

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

WRIT PETITION NO. 12217 OF 2018

1. Ansari Farahana Abdul Rauf
Age: 25 Years, Occu.- Household,
R/o: Sadi Galli, Old Jalna,
Taluka & District – Jalan. ... **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The State Election Commission
Maharashtra State, New Administrative
Building, Hutatma Rajguru Chowk,
Madam Cama road, Mumbai.
3. Jalna Municipal Council,
Jalna, Through its Chief Officer.
4. The District Collector,
Jalna at Jalna,
District- Jalna.
5. The District Caste Scrutiny Committee, Jalna,
District- Jalna, Through its Member Secretary.
(Respondent no.5 added as per order dated 19.11.2018) ... **Respondents**

**WITH
WRIT PETITION NO. 12218 OF 2018**

1. Vijay Baburao Pawar
Age: 31 Years, Occu.- Agriculturist,
R/o: Dehedkarwadi, Old Jalna,
Taluka & District – Jalan. ... **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The State Election Commission
Maharashtra State, New Administrative
Building, Hutatma Rajguru Chowk,
Madam Cama road, Mumbai.
3. Jalna Municipal Council,
Jalna, Through its Chief Officer.
4. The District Collector,
Jalna at Jalna,
District- Jalna.
5. The District Caste Scrutiny Committee, Jalna,
District- Jalna, Through its Member Secretary.
(Respondent no.5 added as per order dated 19.11.2018)

... **Respondents**

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Miss. P. S. Talekar, Advocate for the Petitioners.
Mr. P. K. Lakhotiya, AGP for respondent nos. 1,4 & 4.
Mr. S.T. Shelke, Advocate for the respondent no.2.
Mr. R.S. Dhamangaonkar, Advocate for the respondent no.3.

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**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 31.07.2019
DATE OF PRONOUNCING THE JUDGMENT : 18.10.2019**

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JUDGMENT :- (Per: Mangesh S. Patil, J.)

Since the petitioners in both these Writ Petitions are claiming same relief on same set of facts, both the matters have been heard simultaneously and are being disposed of by this common judgment.

2. Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P and learned advocate for the petitioners waive service. At the request of both the sides the matters are heard finally at the stage of admission.

3. The Petitioners are the candidates elected from their respective wards as councillors in the Janla Municipal Council in election held on 02.12.2016. They are challenging validity of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965 (hereinafter referred to as 'the Municipal Council Act') as amended by the Amendment Act of 2018 which amendment has been brought in operation with effect from 27.09.2018, on the ground that it is ultra virus Article 14 and 243T of the Constitution of India and in the alternative to read it down to the extent of the Petitioners who have obtained certificate of validity as Scheduled Caste under the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000, (hereinafter referred to as 'the Caste Certificate Act') within the period of twelve months from the date of

their election as councillors.

4. The facts as are necessary and relevant for the decision of the Writ Petitions may be summarized as under:

The petitioners were elected as councillors in the election held on 02.12.2016 to the Jalna Municipal Council from their respective wards under reserve category. In view of the provisions of Section 9A of the Municipal Council Act which initially laid down that the persons desirous of contesting election to the seat reserved for Scheduled Caste etc. shall submit their Caste Certificate and Validity Certificate under the Caste Certificate Act along with the nomination paper. By the Proviso the condition was relaxed to the extent that in case their proposal for validity certificate is pending they would submit a true copy of the application submitted to the Scrutiny Committee and an undertaking that they would submit the Validity Certificate within six months from the date on which they were declared elected. This period of six months by subsequent amendment of the year 2018 was increased to 12 months. By virtue of the impugned amendment a further grace period of 15 days has been given whereby it has been provided that such a person who has obtained Validity Certificate on or before coming into force of the

amendment i.e. 27.09.2018 are entitled to submit such Validity Certificates within 15 days i.e. on or before 12.10.2018.

5. Since the petitioners obtained Validity Certificate between 27.09.2018 and 12.10.2018, according to them this provision is discriminatory in as much as there is no intelligible differentia between the candidates who have obtained Validity Certificate prior to 27.09.2018 and the candidates who have obtained Validity Certificate between 27.09.2018 and 12.10.2018. According to the Petitioners they are being discriminated and the amendment is violative of Article 14. In the alternative the Petitioners pray that this provision of providing grace period of 15 days only to the elected candidates who have obtained Validity Certificate prior to 27.09.2018 be read down to their extent.

