

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

WRIT PETITION NO.6902 OF 2017

Surekha Sharad Koli
@ Surekha Ukhardu Mahale,
Age-37 years, Occu:Household,
R/o-Balaji Peth, Yawal,
Tq-Yawal, Dist-Jalgaon.

...PETITIONER

VERSUS

- 1) Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar,
Through its Member Secretary,
- 2) District Collector,
Jalgaon, Dist-Jalgaon,
- 3) Municipal Council,
Yawal, Tq-Yawal,
Dist-Jalgaon,
Through its Chief Officer.

...RESPONDENTS

...
Mr.Sagar S. Phatale Advocate for Petitioner.
Mr.A.V. Deshmukh, A.G.P. for Respondent Nos.1 and 2.
Mr. N.R. Dayama Advocate for Respondent No.3.
...

**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 has moved the high court invoking its extra ordinary powers challenging the communication dated 25th May, 2017 wherein chief officer, municipal council, Yawal had directed her to produce validity certificate since she had staked claim in the election as a candidate belonging to scheduled tribe - "*Tokare Koli*", having regard to circular dated 28th March, 2016 and order of state election commission dated 17th October, 2016 while her claim was pending decision by scrutiny committee. As such petitioner had prayed for direction to scrutiny committee to expeditiously decide the pending claim and simultaneously sought relief to restrain respondents No.2 and 3 from taking any coercive action on the basis of non submission of certificate of validity.

3. Petitioner has received tribe certificate issued by the competent authority about her being from "*Tokare Koli*" - scheduled tribe, in 2009. While she was desirous to contest

election of municipal council, Yawal scheduled to be held in November, 2016, she had applied to scrutiny committee for verification of her tribe certificate. In November, 2016 she contested the election as a candidate belonging to scheduled tribe category and had been elected as a councillor for the term 2016-2020. In view of section 9-A/51-1B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the municipal councils Act"), she was required to submit the tribe claim within six months. She has moved this court seeking directions to decide her tribe claim expeditiously and in the meanwhile protect her membership of council. While the synopsis refers to aforesaid, learned counsel for the petitioner during submissions, clarifies that as a matter of fact the petitioner has been directly elected as president of the municipal council in view of the amended provisions, since the seat of the president has been reserved for scheduled tribe.

4. Learned counsel further submits that in writ petitions No.5398 of 2017 and 6706 of 2017 there had been directions to the committee to decide pending claims of the petitioners therein within six months and till the decision by the scrutiny committee,

interest of the petitioners had been protected by directing the respondents not to take any coercive action against the petitioners on the ground of their failure to submit validity certificate. Learned counsel, therefore, urges for similar relief.

5. On the other hand, learned AGP Mr. A.V. Deshmukh appearing for respondents No.1 and 2 points out that second proviso to section 9A as well as section 51-1B of the the maharashtra municipal councils Act, reads thus:

“ **9A -**

Provided further that, if the person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.”

“ **51-1B**

Provided further that, if the person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a President.”

6. Learned AGP further points out decision of full bench of this court in the case of *Anant H. Ulahalkar and another vs. Chief Election Commissioner and others*, reported in 2017(1) All MR 1, as well as decision of the supreme court in the case of *Shankar Raghunath Devre (Patil) vs. State of Maharashtra and others*, dated 23rd August, 2018.

He submits that the supreme court has endorsed the view taken by the full bench in the case of *Anant H. Ulahalkar and another vs. Chief Election Commissioner and others* (supra), observing thus:

“ Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act (Act No.59 of 1949) require a member of the Scheduled Castes, Scheduled Tribes or other Backward Classes to enclose with the nomination for election his/her Caste Certificate issued by the Competent Authority and also the Validity Certificate issued by the Caste Scrutiny Committee.

A proviso to the aforesaid main provision of the statute was brought in subsequently which permitted a candidate to file his/her nomination even in the absence of the validity certificate provided he/she encloses with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit, within a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.

There is a second proviso which contemplates that on the failure of the concerned person(s) to produce the validity certificate within the time frame stipulated his election “shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor”.

We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions that the aforesaid provisions of the statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with the further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be negatory.

Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely, that the legislative intent was to make the provision of the statute mandatory

irrespective of individual hardships.”

7. Learned AGP submits that in view of the aforesaid, the position is clear that disqualification because of non submission of tribe validity certificate has been incurred and suffered by the petitioner by operation of law and this court would at the most may direct the scrutiny committee to dispose of pending tribe claim of the petitioner.

8. Having regard to proviso, as referred to above as well as exposition of law over the same by full bench of this court and the supreme court, it emerges that disqualification has been incurred by the petitioner for non submission of tribe validity certificate.

9. Learned counsel for the petitioner has tried to submit that the disqualification of the elected persons who had not submitted validity certificates within stipulated time were saved by the State of Maharashtra under ordinance promulgated on 14th February, 2019 and therefore interim protection earlier granted by this court may be continued till decision by the scrutiny committee. But the position emerges that the

ordinance would hardly be able to support claim of the petitioner for it is not the case that the petitioner is in a position to submit validity certificate. Learned counsel, during the course of submissions, has also referred to the judgment and order passed by the division bench of this court in group of writ petitions bearing No.181 of 2018 and other companion petitions, dated 2nd April, 2019, pointing out paragraph No.17 thereunder. Perusal of the same would reveal that the protection in the case had been entailed under very peculiar facts and circumstances, while it had been gauged by the court, validity would ensue.

10. In the circumstances, in our opinion, while statutory operation is backed by exposition on the same by full bench and supreme court, it is difficult to continue the interim protection granted earlier under the orders of this court. We do not consider that this is a fit case wherein extra ordinary powers of the high court could be exercised to protect interest of the petitioner.

11. As such writ petition is disposed of with direction to the scrutiny committee to decide on the pending tribe claim of

the petitioner as expeditiously as possible, preferably within six months from the date of receipt of writ of this order. Rule is made absolute accordingly.

(S.M. GAVHANE, J.)

asb/OCT19

[SUNIL P. DESHMUKH, J.]