

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

919. WRIT PETITION No. 3264 of 2019

Pushpa W/o Popatrao Ghanwat
alias Pushpa D/o Barku Sonwane
age 38 years occupation household
R/o village Jatwada Tal. & Dist. Aurangabad ...Petitioner

VERSUS

1. The State of Maharashtra
Through : The Secretary,
Department of Rural Development,
M.S. Mantralaya, Mumbai
2. The State Election Commission,
Maharashtra State (**Deleted**)
3. The District Collector,
District Aurangabad
4. The Sub-Divisional Officer,
Aurangabad
5. The Tahsildar,
Aurangabad Tal. & Dist. Aurangabad ...Respondents

*Mr. Govind Kulkarni, Advocate, holding for Mr. Rajendra S.
Deshmukh, Advocate for petitioner
Mr. Y.G. Gujarathi, Asstt. Govt. Pleader for respondents no.1,3,4&5*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th March, 2019

ORAL JUDGMENT :

1. At the outset, learned counsel Mr. Kulkarni for petitioner, on instructions, seeks leave to delete respondent no.2 claiming that it is not necessary party.

2. Leave granted. Respondent no.2 is deleted at the risk and peril of the petitioner.

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

4. Petitioner challenges order dated 5th January, 2019 passed by respondent no.1 - the Collector, Aurangabad, disqualifying her as member of Village Panchayat, Jatwada Taluka and District Aurangabad for non-submission of validity certificate within stipulated period under section 10-1A of the Maharashtra Village Panchayats Act.

5. It appears that petitioner belongs to '*Dhangar*' tribe falling under Nomadic Tribes category and had submitted proposal for validity certificate before the Scrutiny Committee on 20th September, 2017. Since validity certificate could not be submitted by petitioner 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.

6. 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. "

7. It appears that claim of petitioner has been validated by the District Scrutiny Committee by issuing validity certificate on 25th October, 2018. It is not disputed that the petitioner has submitted the validity certificate on the same day with respondent no.5 Tahsildar, Aurangabad.

8. It appears that the present case would be largely covered by observations in decision of writ petition no. 1238 of 2019, while petitioner has been elected member of Village Panchayat, Jatwada, she has submitted her claim for verification and scrutiny committee has validated her claim by issuing certificate dated 22nd October, 2018 and the same had been submitted by petitioner with respondent no.5 on 25th October,

2018 itself.

9. Subsequently, the State government has also 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. ”

10. Having regard to the events as have been referred to above, the disqualification for non-submission of validity certificate within stipulated period stands stayed and protected under the provisions of ordinance dated 14th February, 2019, and

in the process, impugned order dated 5th January, 2019, is rendered untenable.

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

12. Although, learned Assistant Government Pleader has submitted so, yet, in the present case while the petitioner has been elected in October, 2017 and she has submitted the caste validity certificate on 25th October, 2018 with the competent authority, it appears that effect of ordinance dated 11th October, 2018 and 14th February, 2019 negates effect of order of disqualification incurred.

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

14. Rule is made absolute accordingly.

**(SUNIL P. DESHMUKH)
JUDGE.**