

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3286 OF 2017

Shankar Karbhari Gaikwad,
Age-30 years, Occu:Agri.,
R/o-Nimgaon Wagha,
Tq. & Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai-32,
- 2) The Additional Collector,
Ahmednagar,
- 3) The Tahsildar,
Tq-Ahmednagar,
Dist-Ahmednagar,
- 4) Dipak Bhanudas Gaikwad,
Age-Major, Occu:Agri.,
R/o-Nimgaon Wagha,
Tq. & Dist-Ahmednagar.

...RESPONDENTS

...

Mr.Abhijit S. More Advocate for Petitioner.
Mr.S.S. Dande, A.G.P. for Respondent Nos.1 to 3.
Mr.R.C. Bramhankar Advocate h/f. Mr. N.L. Jadhav
Advocate for Respondent No.4.

...

**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 7TH OCTOBER, 2019

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. The petitioner was elected as member of village panchayat on a reserved category seat on 4th August, 2015. The petitioner claims to belong to scheduled caste, "Mahar". The scrutiny committee issued validity certificate in favour of the petitioner on 8th February, 2016. However, before the same was issued, while the claim of the petitioner had been pending scrutiny by the committee, under *suo motu* proceedings initiated by Collector, taking recourse to proviso to section 10(1A) of the Maharashtra Village Panchayat Act, without giving opportunity of hearing to the petitioner, while orders in cases were passed en-mass disqualifying the elected persons from posts of membership of village panchayat from reserved category, in a grampanchayat dispute bearing No.172 of 2016, petitioner as well had been declared to be disqualified.

3. Learned counsel for the petitioner has submitted that upon receiving validity certificate on 8th February, 2016, the same had been submitted with the concerned office on 29th June, 2016.

4. Additionally, learned counsel for the petitioner has placed reliance upon the order passed by division bench of this court in writ petition No.13231 of 2018 (*Hemant Babasaheb Nikam and another vs the state of Maharashtra and others*), dated 6th March, 2019, and submits that petitioner is similarly placed as the petitioners in writ petition No.13231 of 2018.

5. It may have to be referred to that the disqualifications of the persons were saved by the State under ordinance promulgated on 14th February, 2019, incorporating under clause 4 following provision:

“ 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. ”

6. Election commission has not yet held election to fill up the post held by the petitioner and the petitioner has already submitted validity certificate to the competent authority, the same appears to be the stipulated period under promulgated ordinance of 14th February, 2019. In view of the same, the impugned order dated 23rd December, 2016 passed by respondent No.2 in grampanchayat dispute No.172 of 2016 has been rendered unsustainable and inefficacious and is, thus, set aside to the extent of petitioner. Necessary consequences should follow. Rule is accordingly made absolute. Writ petition stands disposed of.

(S.M. GAVHANE, J.)

asb/OCT19

[SUNIL P. DESHMUKH, J.]