

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

WRIT PETITION NO. 13369 OF 2019

Surekhabai w/o Manoj Jaiswal
Age : 38 years, Occu : Agricultural
R/o Masala (Bk.), Tq. Sillod,
District : Aurangabad.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The District Collector,
Aurangabad, Tq. & Dist. Aurangabad.
3. Block Development Officer,
Panchayat Samiti, Sillod,
Tq. Sillod, Dist. Aurangabad.

... RESPONDENTS

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Advocate for the Petitioner : Shri H. H. Padalkar h/f.
Shri D. M. Bhalke
AGP for Respondent Nos. 1 and 2 : Shri N. T. Bhagat
Advocate for respondent No. 3 : Shri Syed Rahatab
Jahagirdar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th NOVEMBER, 2019.

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ORAL JUDGMENT :

1. Leave to correct the date of the impugned order in the prayer clause. Correction be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioner is aggrieved by the order dated 08/08/2019 passed by the District Collector, Aurangabad, by which, the petitioner has been disqualified for having failed in filing the Caste Validity Certificate within time.
4. I have considered the strenuous submissions of the learned Advocates for the petitioner and respondent No. 3 and the learned AGP appearing on behalf of respondent Nos. 1 and 2. A short issue arises for adjudication in this matter.
5. There is no dispute that the petitioner belongs to a reserved category and had contested the elections

to a position which was reserved for the OBC category. She was elected as a Member of the Village Panchayat Borgaon (Bazar) Masala Budruk on 03/08/2015. She has tendered her Caste Validity Certificate with the appropriate authority on 14/05/2019. She has been disqualified under Section 10-1A of the Maharashtra Village Panchayats Act by the impugned order on the ground that she had tendered her Caste Validity Certificate belatedly by only one day.

6. It is undisputed that the learned Full Bench of this Court delivered its judgment in **Anant H. Ulahalkar Vs. Chief Election Commissioner [2017(1) Mh.L.J. (FB) 431]** concluding that the provision for submitting the Caste / Tribe Validity Certificate is a mandatory provision. The matter was taken to the Honourable Apex Court, in the matter of **Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra, Spl. Leave to Appeal (c) Nos. 29874-20875/16 (WP No. 5686/16 dtd.02/09/2016 and dtd. 1/10/2016,** the Honourable Apex Court upheld the view taken by the

learned Full Bench and concluded that the said provision is mandatory in nature. Thereafter, the State Government issued several notifications protecting such elected members. The last step taken by the State Government was in the form of the Maharashtra Ordinance No.II of 2019 dated 14/02/2019, by which, the protection was extended by three months from the date of the publication of the said Ordinance on 14/02/2019.

7. Section 10(1) of the Maharashtra General Clauses Act reads as under :-

" 10(1) In any Bombay Act by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order 1960 (or Maharashtra Act) made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word " from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

8. This Court had an occasion to consider

computation of 7 days under Section 35(2) of the Maharashtra Village Panchayat Act with regard to the 'no confidence motion' being moved and the special meeting being convened for considering the said motion, in the matter of ***Pandhari Shripat Patil Vs. State of Maharashtra and others [2002 (5) Mh.L.J. 171]***. It was held in paragraph nos. 5 to 17 as under :-

“5. Section 35(2) of the said Act clearly provides that the period of seven days is to be counted “from the date of receipt of notice under section 35(1)”. The word ‘from’ as a general rule; excludes the day from which the time is to be reckoned except where the context requires the contrary rule to be adopted. That is the law laid down by this Court in the case of Someshwar Bapurao Nilakhe vs. Nivritti Baburao Gholave, reported in 1972 Mh.L.J. 916 = AIR 1973 Bombay 147. Similar view was taken by Madras High Court in In re Court Fees reported in AIR 1924 Madras 257, wherein it was held that where a statutes fixes only the terminus a quo of a state of things which is envisaged as to last indefinitely, the common law rule

obtains that you ought to neglect fractions of a day and the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed, that is to say, from midnight of the day preceding the day on which it is promulgated; where, on the other hand, a statute delimits a period marked both by a terminus a quo and a terminus ad quem, the former is to be excluded and the latter to be included in the reckoning. The rule is applicable whenever time has to be computed from a day specified and whenever certain period of limitation is fixed for performance of doing of an act. Section 12(1) of the Limitation Act, 1963 and section 10 of the Bombay General Clauses Act, 1904 are based upon the said general rule. The said section 12 applies to suits, appeals and applications referred to in the Limitation Act. Though the provisions of section 12(1) would not be attracted in the matter in issue, yet the provisions of section 10 of the Bombay General Clauses Act, 1904 would be applicable. The said section 10 provides that in any Bombay Act or Maharashtra Act, it shall be sufficient for the purpose

of excluding the first in a series of days or any other period of time, to use the word “from” and for the purpose of including the last in a series of days or any other period of time to use the word “to”. The said provision is in pari materia with section 9 of the General Clauses Act, 1897. These provisions give statutory recognition to the well established principles applicable to the construction of statutes that ordinarily, in computing time, the rule observed is to exclude the first and to include the last day of the specified period.