6. The learned advocate for the petitioners submits that in fact constitutional validity of the provision of Section 9A of the Municipal Council Act has never been agitated in the past. It was not even considered by the full bench of this Court in the matter of **Anant H. Ulahalkar and Another Vs. Chief Election Commission and Others; 2017 (1) Mh.L.J.** wherein only the question as to whether the period of six months provided in the Proviso to Section 9A was mandatory or

directory was considered. There was no challenge to the constitutional validity of Section 9A of the Municipal Council Act in the matter before the full Bench. She submitted that a distinction is sought to be made without there being a material difference in the candidates who had secured Validity Certificate before 27.09.2018 who were granted grace period of further 15 days to submit it, on the one hand, and the candidates like the Petitioners who were unfortunate to obtain such Validity Certificate for no fault of theirs, but because of the inability of the Scrutiny Committee to complete the enquiry and could obtain it during this grace period of 15 days i.e. after 27.09.2018 but before 12.10.2018. The distinction sought to be made is artificial and the petitioners having been duly elected, their election as councillors cannot be allowed to be invalidated. The second Proviso to Section 9A shows that the consequence of such election being cancelled is automatic and such disqualification terminating their election retrospectively is unconstitutional.

7. The learned A.G.P. submits that pursuant to Article 243T of the Constitution of India the legislature in its wisdom has specifically provided by Section 9A a mandate that any person desirous of

contesting election to a seat reserved for a backward class has to submit Caste Certificate and Validity Certificate along with the nomination paper. This provision was inserted by the amendment which had come into force on 19.08.2006. It is after realizing that the applications/proposals for issuance of Validity Certificate under the Caste Certificate Act could be pending before the Scrutiny Committee and it would be difficult for the candidates to procure it that the two Provisos were inserted by subsequent amendments. By virtue of first Proviso a candidate who has applied to the Scrutiny Committee for verification of his Caste Certificate before filing of the nomination paper could file a nomination paper to contest election to a reserved seat with a true copy of the application filed by him to the Scrutiny Committee for issuance of validity certificate and by furnishing an undertaking that he would furnish the Validity Certificate within a period of six months from the date of declaration of election. By second Proviso only a consequence has been spelt out and it has been laid down that failure to produce Validity Certificate within six months, which was subsequently increased to 12 months by the amendment which has been brought into effect from 07.04.2015, the election of such candidate is deemed to have been terminated retrospectively and he shall be disqualified for being a

councillor.

8. According to the learned A.G.P the effect and consequence of this provision of section 9A and its two Provisos is quite logical and reasonable. The legislative wisdom cannot be trampled with without sufficient and sound reasons. If a person really intends to contest election to a reserve seat, he obviously has to have a Caste Certificate and a Validity Certificate and that is what Section 9A initially provided for. The hardship was only relaxed to some extent by the first proviso and the second proviso merely declares the consequence of not furnishing a Validity Certificate.

9. The learned A.G.P further submitted that it is only by way of some concession that a further grace period of 15 days was provided as a window to enable the candidates who have obtained validity certificate prior to 27.09.2018 to produce it within 15 days therefrom. Unfortunately for the petitioners they could obtain it after the cut off date of 27.09.2018. There is apparently a clear distinction between the candidates who had obtained the Validity Certificate prior to that date and those who have obtained it subsequently since it was the date on which Maharashtra Ordinance No. XX of 2018 was promulgated by the

Hon'ble Governor of the State which later on culminated into an Act to amend Section 9A of the Municipal Council Act and a similar provision contained in the Maharashtra Municipal Corporation Act.

10. The learned A.G.P. would submit that when the legislature in its wisdom has provided for such a window, in the absence of any specific instances of any malice or some ulterior motive, one cannot challenge the virus of the provision. The petitioners may be unfortunate but the consequence must follow for not being able to obtain Validity Certificate prior to 27.09.2018. Thus according to learned A.G.P. the distinction is clearly based on intelligible differentia and is not violative of Article 14 of the Constitution of India.

