

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.873 OF 2018

LATA JALINDER TODMAL @ LATA KERU MAGAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri V. V. Tarde
AGP for Respondent Nos. 1 to 3 : Shri S. W. Munde

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th APRIL, 2019.

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PER COURT :

1. On 24.01.2018, I had passed the following order :-

"1. The petitioner is aggrieved by the order dated 16.9.2016 passed by the Additional Collector, by which, the petitioner has been disqualified as an elected member of Village Gram Panchayat, Jeur, under Section 10(1A) of the Maharashtra Village Panchayat Act for having failed in filing the Caste Validity Certificate within six months from the date of election.

2. The learned Full Bench of this Court in the matter of Anant H. Ulhalkar Vs. Chief Election Commissioner and others [2016 SCC OnLine Bom 9862], has concluded that the provision for furnishing a caste validity certificate within six months from the date of election is mandatory in nature

and failure to do so would lead to the automatic disqualification of the elected member.

3. The Honourable Apex Court has stayed the said judgment in the SLP Nos. 29874-29875 of 2016 and has protected such litigants.

4. Issue notice to the respondents, returnable on 16/3/2018.

5. Learned AGP waives service for respondents.

6. Until the decision of the Honourable Apex Court in the above stated matters, the impugned order shall stayed stayed."

2. The learned Advocate for the petitioner submits that he acquired his caste validity certificate and also tendered it to the appropriate authority. The petitioner has challenged his disqualification under Section 10-1A of the Maharashtra Village Panchayats Act.

3. The learned Advocate for the petitioner now submits that the issue of disqualification on account of non-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.

4. 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 protection to those who have belatedly submitted caste validity certificates in such elections which were held between 26.3.2015 to 31.3.2016 for about 19,000 village Grampanchayats.

5. Considering this provision, this Court at the 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.

6. 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.

7. 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. "*

8. 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 petitioner submits that, he has submitted his Caste Validity Certificate on 03.02.2016 before the Additional Divisional Commissioner.

9. In the light of the above, this petition is allowed. The impugned order dated 06/09/2016 passed by respondent No.2 stands quashed and set aside.

(RAVINDRA V. GHUGE, J.)

shp/-