

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

920. WRIT PETITION No. 3266 of 2019

Tulshiram S/o Govardhan Chavan,
age 46 years occupation agriculture
R/o Chincholi Tanda Taluka and Dist. Aurangabad
...Petitioner

VERSUS

1. The State of Maharashtra
Through : The Collector, Aurangabad
2. The District Caste Scrutiny Committee,
Aurangabad (Deleted)
3. The Sub-Divisional Officer and Magistrate,
Aurangabad
4. The Tahsildar, Aurangabad. ...Respondents

Mr. R.C. Bora, Adv., with Mr S.A. Pathan, Adv. for petitioner
Mr. Y.G. Gujarathi, Asstt. Govt. Pleader for all respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th March, 2019

ORAL JUDGMENT:

1. At the outset, learned counsel for petitioner seeks leave to delete respondent no.2 claiming that it is not necessary party. Leave granted. Respondent no.2 is deleted at the risk and peril of the petitioner.

2. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally with consent.

3. There is no particular dispute on the factual aspects that petitioner had been elected as a member of the *Gram Panchayat*, Chincholi, Taluka and District Aurangabad, held in the year 2015 from " *Vimukta Jati (A)* " category and had been further elected as *Upa-Sarpanch* in June 2018. His caste validity claim of " *Vimukta Jati (A)* " had been pending before respondent no.2. (Now deleted from array of respondents.) Respondent no.2 has issued to him validity certificate dated 22nd October 2018. It is being claimed on behalf of petitioner that though certificate bears date 22nd October 2018, same had been received at his end quite some time thereafter and, in the meanwhile, impugned order came to be passed. It is being referred to that, upon notice in October 2018 by the Sub-Divisional Officer, it had been informed by him that the Scrutiny Committee had validated his caste claim but the validity certificate had not been issued, and thereafter impugned order dated 5th January, 2019 has been passed.

4. Having regard to clause (8) of the Ordinance No. XXI of 2018 dated 11th October, 2018 and particularly, clause (4) of Ordinance dated 14th February, 2019 promulgated by the State

Government, reading, 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. ” ;

it emerges that the impugned order is unsustainable.

5. As the petitioner claims to have received the caste validity certificate dated 22nd October 2018, in the circumstances, the petitioner may submit the same with the concerned authority within the period of four weeks. On submission of such certificate, the petition shall be allowed.

6. In case of failure to submit the certificate with

competent authority, the petition shall be deemed to have been dismissed.

7. Rule is made absolute accordingly.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar