

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

916. WRIT PETITION No. 3207 of 2019

Smt. Rina W/o Mallinath Gaikwad
age 35 yrs occupation household/Member
of Village Panchayat, Yenegur R/o Omerga
Taluka Omerga Dist. Osmanabad

...Petitioner

VERSUS

1. The District Collector,
Osmanabad District Osmanabad
2. The Sub-Divisional Officer,
Omerga Taluka Omerga District Osmanabad.

...Respondents

*Mr. Ajay T. Kanawade, Advocate, holding for Mr. Swapnil A.
Deshmukh, Advocate for petitioner*
Mr. Y.G. Gujarathi, Asstt. Govt. Pleader for 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 respondent no.1- the Collector, Osmanabad, disqualifying her from the post of member of Village Panchayat,

Yenegur 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 in October 2017. It appears that petitioner comes from '*Hindu Mahar*' community falling under Scheduled Caste category. She had submitted proposal for caste validity before the Caste Scrutiny Committee prior to filing nomination for election of the *Gram Panchayat*. Since validity certificate could not be submitted by petitioner, within stipulated period pursuant to section 10-1A of the Maharashtra Village Panchayats Act, a notice had been issued to her on 27th December, 2018 for her disqualification to which petitioner appears to have filed reply giving explanation for delay in submission of validity certificate. However, without considering explanation, order dated 24th January, 2019 has been passed by the Collector, Osmanabad disqualifying her.

4. Caste validity Certificate was issued by the Scrutiny Committee, Osmanabad. Its issuing date is shown to be 30th January, 2019, however, was not handed-over to her soon thereafter. On its receipt by her, petitioner has submitted it

immediately with respondent no.2 on 8th February, 2019.

5. 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.

6. It appears that claim of petitioner has been validated under decision dated 30th January, 2019, however, it appears that the petitioner had not been supplied with certificate of validity. Petitioner has been elected member of Village Panchayat, Yenegur Taluka Omerga. The Scrutiny Committee has validated her caste claim under decision dated 30th January, 2019, the same had been submitted by petitioner on 8th February, 2019 and she is declared to have been disqualified.

7. 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 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. ”

8. Having regard to the events as have been referred to above, the disqualification for non-submission of caste validity certificate within stipulated period stands stayed and protected under provisions of Ordinance dated 14th February, 2019, and in the process, impugned order dated 24th January, 2019, is untenable.

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

10. Although, learned Assistant Government Pleader has submitted so, yet, in the present peculiar case while the petitioner has been elected in October, 2017, effect of ordinance dated 14th February, 2019 completely governs the situation negating disqualification incurred by petitioner.

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

12. Rule is made absolute accordingly.

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

Madkar