

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

WRIT PETITION NO. 7756 OF 2018

**ANITA VIJAY INGALE @ ANITA PRALHAD BHALERAO
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Shri Girish Nagori
AGP for Respondent Nos. 1 to 3 and 6 : Shri N. T. Bhagat

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th APRIL, 2019.

...

PER COURT :

1. On 17.07.2018, this Court (Coram : Sunil P. Deshmukh, J.) had passed the following order :-

"1. Learned Counsel for petitioner submits that caste validity certificate had been submitted with the concerned authority, however, there had been delay of twenty days and therefore, proceedings for committing breach in submission not being within stipulated period prescribed under proviso to Section 10 (1-A) of the Maharashtra Village Panchayats Act, 1958 had been taken up against her and the proceeding has been allowed. He submits that the said stipulation whether is of mandatory or directory nature, is a question pending consideration before the Apex Court, wherein effect and operation of decision of the Full Bench of this Court in the case of Anant H. Ulhalkar Vs. Chief Election Commissioner

reported in 2017 (1) Mh.L.J. 431, has been stayed.

2. *In view of aforesaid, issue notice to respondents, returnable on 14th August 2018.*

3. *Learned Assistant Government Pleader waives service for respondents No. 1 to 3 and 6.*

4. *Learned counsel for petitioner urges for interim relief referring to that initially against impugned order passed by the Collector, petitioner had been in appeal before the Divisional Commissioner, Nashik, however, the appeal has been ultimately turned down considering that it is not competent and in the circumstances, writ petition has been filed. He further submits that there has been no declaration of vacancy as yet and no declaration of election substituting the petitioner.*

5. *In the circumstances, there shall be ad-interim relief in terms of prayer clause 'C'.*

6. *In addition to service through Court process, petitioner shall serve respondents No. 4 and 5 by any legally acceptable private mode of service and file affidavit alongwith tangible proof to that effect by returnable date. In case of failure to serve respondents No. 4 and 5 privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease*

to operate. "

2. The learned Advocate for the petitioner submits that she acquired her caste validity certificate and also tendered it to the appropriate authority. The petitioner has challenged her disqualification under Section 10-1A of the Maharashtra Village Panchayats Act.

3. The learned Advocate for the petitioner now submits that the issue of disqualification on account of non furnishing of the caste/tribe validity certificate within six months as prescribed under section 10(1)(A) of the Maharashtra Village Panchayat Act has been considered by the learned full bench of this Court in the matter of ***Anant H. Ulhalkar versus Chief Election Commissioner (2017 (1) Mh.L.J.431)***. It was concluded that the prescribed period of six months for submitting the caste validity certificate is a mandate of law. The matter was taken to the Honourable Apex Court and in the matter of ***Shankar S/o Raghunath Devre (Patil) versus State of Maharashtra in Petitions for Special Leave to Appeal (C) Nos.29874-29875/2016***, arising out of the Judgment & Order

dated 2.9.2016 in Writ petition No.5686/2016 and 1.10.2016 in R.P.No.201/2016 in W.P. No.5686/2016, the Honourable Apex Court sustained the view taken by the learned full bench.

4. Pursuant to the above, the State of Maharashtra introduced an ordinance on 11.10.2018, by which the time/period for submitting the caste validity certificate was extended and those persons who were elected in the elections held from 31.3.2016 onwards were permitted to submit their caste validity certificates. Thereafter, by an ordinance No.II/2019 dated 13.2.2019, the State of Maharashtra resolved to grant protection to those who have belatedly submitted caste validity certificates in such elections which were held between 26.3.2015 to 31.3.2016 for about 19,000 village Grampanchayats.

5. Considering this provision, this Court at the Nagpur Bench has passed an order on 25.2.2019 in the matter of ***Priya Rahul Kakade versus The Collector, Akola*** and others in Writ Petition No.968/2017.

6. There is no dispute that the petitioner was elected on

4.8.2015 as a Member of the Grampanchayat. She received the caste validity certificate on 14.01.2016. A statement is made in paragraph No.4 that after the petitioner received the validity certificate from the committee and she produced the same before the learned Commissioner, Nasik Division, Nasik during the hearing in File No. 19/Appeal/13260/2017.

7. Clause 4 of the Government Ordinance No.II of 2019 causes an amendment to section 8 of the Maharashtra Grampanchayat Act (62 of 2018(LXII/2018) by which it stands amended as follows :-

“ 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. The learned AGP submits, on instructions, that elections to the Grampanchayat from which the petitioner was disqualified, have still not been declared and the seat is yet to be declared as vacant. The learned Advocate for the petitioner submits that, she has submitted her Caste Validity Certificate on 14.01.2016 before the Additional Divisional Commissioner.

9. In the light of the above, this petition is allowed. The impugned order dated 02/02/2017 passed by respondent No. 3 and 15/04/2017 passed by respondent No.2 stands quashed and set aside.

(RAVINDRA V. GHUGE, J.)

shp/-