6. This Court in the case of Smt. Manjuli vs. Civil Judge, Senior Division, Wardha and others, reported in 1967 Mh.L.J. 435 = AIR 1970 Bombay 1 has held that in computing the period of limitation for election petition, the day on which the election results are declared is to be excluded. Again in the case of The Commissioner of Income Tax, Bombay vs. The New Citizen Bank of India Ltd., reported in (1966) 68 BLR 602, it was held that date of receipt of an order by the party is to be excluded for the purposes of section

65(1) of the Income Tax Act, 1922 and the party must be given clear 60 days time. as section 9 of the General Clauses Act applies to the case. In Dhanu Singh vs. Kesheoprasad and others, reported in AIR 1923 Nagpur 246, the appellant had sued the respondents therein for joint possession of a plot of land acquired by the defendants. On the 29th November, 1920 a decree of joint possession was passed in favour of the appellant subject to his paying one hundred rupees as contribution within six months from the date of decree. The period of six months expired in the vacation when the Courts were closed, and the appellant therein deposited the money in the court on the day the Court had reopened after vacation. It was held that in view of section 10 of General Clauses Act, the payment was in time.

7. Halsbury's Laws of England, 37th Edition Vol.3, it is stated thus :

"Days included or excluded - when a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and

the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or exclusion of the day named may be intended. As a general rule however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

8. In recent decision by the Apex Court, in the matter of Tarun Prasad Chatterjee vs. Dinanath Sharma, reported in (2000) 8 SCC 649, it has been held that the principle contained in section 9 of the General Clauses Act, 1897 is that when a period is delimited by statute or rule, which has both a beginning and an

end, the word “from” is used indicating the beginning, the opening day is to be excluded. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period and this is intended to obviate the difficulties or inconvenience that may be caused to some parties. The Apex Court has further held that in order to apply section 9 of the General Clauses Act, the first condition to be fulfilled is whether a prescribed period is fixed “from” a particular point. When the period is marked by terminus a quo and terminus ad quern, the canon of interpretation envisaged in section 9 of the General Clauses Act, 1897 requires to exclude the first day.

9. Considering the provisions of law contained under section 35(1) and (2) of the said Act, which clearly provide a fixed period of seven days and also provide for starting point “from” the date of receipt of notice under section 35(1) of the said Act, and applying the laid held down by the Supreme Court, as well as the provisions of section 10 of the Bombay General

Clauses Act, 1904, the day of receipt of the said notice under section 35(1) of the said Act will have to be excluded while computing the period of seven days. Undisputedly, notice was received by the Tahsildar on 19-3-2001. So the Tahsildar could have convened the meeting within seven days therefrom i.e. seven days to be counted from 20th March onwards. The period of seven days in that case would expire on 26th March. But the meeting was held on 27th March 2001. Therefore, the contention of the petitioner is that it falls on eighth day and not on seventh day, whereas applying the provisions of section 11 of Bombay General Clauses Act, 1904, respondents insist that it was within the prescribed period.

10. Section 11 of the Bombay General Clauses Act, 1904 provides that, where, by any Bombay Act or Maharashtra Act made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the

prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open, provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies. The provisions of law contained in section 11 of the Bombay General Clauses Act, 1904 are in pari materia with those in section 10 of the General Clauses Act, 1897. The Supreme Court in Harinder Singh vs. S. Karnail Singh and others, reported in AIR 1957 SC 271 has, while considering the scope of section 10 of the General Clauses Act, 1897, held that :

“Broadly stated, the object of the section is, to enable a person to do what he would have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section, the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is

that there should be a period prescribed and that period should expire on a holiday.”

11. In Ram Saroop and another vs. Khaderan Kohar, reported in AIR 1927 All.608, an application for setting aside the decree was made, together with tender of the decretal amount on 3rd December 1926, but the amount was actually paid into the treasury on 6th December, 1926. The lower court accepted the payment as good. The Rules required payment to be made within three days of the tender. Considering the fact that 5th December 1926 was a holiday, it was held that the payment on the subsequent day was within the period of three days.

12. Full Bench of Allahabad High Court in Raja Pande vs. Sheopujan Pande & others, reported in AIR 1942 All. 429 has held that if the period of three months prescribed by section 9(l)(c) of Provincial Insolvency Act, 1920 expires on a day when the Court is not sitting, then the petition can be validly presented on the next day when the Court is sitting.

