

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 **WRIT PETITION NO.3975 OF 2018**

KAILASH MAGHAJI SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner :Mr. Shermale K. N.
AGP for Respondents No.1, 2 & 4:Mr. N.T. Bhagat
Advocate for Respondent No.3 :Mr. S.T. Shelke
...

CORAM : **RAVINDRA V. GHUGE, J.**

(Dated: March 06, 2019)
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PER COURT :-

1 The petitioner is aggrieved by the order dated 16.9.2016 passed by the Additional Collector, Ahmadnagar in Grampanchayat Dispute No.154/2016 vide which he has been disqualified from continuing as a Member of the Grampanchayat on account of his failure to submit his caste validity certificate within the prescribed limit of six months. He is also aggrieved by the order of the Additional Commissioner, Nasik Division dated 7.2.2017, by which his Grampanchayat Appeal No.233/2017 has been rejected on account of a minor delay.

2 It requires no debate that the issue of disqualification on account of not furnishing of the caste/tribe validity certificate within six months as prescribed under section 10(1)(A) of the Maharashtra Village Panchayat Act has been considered by the learned full bench of this Court in the matter of **Anant H. Ulhalkar versus Chief Election Commissioner (2017 (1) Mh.L.J.431)**. It was concluded that the prescribed period of six months for submitting the caste validity

certificate is a mandate of law. The matter was taken to the Honourable Apex Court and in the matter of ***Shankar S/o Raghunath Devre (Patil) versus State of Maharashtra in Petitions for Special Leave to Appeal (C) Nos.29874-29875/2016***, arising out of the Judgment & Order dated 2.9.2016 in Writ petition No.5686/2016 and 1.10.2016 in R.P.No.201/2016 in W.P. No.5686/2016, the Honourable Apex Court sustained the view taken by the learned full bench.

3 Pursuant to the above, the State of Maharashtra introduced an ordinance on 11.10.2018, by which the time/period for submitting the caste validity certificate was extended and those persons who were elected in the elections held from 31.3.2016 onwards were permitted to submit their caste validity certificates. Thereafter, by an ordinance No.II/2019 dated 13.2.2019, the State of Maharashtra resolved to grant the benefit of belatedly submitting caste validity certificate to such elections which were held between 26.3.2015 to 31.3.2016 for about 19,000 village Grampanchayats.

4 Considering this provision, this Court at Nagpur Bench has passed an order on 25.2.2019 in the matter of ***Priya Rahul Kakade versus The Collector, Akola*** and others in Writ Petition No.968/2017.

5 There is no dispute that the petitioner was elected on 4.8.2015 as a Member of the Grampanchayat. He received the caste validity certificate on 3.10.2016. A statement is made in paragraph No.4 that

after the petitioner received the validity certificate from the committee, he produced the same before the learned Commissioner, Nasik division, Nasik during the hearing in Grampanchayat Appeal No.232/2017.

6 Clause 4 of the Government Ordinance No.II of 2019 causes an amendment to section 8 of the Maharashtra Grampanchayat Act (62 of 2018(LXII/2018) by which it stands amended as follows:-

“ 4. Section 8 of the amendment Act, shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, following sub-section shall be added, namely:-

(2) Notwithstanding anything contained in sub-section (1), any person who has obtained Caste Certificate or Validity Certificate after the 26th March, 2015, but has not filed such certificate within the stipulated period as per provisions of the Maharashtra Village Panchayats Act, shall not be deemed to be disqualified under the provisions of the Maharashtra Village Panchayats Act, if he has already submitted the Validity Certificate to the Competent Authority after expiry of the such stipulated period but before the publication of the Maharashtra Village Panchayats and the Maharashtra Zilla parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019 in the Official Gazette or if he submits such certificate within a period of three months from the date of such publication of said Ordinance, 2019 in the Official Gazette:

Provided that, the provisions of this section shall not apply where the State election Commission has already prior to the date of publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (amendment) Ordinance, 2019 in the Official Gazette has held elections to fill the vacancy of such person or declared the programme for holding of such election. “

7 The learned AGP submits, on instructions, that elections to the Grampanchayat from which the petitioner was disqualified, have still not been declared and the seat is yet to be declared as vacant. The learned Advocate for the petitioners submits that, he has submitted his Caste Validity Certificate on 06/10/2016 before the Additional Divisional Commissioner.

8 Considering the above and keeping in view of the order dated 25.2.2019 passed by this Court at Nagpur in Priya Kokate (supra), this petition is allowed. The impugned orders dated 16.9.2016 and 7.2.2017 are quashed and set aside and the petitioner stands restored to his position as a Member of the Grampanchayat

**(RAVINDRA V. GHUGE),
JUDGE**