11. The learned A.G.P. also pointed out that no instances of any favouritism have been furnished by the petitioners. The learned A.G.P. then submits that the petitioners are merely seeking to read down the provisions so that they can walk in and their election is saved from the consequences of operation of the second Proviso to section 9A. There is no apparent reason to read down the provision. Lastly, the learned A.G.P. submits that when the time line has been provided by the statute, it is to be strictly followed. The full bench of this Court in the case of

Anant H Ulhalkar (supra) has specifically held time limits of six months provided in Section 9A of the Municipal Council Act as mandatory. A similar view needs to be taken even while interpreting this recent amendment providing that it is only the candidates who have obtained and are in possession of Validity Certificate issued prior to 27.09.2018 to file it within 15 days. Such cut off date cannot be extended by reading down the provision. It would be nothing but legislating which this Court should not do.

12. The petitioners are challenging the constitutional validity of the Maharashtra Ordinance XX of 2018 dated 27.09.2019 as also it's successor the Maharashtra Municipal Council Act (Second Amendment Act, 2018) being violative of Article 14 of the Constitution of India. It would therefore be apposite to understand the legislative history preceding the enactment which according to us would be determinative of the legislative intent which is so vital to examine if the amendment comes clean through the twin tests of Article 14 of the Constitution of India.

13. The 74th Amendment to the Constitution of India introduced Part IX-A comprising of Article 243P to 243ZG which was brought into

force w.e.f. 01.06.1993. It introduced a new system of local self Government for the urban areas called Municipality. Article 243-T provides for reservation of seats in the Municipality for persons belonging to Scheduled Casts and Scheduled Tribes. Clause 6 of Article 243-T enables Legislature of a State to make any provision for reservation of seats in any Municipality in favour of backward classes of citizens.

14. The Municipal Councils Act contains a provision regarding its composition in Section 9. Section 9-A was inserted by the Maharashtra Municipal Corporations and Municipal Councils (Amendment Act 2006) dated 19.08.2006. It provides that every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes, the Backward class of citizens shall submit along with the nomination paper, his caste certificate issued by the Competent Authority under the Castes Act and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Caste Certificate Act. Initially Section 9-A had no proviso and read as under:

“9A. Person contesting election for reserved seats to submit Caste Certificate and Validity Certificate]

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit,

alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Vatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.”

15. By the Maharashtra Municipal Corporations and Municipal Councils (Amended Ordinance 2006) which came into force from 27.10.2006. The two provisos were added which then read thus:

“Provided that, a person who has applied to the Scrutiny committee for the verification of his Caste Certificate before the date of filing the nomination paper but who has not received the validity certificate on the date of filing of the nomination paper;-

i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the validity certificate or any other proof for having made such application to the Scrutiny Committee; and

ii) an undertaking that he shall submit, within a period of three months from the date of his election, the validity certificate issued by the Scrutiny Committee;”

16. The statement of objects and reasons to the Ordinance read thus:

“STATEMENT

By the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 2006 (Mah.XXXV of 2006), the Mumbai Municipal Corporation Act, the Bombay Provincial Municipal Corporation Act, 1949, the City of Nagpur Corporation Act 1948 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, have been amended to provide that a person who desires to contest election to a reserved seat shall

submit, at the time of filing of nomination, the Caste Certificate issued to him by the Competent Authority and the validity certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

2. *The Government has received the number of representations from people's representatives to the effect that in view of the pendency of large number of applications with the Scrutiny Committee, number of persons desirous of contesting the elections to the reserved seats, will not get the validity certificate issued by the Scrutiny Committee before the date of filing nominations, and as a result, they would be deprived of their right to contest the election. The Government, therefore, considers it expedient to amend the aforesaid Acts with a view enable the person who has applied for issuance of validity certificate to the Scrutiny Committee but who has not received the validity certificate to contest the election to the reserved seat on the condition that he will submit, at the time of filing the nomination paper, true copy of the application made by him to the Scrutiny Committee and give an undertaking that he will produce the validity certificate within a period of three months from the date of his election. Provision is also proposed to be made that if he fails to produce the validity certificate within a period of three months as per the undertaking given by him, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.*

3. *As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act, the Bombay Provincial Municipal Corporation Act, 1949, the City of Nagpur Corporation Act, 1948 and Townships Act, 1965 for the purposes aforesaid, this Ordinance is promulgated."*

17. The Ordinance was replaced by the Maharashtra Municipal Corporations, Municipal Councils (Second Amendment Act 2006) which stated that it should be deemed to have come into force on 27.10.2006 for the sake to continuity.

18. The effect of the provisos was clearly not to deprive a person belonging to the reserved category who has applied for issuance of Validity Certificate to the Scrutiny Committee but was unable to receive it because of pendency of large number of applications with it, from contesting the election. A concession was given for the first time to furnish alongwith nomination paper, a true copy of the application made by him to the Scrutiny Committee and giving an undertaking that he will produce the Validity Certificate within a period of three months from the date of his election.

The second proviso provided the consequence of his failure to produce the Validity Certificate as undertaken by declaring that his election shall be deemed to have been terminated retrospectively and also further attaches a disqualification for being a Councillor. It is also important to note that the Government was prompted to give such relaxation since number of representations from peoples representatives were received by it in view of the pendency of large number of applications and inability of the persons desirous of contesting the elections to the reserved seats to obtain Validity Certificate.

19. By the Maharashtra Act No. XIII of 2008 both these provisos were deleted w.e.f. 02.05.2008 since both these provisos were deleted w.e.f. 02.05.2008 this concession was withdrawn. As a result a person desirous of contesting a election to a reserved seat could submit nomination form for reserve seat only if he had a Caste Certificate as well as the Validity Certificate.

20. Again, by the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township (Second Amendment) Ordinance, 2012 the two provisos with slight modifications were reintroduced w.e.f. 08.10.2012 and read thus:

“Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before 31st December, 2013, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for the verification of his Caste Certificate before the date of filing of the nomination papers but who has not received the Validity Certificate on the date of filing of the nomination papers shall submit, along with the nomination papers,-

(i) a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and

(ii) an undertaking that, he shall submit, within a period of six months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee; provided further that, if the person fails to produce the Validity Certificate within a period of six 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.”

21. The ordinance was replaced by Maharashtra Act No.XXXI of 2012 published in the Official Gazette on 24.12.2012 but giving effect to the amendment from 08.10.2012 which was the date of coming into force of its predecessor the Ordinance of 2012. The statement of objects and reasons of the Ordinances of 2012 read thus:

“STATEMENT OF OBJECTS AND REASONS

Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965) provided that a person who desires to contest election to a reserved seat shall submit, along with the nomination papers, the Caste Certificate issued to him by the competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001).

2. The general elections of approximately ten Municipal Councils were scheduled to be held in October, 2012 and preliminary work for holding those elections had already commenced. Such elections of other Municipal Councils are also likely to be held in near future. Taking into consideration the pendency of large number of applications with the Scrutiny Committee, number of persons desirous of contesting the elections to the reserved seats would not have got the Validity Certificate issued by the Scrutiny Committee before the date of filing nomination and as a result, they would have been deprived of their right to contest the election. The Government, therefore, considered it expedient to amend the said Act with a view to allow the persons desirous of contesting election for reserved seats and who had applied to the Caste Scrutiny Committee for obtaining Caste Validity Certificate at the time of filing the nomination, to submit the

Caste Validity Certificate within six months from the date on which they were declared elected. Similarly, the Government considered it expedient to amend section 511-B of the said Act to allow Presidents of the Councils elected against reserved posts, to submit the Validity Certificate within six months from the date on which they were declared elected.

3. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah.XL of 1965), for the purposes aforesaid, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Ordinance, 2012 (Mah. Ord. X of 2012), was promulgated by the Government of Maharashtra on the 8th October, 2012.

4. The Bill is intended to replace the said Ordinance by an Act of the State Legislature.”

As can be seen, more or less the reason which had prompted issuance of the Ordinances were similar to the reasons which had prompted the earlier Ordinance dated 27.10.2006.

22. By Maharashtra Act No. XIII of 2015 which came into force on 07.04.2015 the words 'before 31st December 2013' in the first proviso to Section 9-A was substituted by the words 'before 31st December 2017'.

23. Recently, by the impugned Ordinance, a further amendment to Section 9A of the Municipal Councils Act has been brought into force w.e.f. 27.09.2018 whereby period of six months under the first and

second Proviso of Section 9A has been replaced by twelve months w.e.f. 07.04.2015 and the statement of object and reasons for such Ordinance reads thus:

“

STATEMENT

Section 5B of the Mumbai Municipal Corporation Act (III of 1988), Section 5B the Maharashtra Municipal Corporations Act (LIX of 1949) and section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965), provides that, every person desirous of contesting election to a seat reserved for person belonging to Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Classes of citizens, shall submit, alongwith the nomination paper, Caste Certificate issued by the competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act 2000 (Mah. XXIII of 2001) and the rules made thereunder.

2. *The said sections have been amended by Maharashtra Act No. XIII of 2015 with effect from the 7th April 2015, which permits the candidate to submit, alongwith the nomination papers for election to a reserved seat, a true copy of the application preferred by him to the Scrutiny Committee for issuance of the Validity Certificate or any other proof of having made such application to the Scrutiny Committee; and an undertaking that he shall submit, within a period of six months from the date of his election, the*

Validity Certificate issued by the Scrutiny Committee.

3. *The Caste Scrutiny Committees are overburdened with the task of issuing the validity certificates and this results in difficulties for the elected candidates to obtain the Caste Validity Certificate. In view of the provisions of the relevant Municipal law, in case the elected candidate fails to produce the validity certificate, within a period of six months from the date of his election, his election shall stand to be terminated retrospectively and shall stand disqualified for holding the post.*

4. *To ensure that the elected candidates who have already obtained the Caste Certificate and the Validity Certificate would not be disqualified merely because of failure to produce the Caste Validity Certificate issued by the Caste Scrutiny Committee in time as per the undertaking furnished by him, it is considered expedient to provide for further extension of six months to the elected candidates for submitting such certificate. In view of this, it is expedient to suitably amend section 5B of the Mumbai Municipal Corporation Act (III of 1988), and of the Maharashtra Municipal Corporations Act (LIX of 1949) and section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XL of 1965), retrospectively, i.e. the date of commencement of the Maharashtra Act No. XIII of 2015.*

It is also considered expedient to make similar provisions in respect of elected Mayors of the Municipal corporations or, as the case may be, the Presidents of the Municipal Councils or Nagar Panchayats.

In view of such amendments, with retrospective effect, it is

expedient to incorporate the suitable saving provisions and also the provision for removal of difficulty, which may arise in giving effect to the provisions of the said Acts, due to the proposed amendment.

For achieving the above purposes, the relevant Municipal Laws are amended, suitably.

5. *As both Houses of the State Legislature are not in session and the governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act (III of 1888), the Maharashtra Municipal Corporations Act (LIX of 1949) and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial townships Act, 1965 (Mah. XL of 1965), for the purposes aforesaid, this Ordinance is promulgated.”*

24. This Ordinance was subsequently replaced by the Amendment Act which was published on 14.09.2018 and it was declared that it shall be deemed to have come into force on 27.09.2018.

25. In the meantime, in view of diversions of opinions as to whether the stipulation of six months for production of Validity Certificate is directory as was held in the case of **Dadasaheb A. Gulve Vs. State of Maharashtra and Others; 2008 (2) Bom.C.R. 712** or whether it is mandatory as held in the case of **Sadashiv J. Shrote Vs. State of Maharashtra and Others; 2010 (1) Mh.L.J. 203**, a reference

was made to the Full Bench seeking answers on following issues:

“(i) Whether the time limit prescribed under Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected Councillors is mandatory in nature?”

“(ii) Whether the failure on the part of person elected as Councillor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect?”

“(iii) Whether the validation of caste claim of elected Councillor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councillor with retrospective operation?”

26. The Full Bench answered the first issue holding the time limit prescribed under Section 9A to be mandatory. As regards second issue regarding the arguments of alleged hardship and inequality it was observed in paragraph no.58 as under:

“58. The question of alleged hardships or inequity ought not to enter into the realm of statutory interpretation where the statutory provision is plain, clear and unambiguous. The nebulous concept of hardship or alleged inequity, in the face of clear, plain and unambiguous statutory provision, is not reason enough to either deviate from or resist compliance with statutory provisions.”

