on 2nd November 2015. The petitioner was aware of the requirement of producing caste validity certificate within six month. Even assuming that the Caste Scrutiny Committee unnecessarily delayed the proceeding, the petitioner could have easily approached this Court for writ of mandamus against the Caste Scrutiny Committee. Admittedly, the caste validity certificate was not submitted by the petitioner within the period of six

months from 2nd November 2015. On 30th November 2016, the Urban Development Department of the State Government passed an order holding that the petitioner stands disqualified. The petitioner produced the caste validity certificate with KDMC on 1st December 2016.

11. Considering the law which continues to bind this Court, we cannot find fault with the view taken by the State Government as well as by KDMC that the election of the petitioner stood determined by virtue of second proviso to section 5B of the said Act of 1949.

12. Hence, no case for interference under writ jurisdiction is made out. Writ petition is rejected. In view of rejection of writ petition, civil application does not survive and the same stands disposed of accordingly.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)