

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

WRIT PETITION NO. 9741 OF 2019

Padmakar Manoharrao Ugile .. Petitioner

Versus

1. The State of Maharashtra
and others .. Respondents

Ms. P. S. Talekar, Advocate h/f Shri S. D. Tawshikar and Shri
Patel Syed Farhan, Advocates for the Petitioner.
Shri V. M. Kagne, A.G.P. for Respondent Nos. 1 to 3.
Shri S. G. Jadhavar, Advocate for Respondent Nos. 4 to 7.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

CLOSED FOR ORDER ON : 10.10.2019

ORDER PRONOUNCED ON : 22.11.2019

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioner by filing the present petition initially assailed the motion of no confidence moved against the petitioner. This Court under order dated 03rd September, 2019 directed that the no confidence motion may proceed further. In case the no confidence motion succeeds against the petitioner, the same shall not take effect till the next date. The petitioner was also refrained from taking any policy decision till the next date. Interim order was continued. Subsequently, the no confidence motion is passed. The petitioner amended the writ

petition and challenged the notice issued by the respondent No. 3 calling special meeting of no confidence motion against the petitioner. The petitioner also challenged the motion of no confidence dated 03.09.2019.

2. Miss Talekar, the learned advocate for the petitioner strenuously contends that, there are fifteen members in the Gram Panchayat. Six members had moved the motion of no confidence against the petitioner. Out of six members, three members are disqualified in view of Sec. 10(1-A) of the Maharashtra Village Panchayat Act, 1959 (for short "Act 1959") on the ground that they have not submitted validity certificates, though have contested the election from reserved category. The learned advocate further contends that, the petitioner and the respondent No. 7 were disqualified by the common order of the Collector. The petitioner challenged the order of the Collector disqualifying the petitioner. The writ petition filed by the petitioner is allowed and the order of disqualification passed by the Collector is set aside. The respondent No. 7 did not challenge the order of the Collector disqualifying him. The disqualification of the respondent No. 7 is intact and has attained finality. The requisition was given by the six persons. The respondent No. 7 had submitted caste validity before the Sub Divisional Officer in the enquiry dated 20.12.2018, but has not filed such certificate with the competent authority within the time provided under Ordinance dated 14.02.2019, nor challenged the order of the Collector before any competent Court.

3. The learned counsel further submits that, as the respondent No. 7 was disqualified, he could not have issued notice of no confidence motion against the petitioner. If the respondent No. 7 is removed from the office, then the requisite number of members i. e. 2/3rd majority is not complied and on this count itself the motion of no confidence deserves to fail.

4. Ms. Talekar, the learned advocate further submits that, the Collector by relying on the newly inserted Section 8(2) in the Ordinance dated 14.02.2019 has observed that, the respondent No. 7 is protected by said ordinance. Same is illegal. All the persons including disqualified respondent No. 7 were present in the meeting dated 03.09.2019 and voted against the petitioner. The motion of no confidence was not passed by requisite 2/3rd majority as prescribed under the Statute in Section 35(3) of the Act 1959.

5. The learned advocate further submits that, if vote of the respondent No. 7, who is disqualified by the order of the Collector dated 23.01.2019 and has attained finality and who also does not comply with the requirement for protection under the Ordinance dated 14.02.2019 is not considered, then condition of requirement of 2/3rd majority required under statute is not fulfilled, hence no confidence motion cannot be held to be legitimately passed. The respondent Nos. 4 to 6 are disqualified. They are also not entitled to sit and vote in any meeting of the panchayat, as such, the notice of no confidence motion is invalid and contrary to Section 35(1) of the Act 1959. The notice of no confidence is

signed by six members including respondent Nos. 4 and 5, who are already disqualified. Therefore, only four valid members are deemed to have signed notice of no confidence motion. In view of that also notice of no confidence motion is illegal. It could be said that the proposal for no confidence motion is vitiated as it is signed by disqualified persons and three qualified persons not matching mark of 1/3rd members of the Gram Panchayat as is required under Section 35 of the Act 1959.

