

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1969 OF 2018
IN
WRIT PETITION NO.9580 OF 2017
(The order is corrected pursuant to the order dated 4th January,
2019.)

Smt. Geeta Kiran Bhandari

....Applicant/
Org. Respondent No.5

In the matter of :

Ms. Steffie Morris Kinny

....Petitioner

versus

The State of Maharashtra and ors.

.....Respondents

Mr. Y. S. Jahagirdar, senior advocate with Mr. Chintamani K. Bhangoji,
advocate for the applicant/org.respondent No.5.

Mr. R. S. Apte, senior advocate along with Ms. Puja Acharekar I/b. Mr.
Suhail Khan, advocate for the applicant/original petitioner.

Mrs. Ashwini Anant Purav, AGP for the State.

Ms. Sheetal Mane, advocate for the Corporation.

CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.

DATE : 18th DECEMBER, 2018.

P. C. :

Heard learned senior counsel, learned counsel and learned
AGP appearing for the respective parties.

2. The application is filed for vacating the ad-interim order
granted by this Court on 23rd August, 2017 in the above writ petition.

3. The petitioner contested the elections of the respondent -Corporation from OBC category and got elected on 23rd February, 2017, on the basis of the Caste Certificate. The caste certificate of the petitioner was thereafter sent for scrutiny to the Caste Scrutiny Committee and the District Caste Scrutiny Committee invalidated the said certificate by its order dated August, 2017. Thereafter, the original petitioner approached this Court by filing the aforesaid writ petition. The petition was placed for admission on 23rd August, 2017 and, after hearing both the sides, this Court was pleased to grant ad-interim relief in terms of prayer clauses (c) and (d) which reads as under :

“(c) Pending hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to stay the operation, execution and implementation of the impugned Order and decision of the Respondent No.2, which is at Exhibit A of this Petition.

(d) Pending the hearing and final decision of this Writ Petition, this Hon'ble Court be pleased to direct the respondent No.3 & 4 and their Officers, Representatives and/or any other authorized person on their behalf, not to take any steps to deprive, prevent and/or unseat the Petitioner from the post of Corporator/Counsellor of Ward No.32 of Respondent No.3”

4. Mr. Jahagirdar, learned senior counsel for the applicant, does not seriously object to the ad-interim relief granted in terms of prayer clause (c). He, however, has strong objection for continuance of the ad-

interim relief granted in terms of prayer clause (d). Mr. Jahagirdar invited our attention to the decision of Full Bench of this Court in **Anant H. Ulahalkar and anr. Versus Chief Election Commissioner and ors. 2017 (1) Bom.C.R. 230** and submitted that the same was challenged in the Supreme Court and at the relevant time (when the interim relief was granted), the petition was pending in the Supreme Court. He submitted that, however, the Supreme Court subsequently upheld the said decision of the Full Bench of this Court and, therefore, the ad-interim relief in terms of prayer clause (d) referred above should not be continued.

5. Mr. Apte, learned senior counsel for the petitioner, vehemently opposed the application. He does not dispute that the Full Bench decision is confirmed by the Apex Court. However, he wants to challenge the provisions under which the period is fixed for submitting the petitioner's validity certificate. He submitted that he has already made an application to amend the petition.

6. Having considered the rival submissions, we find substance in the submission of Mr. Jahagirdar, learned senior counsel. The question which fell for consideration before the Full Bench in the case of **Anant H. Ulahalkar (Supra) were as follows :**

(i) Whether the time limit prescribed under section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and

Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councillor is mandatory in nature?

(ii) Whether the failure on the part of person elected as Councillor 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 Councillor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councillor with retrospective operation?

We are concerned with the question at serial No.(ii). This question is answered by the Full Bench in paragraph 94. The Full Bench held that on failure on the part of the elected Councillor to produce the Validity Certificate within the stipulated period would automatically result in termination of his election with retrospective effect. As stated above, this decision is confirmed by the Apex Court. In the above facts and circumstances, the petitioner has no scope to challenge the provisions under which the period is fixed for submitting the validity certificate.

7. There is no dispute that the petitioner got elected on

23rd February, 2017 as a Councillor and the petitioner has failed to produce the validity certificate within the stipulated period of 6 months (after amendment- period of one year) from the date of election. The petitioner's claim that she belongs to OBC Category is invalidated by the Caste Scrutiny Committee and the same is sub judice in the above petition. In the circumstances, we are of the considered opinion that the interim relief granted in terms of prayer clause (d) cannot be continued and the same is, therefore, vacated. The civil application is, accordingly, made absolute in the above terms and is disposed of such.

[REVATI MOHITE DERE, J.]

[RANJIT MORE, J.]