

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3263 OF 2019

Vaishali w/o Arjun Darode alias
Usha d/o Sahebrao Ghuge
Age: 39 years, Occ: Household
R/o Village: Jatwada, Taluka Aurangabad
District- 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
3. The District Collector, Aurangabad
District- Aurangabad
4. The Sub Divisional Officer,
Aurangabad
5. The Tahsildar, Aurangabad ...Respondents

...

Mr. Govind Kulkarni, Advocate h/f Mr. Rajendrraa
Deshmukkh, Advocate for petitioner
Mr. Y. G. Gujarathi, Assistant Government Pleader for
respondents no. 1, 3, 4 and 5

...

CORAM: SUNIL P. DESHMUKH, J.

Date: 8th March, 2019

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.
2. Petitioner questions sustainability of order dated 5th January, 2019 passed by the collector, Aurangabad, disqualifying her from membership of grampanchayat, village Jatwada, taluka and district Aurangabad for non-submission of validity certificate within stipulated period under section 10-1A of the Maharashtra Village Panchayats Act.
3. It appears that petitioner belongs to '*Vanjari*' community falling under Nomadic Tribe category. Elections were held on 9th October, 2017 for membership of grampanchayat, Jatwada. The petitioner had contested as a vanjari person and had been elected as a member. She had submitted certificate issued by the competent authority for verification. 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 for failure to furnish validity certificate within stipulated period.

4. It appears that claim of petitioner has been validated under decision of scrutiny committee dated 13th November, 2017. She received validity certificate on 17th November, 2018 and on the same day i.e. on 17th November, 2018, petitioner had submitted it to the concerned authority, but she stood disqualified.

5. 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.

6. 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 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 validity certificate stands stayed and protected by the provision under ordinance dated 14th February, 2019, and in the process, impugned order dated 5th January, 2019, is rendered untenable.

8. The petitioner claims to have received validity certificate on 17th November, 2018 and on the same date, she submitted the same with the concerned authority and the same goes uncontroverted.

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

10. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

vdk