6. The respondent No. 7 cannot get the protection of the Ordinance dated 14.02.2019, as requirement under the said ordinance is not complied and the validity certificate is not submitted by the respondent No. 7 within time before the competent authority. The Collector in communication dated 29.08.2019 could not have held the respondent No. 7 to be qualified especially, when the Collector under order dated 23.01.2019 had disqualified the respondent No. 7 and the said order has attained finality. The Collector has no power of review. The power of review cannot be assumed by the authority. The learned advocate relies on the judgment of the Apex Court in a case of Patel Narshi Thakershi Vs. Pradyumnsinghji reported in *(1971) 3 SCC 844*. Once the respondent No. 7 is disqualified under order of the Collector, the Ordinance dated 14.02.2019 cannot come to the aid of the respondent No. 7. The Ordinance dated 14.02.2019 cannot be interpreted to negate the order of the Collector under Section 10(1-A) of the Act 1959 passed prior to issuance of ordinance. The learned advocate relying on the judgment of the learned Single Judge of this Court

dated 03.07.2019 in Writ Petition No. 6400 of 2018 submits that, the order of disqualification cannot be considered as nullified, so far as person who does not challenge it is concerned and he cannot continue to act as a member muchless participate in no confidence motion.

7. Mr. Jadhavar, the learned advocate for respondent Nos. 4 to 7 submits that, Nalgir Gram Panchayat consists of fifteen members. Three members of the gram panchayat are disqualified on account of non submission of caste validity certificate. There are only twelve members who are entitled to sit and vote in any meeting of the gram panchayat. The respondent No. 7 is qualified to sit and vote in the meeting of the gram panchayat as a member, as he has submitted the validity certificate on 20.12.2018. The Collector has rightly considered the said aspect. As there would be only twelve qualified members who are entitled to sit and vote, 1/3rd i. e. four qualified members of gram panchayat have rightly filed an application for moving no confidence motion. The no confidence motion is passed by majority and eight members have voted in favour of the motion. The same is rightly passed. The petitioner cannot take advantage of interim order passed by this Court. The learned counsel relies on the judgment of the Apex Court in a case of South Eastern Coalfields Ltd. Vs. State of M. P. and others reported in *(2003)8 SCC 648*.

8. The learned Assistant Government Pleader for respondent Nos. 1 to 3 submits that, on or about 23.01.2019, the Collector

Latur disqualified five members of the Gram Panchayat Nalgir for not submitting caste validity certificates, which includes petitioner and respondent Nos. 4 to 7. The petitioner filed Writ Petition No. 2078 of 2019 before this Court. This Court by order dated 13.03.2019 allowed the writ petition and held that the petitioner is qualified member of the Gram Panchayat, Nalgir. After the ordinance was passed, the Collector conducted an enquiry and called for the report. It was found that the respondent No. 7 has already submitted caste validity certificate to the competent authority on 20th December, 2018. After considering the report dated 16.08.2019, the respondent No. 2 was pleased to pass order holding the respondent No. 7 to be qualified. On 31st July, 2019, six members submitted a notice for no confidence resolution. Out of six members, two members are not qualified. As there are twelve qualified members 1/3rd members would be four and four qualified members had given the notice. The same is legal and proper. The no confidence motion was rightly passed.

9. We have considered the submissions canvassed by the learned counsel for respective parties.

10. The petitioner is the Sarpanch of Gram Panchayat Nalgir, consisting of fifteen members. The petitioner and respondent Nos. 4 to 7 had contested the election as reserved category candidates and had failed to submit the validity certificate within the time stipulated under Section 10(1-A) of the Act 1959. The petitioner and respondent Nos. 4 to 7 were disqualified by

the Collector under order dated 23.01.2019.

11. It appears that, the petitioner filed Writ Petition No. 2078 of 2019 before this Court challenging disqualification. This Court under order dated 13th March, 2019 allowed the writ petition and set aside the order passed by the Collector disqualifying the petitioner. This Court in the said judgment considered the protection granted by Ordinance No. II/2019 dated 13.02.2019. It further appears that, the order of disqualification dated 23.01.2019 was not assailed by the respondent No. 7 in this Court. It further appears that, respondent Nos. 4 to 6 are not qualified as, they have failed to submit the validity certificates. The respondent No. 7 has submitted the validity certificate on 20.12.2018 with the Sub Divisional Officer, Udgir. The same appears to be in the order/report of the Collector dated 29.08.2019.

