

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

925. WRIT PETITION No. 3297 of 2019

Jyoti W/o Dhananjaya Survase
age 28 years occupation household
R/o Koral Taluka Omerga District Osmanabad ...Petitioner

VERSUS

1. The State of Maharashtra
 through its Secretary,
 Department of Rural Development,
 Mantralaya, Mumbai – 32
2. The Collector,
 Osmanabad Taluka and District Osmanabad
3. The Tahsildar,
 Tahsil Office, Omerga
 Taluka Omerga District Osmanabad ...Respondents

*Mr. Dhananjaya A. Mane, Advocate, holding for Mr. Nilkanth R.
Pawade, Advocate for petitioner
Mr. Y.G. Gujarathi, Asstt. Govt. Pleader for all 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 24th January, 2019 passed by the Collector, Osmanabad, disqualifying her from the post of Member of Village Panchayat, Koral Taluka Omerga District

Osmanabad for non-submission of caste validity certificate within stipulated period, under section 10-1A of the Maharashtra Village Panchayats Act.

3. After hearing learned counsel for the parties, it appears that lot of events have taken place after election of petitioner as Member of the Village Panchayat, held in October 2017. It appears that petitioner belongs to Scheduled Caste category and had submitted certificate issued by the competent authority for verification of her caste certificate alongwith the nomination. She has also produced on record copy of the receipt dated 27th September, 2017 issued by the District Caste Scrutiny Committee, Osmanabad, to show that she has submitted the proposal of verification of caste certificate issued by the competent authority. Since validity certificate could not be submitted by her within stipulated period pursuant to section 10-1A of the Maharashtra Village Panchayats Act, impugned order dated 24th January, 2019 has been passed by the Collector, Osmanabad, disqualifying her for failure to furnish the same within stipulated period.

4. 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.

5. It appears that caste claim of petitioner has been validated under decision dated 22nd January, 2019, however, it appears that the petitioner had not been supplied with the certificate of validity. Petitioner has been elected member of Village Panchayat, Koral. She had submitted her caste certificate for verification and the Caste Scrutiny Committee has validated her caste claim under decision dated 22nd January, 2019, the same had been received by petitioner on 21st February, 2019 and she has submitted the same with respondent no.3 on 25th February, 2019 and she is declared to have been disqualified.

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 under provisions of Ordinance No. II of 2019 dated 14th February, 2019, and in the process, impugned order dated 24th January, 2019, is untenable.

8. Learned Assistant Government Pleader submits that impugned order passed by the Collector, Osmanabad would not be faulted with having regard to the 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, 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 (C) and is disposed of.

11. Rule is made absolute accordingly.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar