

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1986 OF 2019

Janabai w/o Raju Kale
Age: 34 years, Occu: Household
& Sarpanch of Village Panchayat
Shewata (Kh.)
R/o. Shewata (Kh.), Tq. Phulambri
Dist. Aurangabad. ...Petitioner

Versus

1. The District Collector,
Aurangabad Dist. Aurangabad
2. The Sub Divisional Officer,
Phulambri-Paithan, Dist. Aurangabad ...Respondents

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Mr. Vishal A. Bagal, Advocate for petitioner
Mr. Y.G. Gujarathi, 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 18th January, 2019 passed by the collector, Aurangabad, disqualifying her as *Sarpanch* of Village Panchayat, Shewata (Kh.) taluka

Phulambri dist. Aurangabad for non-submission of validity certificate within stipulated period under section 10-1A and 30-1A of the Maharashtra Village Panchayats Act.

3. It appears that petitioner belongs to '*Kumbhar*' community falling under Other Backward Class category and had submitted certificate issued by the competent authority on 19th July, 2017 for verification. In elections held on 9th October, 2017 for the post of Sarpanch of Shewata (Kh.) taluka Phulambri, district Aurangabad, petitioner was elected. Since validity certificate could not be submitted by her within stipulated period, pursuant to sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act, order dated 18th 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.

5. While the claim of petitioner had been validated under decision of scrutiny committee dated 23rd October, 2018, copy of decision had been submitted by petitioner on 1st November, 2018. However, the petitioner had not been supplied with certificate of validity. She had been supplied with validity certificate later by the scrutiny committee.

6. 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 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. Having regard to the events as have been referred to above, the disqualification for non-submission of caste validity certificate stands stayed and protected by aforementioned clause under ordinance dated 14th February, 2019 and in the process, impugned order dated 18th January, 2019, is rendered untenable.

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

9. Although, learned Assistant Government Pleader has submitted so, yet, in the present peculiar case while the petitioner has been elected in October, 2017, yet, the effect of ordinance of 14th February, 2019 completely

governs the situation negating disqualification incurred by petitioner.

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

11. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

vdk