

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1238 OF 2019

Sangita w/o Gokul Dhanne @
Sangita d/o Punamchand Bhagure
Age : 32 years, Occ: Household,
R/o, Ghardon, Tq. & Dist. Aurangabad ...Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
2. The Collector, Aurangabad
Dist. Aurangabad.
3. Tahsildar, Aurangabad
Dist. Aurangabad.
4. Sub Divisional Officer
Aurangabad Dist. Aurangabad ...Respondents

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Mr. Sagar S. Phatale, Advocate for petitioner
Mr. G. O. Wattamwar, Assistant Government Pleader for
respondents

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CORAM: SUNIL P. DESHMUKH, J.

Date: 7th March, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard
finally with consent of learned counsel for the parties.

2. Petitioner challenges order dated 5th January, 2019 passed by the Collector, Aurangabad, disqualifying her from membership of Grampanchayat, Ghardon taluka & District Aurangabad for non-submission of caste validity certificate within stipulated period under sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act.

3. It appears that petitioner belongs to 'Chambhar', of scheduled caste and had submitted certificate issued by the competent authority through Tahsildar for verification of her caste certificate on 19th September, 2017. Meanwhile, election was held in October, 2017 for the post of Sarpanch of Grampanchayat, Ghardon. Since validity certificate could not be submitted by her within stipulated period, pursuant to sections 10-1A and 30-1A, order dated 5th January, 2019 has been passed by the Collector, Aurangabad disqualifying her.

4. In the interregnum, the government of Maharashtra had promulgated ordinance bearing no. XXI of 2018, dated 11th October, 2018, whereunder, stipulated period for submission of validity certificate had been increased to 'twelve months' in place of prevailing 'six months' and

under clause 3 of the ordinance, such extension had been made effective from 31st March, 2016. Clause 8 of the ordinance reads thus;

" 8. Any person, who has obtained the Caste Certificate and Validity Certificate, but has not filed such certificate prior to the date of commencement of this Ordinance, shall not be deemed to be disqualified under the provisions of the relevant Panchayat law, if he submits such certificate within a period of fifteen days from the date of commencement of this Ordinance:

Provided that, the provisions of this section shall not apply where the State Election Commission has already prior to the date of commencement of this Ordinance held elections to fill the vacancy of such person or declared the programme for holding of such election. "

5. It appears that caste claim of petitioner has been validated under order dated 24th October, 2018, however, it appears that the petitioner had not been supplied with certificate of validity. Petitioner had submitted the order of scrutiny committee validating her claim with the authorities.

6. However, actual validity certificate was not being issued as such and no alternate remedy being available, she had moved division bench of this court under writ petition bearing no. 14208 of 2018, seeking direction to the committee to issue the certificate of validity to the petitioner which is pending. Subsequently, it is stated that certificate of validity had been issued on 14th February, 2019. It is being stated that petitioner has submitted the same on 21st February, 2019 to the concerned authority.

7. In the meanwhile, the State government has issued another ordinance bearing no. II of 2019 dated 14th February, 2019 and clause 4 thereof reads thus;

“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 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. Having regard to the events as have been referred to above, the disqualification for non-submission of caste validity certificate stands stayed and protected under ordinance dated 14th February, 2019 and in the process impugned order dated 5th January, 2019 is rendered untenable.

9. Learned Assistant Government Pleader submits that impugned order passed by the Collector, Aurangabad would not be faulted with having regard to position then prevailing at the time of issuing order, particularly, while the petitioner had already incurred disqualification.

10. Although, learned Assistant Government Pleader has submitted so, yet, in the present peculiar case while the

petitioner has been elected in October, 2017, the ordinance referred to above, promulgated in October, 2018, under clause 8, gives protection to elected member and the decision has been rendered by the scrutiny committee on 24th October, 2018 and had been submitted on 26th October, 2018, before the expiry of period under said clause and certificate of validity had not been issued until 14th February, 2019 and after it was issued, it has been submitted on 21st February, 2019. As such, promulgation of ordinance of 14th February, 2019, completely eliminates disqualification being incurred by petitioner.

11. In the circumstances, Writ petition is allowed in terms of prayer clause (A) and is disposed of.

12. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH, J.]