12. The *prima donna* question would be, whether the respondent No. 7 can be said to be qualified to be the member of the Gram Panchayat so as to sit and vote in the meeting of the Gram Panchayat.

13. Excluding the disqualified members viz respondent Nos. 4 to 6, there would be twelve members. The no confidence motion was submitted by six members. Two were admittedly disqualified. Three qualified members and the respondent No. 7 gave the requisition. If the respondent No. 7 is held to be qualified and eligible to sit and vote as a member of the Gram

Panchayat, then the requisition is given by four qualified members. The same would be sufficient strength i. e. 1/3rd of the 12 members entitled to sit and vote.

14. It is a matter of record that, the Collector had disqualified the petitioner and respondent Nos. 4 to 7 under order dated 23.01.2019. As observed above, the petitioner challenged the said order of disqualification and order of the Collector qua the petitioner has been set aside by this Court under its judgment and order dated 13.03.2019 in Writ Petition No. 2078 of 2019.

15. The respondent No. 7 seeks to take benefit of the Ordinance dated 14th February, 2019 viz Ordinance No. II/2019. It will be necessary to refer to the relevant clauses of the said ordinance. Same reads thus.

MAHARASHTRA ORDINANCE No. II OF 2019

1. (1) This Ordinance may be called the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019.

(2) It shall come into force at once.

2. In section 2 of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 2019 (hereafter referred as to “the amendment Act”),--

(i) in clause (a) for the figures and words “31st March 2016” the figures and words “26th March 2015” shall be substituted and shall always be deemed to have been substituted;

(ii) in clause (b) for the figures and word “31st March 2016” the figures and word “26th March 2015” shall be substituted and shall always be deemed to have been substituted.

3. In section 3 of the amendment Act,--

(i) in clause (a) for the figures and word “31st March 2016” the figures and word “26th March 2015” shall be substituted and shall always be deemed to have been substituted.

(ii) in clause (b) for the figures and word “31st March 2016” the figures and word “26th March 2015” shall be substituted and shall always be deemed to have been substituted.

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) 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) Ordinance, 2019, in the *Official Gazette* has held elections to fill the vacancy of such persons or declared the programme for holding of such election.”.

16. The Ordinance dated 14.02.2019 came into effect at once. In the present case, the election for the post of members of the gram panchayat and Sarpanch took place after 26.03.2015. The Ordinance No. II of 2019 gave protection to all those persons who had contested the election from reserved category in an election

after 26th March, 2015 and had submitted the validity certificate before the publication of the said ordinance or if the same is submitted within a period of three months from the date of publication of said ordinance.

17. The respondent No. 7 has submitted the validity certificate on 20th December, 2018 with the Sub Divisional Officer. According to respondents same is submitted to the competent authority.

18. The competent authority does not appear to have been defined either under the Ordinance or the enactment. The caste validity certificate was already issued to the respondent No. 7 and the same was also filed with the office of the Sub Divisional Officer, Udgir on 20.12.2018 by the respondent No. 7. The respondent authorities do not dispute that Sub Divisional Officer, Udgir was a competent authority to receive the validity certificate.

19. Reading the Ordinance in its totality, it is manifest that, the benefit is given to the candidates, who have obtained the validity certificate and have submitted the same to the competent authority before the publication of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) (Amendment) Ordinance, 2019, in the *Official Gazette*. The respondent No. 7 was issued with the validity certificate and had also submitted it to the Sub Divisional Officer on 20.12.2018 i. e. prior to the issuance of the

Maharashtra Ordinance No. II of 2019. In Section 3 of the Amendment Act, the ordinance prescribes that, for the figures and words 31st March 2016, the figures and words 26th March 2015 shall be substituted and shall always be deemed to have been substituted, meaning thereby that the persons who are elected pursuant to the election held after 26th March, 2015 shall be deemed to be protected and the said substitution of the figure and words 31st March 2016 to 26th March 2015 shall be deemed to be from the date of the introduction of section 3 of the Amendment Act.

