

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910. WRIT PETITION NO. 1396 OF 2019

Sangita W/o Machchindra Gaikwad
alias Sarla D/o Pandurang Madhikar,
age 38 years occupation household/Member
R/o Pandharpur Taluka and District Aurangabad
...Petitioner

Versus

1. The State of Maharashtra
through the District Collector,
Aurangabad Taluka and District Aurangabad
2. The Sub-Divisional Officer,
Aurangabad Taluka and District Aurangabad
3. The Tahsildar,
Aurangabad Taluka and District Aurangabad
...Respondents

Mr. Ravindra V. Gore, Advocate for petitioner
Mr. G.O. Wattamwar, Asstt. Govt. Pleader for respondents

CORAM: SUNIL P. DESHMUKH, J.

Date: 7th March, 2019

ORAL 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 as a Member of Village Panchayat, Pandharpur Taluka and District Aurangabad for non-submission of caste validity certificate within

stipulated period under section 10-1A of the Maharashtra Village Panchayats Act.

2. After hearing learned counsel for the parties, it appears that lot of events have taken place after bye-election of petitioner as Member of the Village Panchayat in May 2017. It appears that petitioner comes from '*Dhobi*' community falling under Other Backward Class (woman) category. While filing the nomination, she had submitted proof of pending proceedings before the Caste Scrutiny Committee. The Caste Scrutiny Committee had issued the caste validity certificate to her on 26th November, 2018 and she has submitted the same with respondent no.2 on 28th November, 2018. Since validity certificate could not be submitted within stipulated period, pursuant to section 10-1A of the Maharashtra Village Panchayats Act, order dated 5th January, 2019 has been passed by the Collector, Aurangabad, disqualifying her.

3. In the interregnum, the government of Maharashtra had promulgated ordinance bearing no. XXI of 2018, dated 11th October, 2018, where-under, 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. "

4. It appears that claim of petitioner has been validated under certificate dated 26th November, 2018 and accordingly she has submitted the certificate with respondent no.2 on 28th November, 2018. It appears that the present case would be largely covered under observations in writ petition no. 1238 of 2019. Since petitioner has been elected member of Village Panchayat, Pandharpur, she has submitted proof of pending proceedings with the Caste Scrutiny Committee alongwith her nomination and the Caste Scrutiny Committee issued to her caste validity certificate dated 26th November, 2018 and the same had been submitted by petitioner with respondent no.2 on 28th November, 2018 but she was declared to have been

disqualified.

5. Subsequently, the State government has issued 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 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. ”

6. 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 provisions of Ordinance dated 14th February, 2019, and in the process,

impugned order dated 5th January, 2019, is untenable.

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

8. Although, learned Assistant Government Pleader has submitted so, yet, in the present peculiar case while the petitioner has been elected in May, 2017, effect of ordinance dated 14th February, 2019 completely governs the situation negating disqualification incurred by petitioner.

9. In the circumstances, writ petition is allowed in terms of prayer clause (B) and is disposed of.

10. Rule is made absolute accordingly.

(SUNIL P. DESHMUKH)
JUDGE

Madkar