13. In a matter before the Full Bench of Patna High Court in the case of Babu Lachmeshwar Prasad Shukul and others vs. Babu Girdhari Lal Chaudhari & others, reported in AIR 1939 Pat 667, the appellant in case of Federal Court appeal was allowed to deposit printing cost of the appeal on the day on which the High Court was reopened after annual vacation, by applying the provisions of law contained in section 10 of the General Clauses Act. While justifying the same, Justice Agarwala had ruled that the expression "an act directed or allowed to be done or taken in an office" is used in the said section 10 in contradistinction to an act directed or allowed to be done or taken in a Court, and that therein "Office" does not include the office of a Court, for when a litigant is required to do a particular act to further his suit or appeal, it is really in the Court that he is required to do it although for the sake of convenience and to save the time of Judges, it is in fact done in the office of the Court. The office of the Court is merely the hand with which the court performs some of its functions. If that be so, the fact that the office of a Court remains open while the Court

itself is closed for judicial business will not deprive a litigant of the extended time for doing an act to which section 10 of General Clauses Act applies.

14. The Division Bench of Nagpur High Court in Rambir Narhargir Gosai vs. Prabhakar Bhaskar Gadhaway and others, reported in AIR 1955 Nag 300, has held that the cross objection filed on the reopening day after the vacation during which the last day for filing if expired must be held to be in time. It was held that section 4 of Limitation Act and section 10 of General Clauses Act embody the general principles enshrined in two maxims "Lex non cogit ad impossibilia and Actus Curiae neminem gravabit" and even if section 4 of Limitation Act is not applicable, the parties can invoke section 10 of General Clauses Act. If neither of the provisions can assist, then the parties can still invoke the general principles embodied in the two provisions.

15. In K. Soosalrathnam vs. The Divisional Engineer, National Highways Circle, Tirunelveli and others,

reported in AIR 1995 Mad 90, it was noticed that as per tender notification the tender schedule could have been obtained between 13-6-1994 and 21-6-1994. However, though originally 21-6-1994 was a working day as on 7-5-1994 which was the day of issuance of tender notification, subsequently Government had declared 21-6-1994 as a holiday on account of Moharam. It was held that though section 10 of the General Clauses Act cannot in terms apply to the said case, the last date for obtaining the schedules should get extended to the next working day, if last date originally fixed becomes a holiday subsequently, on the general principles underlying the said section.

16. In C. F. Angadi vs. Y. S. Hirannayya, reported in AIR 1972 SC 239, where under a compromise decree, the plaintiff was required to deposit certain amount in the Court by a certain date in order to enforce his right of getting a sale deed executed, but the last date as fixed under the decree happened to be a holiday, the plaintiff had deposited the amount on the following day, there it was held that the deposit by the plaintiff

was in substance and in effect a deposit made and acceptance of the deposit by the executing court did not amount to variation of the terms of decree.

17. In Chandra Kishore Jha vs. Mahavir Prasad and others, reported in JT 1999(7) SC 256, it was noticed that an election petition under Patna High Court. Rules could have been presented in the open Court upto 16-5-1995 till 04.15 p.m. in the manner prescribed by Rule 6 either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done, because neither designated election Judge before whom the election petition could be formally presented in the open Court nor the Bench hearing Civil Applications and motions was available on 16-5-1995 after 3.15 p.m. after the Obituary Reference since the Chief Justice of the High Court had declared that "the Court shall not sit for the rest of the day" after 3.15 p.m. Considering that law does not expect a party to do the impossible - impossibilium nulla obligatio est - it was held that the election petition could not have been filed on 16-5-

1995 during court hours, as for all intent or purposes the court was closed on 16-5-1995 after 3.15 p.m. and that since Indian Limitation Act does not apply to an election petition, section 10 of the General Clauses Act would apply and as it was not possible for the appellant to have presented the election petition to the designated election Judge or in his absence to the Bench hearing Civil applications and motions in the open court on that date, which was the last day of the prescribed period of limitation and, therefore, the presentation of the election petition on the very next date i.e. 17-5-1995, in the open court, would be considered, by virtue of section 10 of General Clauses Act, as presentation of the election petition within the prescribed period of limitation."

9. It is, thus, well settled that the first day has to be excluded while computing the period of 7 days *insofar* as Section 35(2) is concerned. The same analogy would apply to the Maharashtra Ordinance No. II of 2019 which provides for 3 months protection. The date on which the Ordinance was published in the

Maharashtra Gazette, will, therefore, have to be excluded and the last date for tendering the Validity Certificate would, therefore, be 14/05/2019.

10. In the light of the above, as the petitioner has tendered her Caste Validity Certificate on 14/05/2019, it will amount to submitting the same on the last day of the period of 3 months. She is, therefore, entitled for protection and would not incur disqualification under Section 10-1A.

11. Consequentially, this petition is allowed. The impugned order dated 08/08/2019 passed by the District Collector, Aurangabad is quashed and set aside. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-