20. The bone of contention of the petitioner is that, the respondent No. 7 had not challenged the order of the Collector disqualifying him and the order has become final. The Collector could not have reviewed the order. There cannot be debate with the proposition that unless the statute provides for a power of review, the authority cannot exercise the power of review.

21. The case of the respondent No. 7 shall have to be considered on the touch stone of Ordinance No. II of 2019. Section 8 of the Amendment Act is renumbered as sub section (1) and after sub section (1), the sub section (2) is added. It begins with non-obstante clause and provides that, any person who has obtained caste certificate or validity certificate after 26th March 2015, but has not filed such certificate within the stipulated period as per the provisions of the Maharashtra Village Panchayats Act shall not be deemed to be disqualified under the provisions of the Panchayat Act, if he has already submitted

validity certificate to the competent authority after expiry of 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* and if he submits such certificate within three months from the date of publication of said Ordinance, 2019 in the Official Gazette. The said provision creates a deeming fiction. By fiction of law the person shall not be deemed to be disqualified, if he has been issued with caste certificate/validity certificate and submitted the same as on the date of Ordinance No. II of 2019 or within the extended period of three months from the date of publication of said ordinance. The amendment statute providing for a deeming clause will have its own efficacy. Said amendment is circumscribed by proviso.

22. The general rule in construing provision containing a proviso is to construe them together without making either of them superfluous or otiose. The function of the proviso is to clarify the generality of the main enactment by providing an exception to the main enactment, but for the proviso would fall within the main enactment. The proviso circumscribes the amending section. The proviso provides an exception to the generality enshrined in the amendment. Save and except the cases falling under the proviso, the other persons who have obtained validity and submitted it to the competent authority as on the date of the Ordinance would be deemed not to be disqualified *inter alia* qualified to be the member of the Gram Panchayat. The proviso is a guide to interpret the provision.

Proviso is used in the present case to remove special case from the general enactment and providing for them specially. The proviso clarifies the section. The proviso carves exception to the general intendment of the provision. The general intendment of the amendment is that the candidates who had contested election from reserved category and had submitted the caste validity certificate as on the date of the Ordinance or within the extended period of three months from the date of Ordinance shall not be deemed to be disqualified. The proviso carves out an exception to the extent that where the Election Commission has prior to the date of the publication of the Ordinance 2019 in the Official Gazette held elections to fill in the vacancy of such persons or declared the programme for holding of such election would not be entitled to the benefit of the ordinance. The proviso carves out an exception probably on the premise that once the elections are held to fill in the vacancy, an irreversible position is created and persons elected to the post rendered vacant on account of the persons originally occupying the post being disqualified having failed to submit the validity, get a vested right or if the programme for holding the election is declared, the election process in midst cannot be stalled.

23. The disqualification of a member on failure to submit validity within stipulated period is axiomatic. Ordinance No. II of 2019 is a boon to all these persons. All these persons who axiomatically stood disqualified because of non submission of validity certificate within the time stipulated by the provisions of the Statute were deemed not to be disqualified, if they were

issued with the validity certificate and had submitted the same as on the date of Ordinance No. II of 2019. The only limitation for the same was engrafted in proviso i. e. if the election for the post held by such persons were already held or the election programme for holding of such election was declared. Save and except, the contingency as is contemplated under the proviso, all other persons who were issued with the validity and have submitted the validity as on the date of ordinance would be deemed not to be disqualified. The contingency as contemplated under the proviso has not taken place in the present case. The election for the post held by the respondent No. 7 was never held, nor the election programme was declared.

24. In view of that, the Collector is not required to exercise power of review, but by operation of law, the respondent No. 7 is deemed not to be disqualified, though the order was passed by the Collector to that effect.

25. In the light of the above, the notice of no confidence motion was given by required majority and no confidence motion was also passed by required 2/3rd majority. The writ petition as such fails and is dismissed. However, with no order as to costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

26. At this stage, the learned counsel for the petitioner seeks continuation of interim orders.

27. The learned counsel for respondents oppose the said request.

28. The petitioner has lost confidence of the majority of the House. We are not inclined to stay non confidence motion. However, the election of the post occupied by the petitioner shall not be held for the period of three weeks from today. On lapse of three weeks the respondent may proceed further to elect new Sarpanch.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19