

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9956 OF 2017

Kavita Bharat Vairage

...Petitioner

Versus

The State Election Commission & Ors.

...Respondents

Mr. V.P. Sawant, i/by Mr. Nitin S. Dhumal, for the Petitioner.

Mr. Rishin Mantri, i/by Mr. S.B. Shetye, for the Respondent No.1.

Mr. Manoj M. Badgujar, i/by Mr. Abhijit P. Kulkarni, for the Respondents No. 2 & 3.

Mrs. R.A. Salunkhe, AGP, for the Respondents No. 4 & 5.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 2 April 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner. Prayer (b) of this Petition reads thus:-

“That this Hon'ble Court may be pleased to issue appropriate Writ, Order or direction declaring that the provisions of Section 5B of the Maharashtra Municipal Corporation Act of submission of caste Validity Certificate within six months is not mandatory and be pleased to further hold and declare that the petitioner has not incurred disqualification due to delayed submission of cast validity certificate.”

2. Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial townships Act, 1965 (for short “the said Act of 1965”) is similar to Section 5A of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). Section 9A of the said Act of 1965 has been interpreted by a Full Bench of this Court in the case of **Anant H. Ulahalkar & Anr. Vs. Chief Election Commissioner & Ors**¹. The

¹ 2017(1) Mh.L.J. 431

Full Bench has held that Section 9A is mandatory. It is pointed out that the said Judgment of the Full Bench has been stayed by the Apex Court pending a Special Leave Petition. The legal position is undisputed. Even if a Judgment of this Court is stayed, this Court continued to be bound by it. Therefore, so long as it is not set aside, in this Petition we are unable to grant a declaration that Section 5A of the said Act of 1949 is not mandatory.

3. The learned Counsel appearing for the Petitioner relies upon the order of the learned Single Judge dated 17 July 2017 in Writ Petition 14391 of 2016 and other connected matters. This order does not consider the well settled position that notwithstanding the stay granted by the Apex Court, this Court continues to be bound by the Judgment of the Full Bench of this Court. He also relied upon another order dated 16 February 2017 of the Division Bench of this Court in Writ Petition No. 87 of 2017. We have carefully perused the said order. It is an *ad-interim* order, which does not consider the

aforesaid settled legal position regarding the legal effect of the stay granted by the Apex Court.

4. Lastly, he relied upon the decision of this Court in the case of *Smt. Jayashree w/o Pawan Girhe Vs. The State of Maharashtra & Ors.*² along with connected Writ Petitions. In fact, even after noting the order of stay granted by the Apex Court, the Division Bench confirmed the order of disqualification. The order dated 8 March 2017 has been stayed by the Apex Court.

5. As stated earlier, the legal position is undisputed that this Court continues to be bound by the decision of the Full Bench in *Anant H. Ulahalkar & Anr.* (supra). Hence, no case for interference is made out. The Writ Petition is accordingly, rejected.

6. At this stage, the learned Counsel appearing for the Petitioner seeks continuation of an *ad-interim* order passed on

² in WP 10565 of 2016

14 September 2017. Accordingly, we direct that the said *ad-interim* order shall be continue to operate for the period of eight weeks from today.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]