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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 164 OF 2018
IN
WRIT PETITION NO. 2200 OF 2017

Anil Anant Thakur & anr. .Petitioners

Vs.

The Additional Collector, District-Palghar & ors. .Respondents

Mr. Prashant Bhavake, Advocate, for the Petitioners
Mr. Anil D'Souza, Advocate, for the Respondent No. 2
Mr. Yuvraj Patil, AGP, for the Respondent Nos. 1, 3, 4, 6 & 7

CORAM : REVATI MOHITE DERE, J.

DATE : 20.12.2018

(IN CHAMBER)

P.C.

. Heard learned counsel for the respective parties.

2. By this Petition, the Petitioners seek Review of the Judgment & Order dated 05.10.2018 passed by this Court (Coram : Revati Mohite Dere, J.) in the aforesaid Writ Petition.

3. Mr. Bhavake, learned counsel for the Petitioners

submits that the order dated 05.10.2018 passed by this Court dismissing the Petition ought to be re-called in view of the subsequent development i. e. in view of the Ordinance passed by the Government of Maharashtra amending Section 10-1A of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance, 2018 (For the sake of brevity hereinafter referred to as 'the Ordinance'). He submits that in view of the Ordinance, dated 11.10.2018, the Petitioners would now be entitled for protection of the extended period upto 12 months, as the earlier period of “six months” has been substituted by “twelve months”. He submits that the Petitioners were declared to be elected on 09.11.2015 and as such, the 6 months period would expire only on 08.05.2016 and as such, the Petitioners would be covered by the Ordinance / Amendment Act. Learned counsel for the Petitioners has also submitted Written Submissions. The same are taken on record.

4. Mr. D'Souza, learned counsel for the Respondent No. 2 and Mr. Patil, learned AGP opposed the Petition. They submit that

the Review Petition is clearly misplaced, inasmuch, as the Ordinance / Amendment Act would not apply to the Petitioners, they having been elected prior to 31.03.2016 i. e. on 09.11.2015. According to the learned counsels, the Petitioners would be governed by Section 10-1A, as it stood prior to the Ordinance / Amendment. Mr. D'Souza, learned counsel for the Respondent No. 2 and Mr. Patil, learned AGP relied on a Division Bench Order of this Court (***Aurangabad Bench***) (***Coram : S. S. Shinde And K. K. Sonawane, JJ.***) dated ***29.11.2018*** passed in ***W. P. No. 13044 of 2018*** and the Order dated ***10.12.2018*** passed by this Court (***Aurangabad Bench***) (***Coram : Ravindra V. Ghuge, J.***) passed in ***W. P. No. 2688 of 2017 with W. P. No. 2883 of 2017***. They submit that the issue raised in this Petition is squarely covered by the aforesaid two orders.

5. Perused the papers and the orders relied upon by the learned counsel for the Respondents. It is pertinent to note that the aforesaid Writ Petition was admitted on ***11.07.2018*** by this Court (***Coram : R. D. Dhanuka, J.***) and the Petitioners were granted interim relief in terms of prayer clause (c) of the Petition.

Liberty was also granted to the parties to apply for early hearing, depending on the outcome of the Special Leave Petition, which was pending before the Apex Court, wherein the challenge was to the Judgment passed by the Full Bench of this Court, in ***Anant H. Ulahalkar & anr. Vs. Chief Election Commissioner and ors***. Since the Apex Court dismissed the SLP and confirmed the Full Bench Judgment of this Court, the Respondent No. 2 sought early hearing of the aforesaid Writ Petition. Accordingly, the aforesaid Writ Petition was taken up for final disposal. After hearing the parties and having regard to the decision of the Full Bench, which was confirmed by the Apex Court, the aforesaid Writ Petition was dismissed vide order dated ***05.10.2018*** (***Coram : Revati Mohite Dere, J.***) and as such, the orders passed by the Authorities dis-qualifying the Petitioners were confirmed. The present Petition is filed having regard to the amendment made in Section 10-1A of the Maharashtra Grampanchyat and Zilla Parishads (Amendment Act) 2018, wherein the words “six months” have been substituted by the words “”twelve months”. The said substitution has specifically been made effective from 31.03.2016.

6. The question that arises for consideration in the Review Petition is, whether the Petitioners are covered by the Ordinance / Amendment dated 11.10.2018. It is not in dispute that the Petitioners had contested the election of Grampanchayat, Satpala, Taluka – Vasai, District – Palghar which was declared on 09.11.2015. The Petitioner No. 1 had contested the said election from the reserved category (OBC) and the Petitioner No. 2 had contested the said election from the reserved category (OBC WOMEN). On 09.11.2015, both the Petitioners were declared to be elected as members of the Grampanchayat under Section 10-1A of the Maharashtra Village Panchayats Act. As per the provisions of the said Act, the Petitioners were to submit their Caste Validity Certificates within six months from the date of declaration of the results i. e. six months from 09.11.2015. Admittedly, the Caste Validity Certificates were not submitted by the Petitioners within the stipulated period i. e. within six months i. e. on or before 08.05.2016. Admittedly, the Petitioner No. 1 submitted his Caste Validity Certificate on 29.07.2016 (after more than 8 months) and the Petitioner No. 2 submitted

her Caste Validity Certificate on 26.08.2016 (after more than 9 months). As the Petitioners had not submitted their Caste Validity Certificates within the stipulated period as contemplated under Section 10-1A, the Respondent No. 2 filed a complaint before the Additional Collector, Palghar and sought dis-qualification of the Petitioners under Section 10-1A of the Maharashtra Village Panchayats Act. The learned Additional Collector, Palghar was pleased to allow the Application and as such, dis-qualified the Petitioners under Section 10-1A of the Maharashtra Village Panchayats Act. The said order was confirmed by the learned Additional Commissioner vide order dated 31.12.2016. Being aggrieved by the said orders, the Petitioners challenged the same by way of the aforesaid Writ Petition, which was dismissed by this Court vide order dated 05.10.2018, having regard to the Full Bench decision in ***Anant H. Ulahalkar's case,*** which was confirmed by the Apex Court.

7. It is pertinent to note, that a Division Bench of this Court (Aurangabad Bench) in W. P. No. 13044 of 2018 dated

29.11.2018 was called upon to consider whether the amended provision under Section 10-1C had retrospective effect and for a direction to decide the representation with regard to the applicability of G. R. dated 11.10.2018 to the members of the village panchayat, who were elected in 2015. A Division Bench of this Court (Coram : S. S. Shinde And K. K. Sonawane, JJ.) after considering the submissions, observed that the State Government intended to apply the said amendment prospectively and not retrospectively and as such, dismissed the contention of the Petitioners therein, that the G. R. had retrospective effect. The Division Bench rejected the relief sought i. e. to make the amendment applicable with retrospective effect, so as to cover the elections held in 2015. Similarly, this Court (Aurangabad Bench) (Coram : R. V. Ghuge, J.) vide order dated 10.12.2018 passed in W. P. No. 2688 of 2017 with W. P. No. 2883 of 2017 while considering a similar situation as in the present Petition observed that the amendment would apply to those elections which were held on or after 31.03.2016.

8. The relevant provisions which arise for consideration

are reproduced hereinunder for the sake of convenience; Clause 2 of the Maharashtra Village Panchayats Act (Amendment) Ordinance reads thus :-

> *"2. In section 10-1A of the Maharashtra Village Panchayats Act (hereinafter in this Chapter referred to as "Maharashtra Village Panchayats Act"), -*
>
> *(a) in the first proviso, in clause (ii), for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 31st March, 2016;*
>
> *(b) in the second proviso, for the words "six months" the words "twelve months" shall be substituted and shall be deemed to have been substituted with effect from 31st March, 2016;*
>
> *(c) after the second proviso, the following proviso shall be added, namely:-*
>
> *"Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Ordinance, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted*

as "twelve months".".

Section 10-1A prior to its amendment on 11.10.2018 reads as under :-

> "**[10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate** – Every person desirous of contesting election to a seat reserved for 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, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001).
>
> [Provided that, for the General or by-elections for which the last date of filing of nomination falls on or [before the 31st December 2015], in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for 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 paper, shall submit, alongwith 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 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 member.]

By the Ordinance, of 2018, the Government of Maharashtra replaced the words “six months” with the words “twelve months”. In view of the amendment, the provisos below Section 10-1A were made applicable with effect from 31.03.2016. Admittedly, the Petitioners were declared to be elected on 09.11.2015 and as such, ought to have submitted their Caste Validity Certificates

within six months as contemplated under Section 10-1A of the Maharashtra Village Panchayats Act, as it stood prior to amendment. Failure to submit the Caste Validity Certificates within the stipulated period resulted in automatic termination of the Petitioners' election with retrospective effect, having regard to the decision of the Full Bench. It is not in dispute that the election of the Petitioners was held prior to 31.03.2016. Thus, all events occurring prior to 31.03.2016, including the declaration of election prior to 31.03.2016 would be governed by Section 10-1A, as it stood prior to its amendment. The Amendment / Ordinance, 2018 extends the period to submit the Caste Validity Certificates from six months to 12 months with effect from 31.03.2016, and as such the said amendment would apply only to these elections, which were held on or after 31.03.2016.

9. Having regard to the same, there is no merit in the submission advanced by the learned counsel for the Petitioners that the amendment would also apply to them. None of the Petitioners are entitled to the benefit of the 2018 'Amendment to Section 10-1A, as their results were declared before 31.03.2016

and admittedly, the Petitioners had failed to submit their Caste Validity Certificates within 6 months from the date of their election.

10. Considering the aforesaid, the Review Petition, being devoid of the merit stands dismissed.

11. Learned counsel for the Petitioners requests for continuation of the ad-interim relief. Request rejected.

(REVATI MOHITE DERE, J.)