27. The Full Bench answered the issued in following words:

“98. In the present case also the legislature in enacting section 9-A has provided for a statutory fiction, which is evident from the use of expression “his election shall be

deemed to have been terminated retrospectively and he shall be disqualified being a Councillor". The statutory fiction must be allowed to have its full play. No other provision or reason has been pointed out to take the view that consequences prescribed under second proviso to section 9-A are not automatic or would require any further adjudication once it is established that the person elected has failed to produce the Validity Certificate within a stipulated period of six months from the date of his election.

99. The validity of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to section 9-A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100. In the result, we hold that the time limit of six months prescribed in the two provisos to section 9-A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to section 9-A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly."

28. The judgment of the Full Bench was challenged before the Supreme Court in case of **Shankar Raghunath Devre (Patil) Vs. State of Maharashtra and Others; (2019) 3 Supreme Court Cases 220**. It upheld

the decision of the Full Bench with following observations in paragraph nos. 6 to 11.

“6. Section 9A of the Maharashtra Municipal councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act 1949 (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.

7. 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 a Scrutiny Committee.

8. There is a second proviso which contemplates that on the failure of the concerned person(s) concerned 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.”

9. 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 nugatory.

10. 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.

11. We, therefore, are of the view that the High Court of Bombay was perfectly justified in coming to the impugned conclusion on the basis of the reasoning that was adopted, which we hereby affirm. Consequently, we dismiss all the special leave petitions and pending applications.”

29. The learned advocate for the petitioners submitted that the Full Bench was called upon to consider as to whether the time limit is mandatory or directory and its consequences but was not called upon to decide the constitutional validity of both the provisos.

30. True it is that the issues referred to the Full Bench did not include constitutional validity of the two provisos. But the Petitioners are making a grievance and are challenging the validity of these provisos on the ground of being arbitrary and the consequence of not producing the Validity Certificate within the stipulated time would put them to hardship. This line of argument and challenge has been considered by the Full Bench in paragraph no.58 (supra) and even the Supreme Court has considered and approved it in the observations quoted herein-above.

Pertinently even the argument of inequality being raised herein was also covered by the Issue nos. 2 and 3 referred to the Full Bench. We need only to reiterate that the time limit being mandatory and the consequences being well defined and which have been held to be valid by the Full Bench as well as the Supreme Court, we are bound by these decisions.

31. Independently, if one scrutinizes the constitutional validity of Section 9A and its provisos on the touch stone of Article 14 of the Constitution of India, it lays down that the State shall not deny to any person, firstly, equality before law and secondly, the equal protection of the laws. Equality does not mean that every law must have universal application for all who are not by nature or circumstances in the same position. The State has the power of classifying the persons for a legitimate reasons. Every such classification to some extent is likely to provide some inequality. A reasonable classification is permissible provided it is based on some real and substantial distinction bearing a reasonable and just relation to the object sought to be achieved. The classification cannot be arbitrary and without substantial basis. Without burdening the judgment by referring to catena of decisions of the

Supreme Court on the issue it would suffice to proceed with an understanding that such classification in order to be reasonable must pass through two tests. It must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and secondly, that the differentia must have a rational relation to the objects sought to be achieved by the statutory provision.

32. Applying these tests to the matter in hand, in our considered view there is indeed a clear distinction between the candidates who have obtained Validity Certificate prior to the cut off date i.e 29.09.2018 and the candidates who have obtained such Certificates beyond that date. One can easily make out the distinction.

33. In order to ascertain as to if such distinction has any nexus or rational relation with the object of enacting Section 9-A and the two provisos one can easily grasp from the legislative history which has been reproduced herein-before that only after realizing the practical difficulties being faced by such candidates in obtaining Validity Certificates because of the over burdening of work with the Scrutiny Committees that the provisos were introduced giving some concession of

same period to produce the Validity Certificate. This period was initially three months which was subsequently increased to six months and by the latest amendment it has been increased to twelve months. The latest amendment further provides a window of fifteen days from 27.09.2018 i.e. up to 12.10.2018 only to the persons who had obtained Validity Certificate prior to 27.09.2018 just to produce it to the Election Commission.

34. It is quite clear that primarily it is only the persons who really belong to the reserved category to whom the benefit of such reservation should go that Section 9A mandated that he should have a Validity Certificate before filing nomination form. It is only after realizing the practical difficulties, with a view to avoid some headship, that a further period of three months / six months / twelve months was granted. The aims and objects clearly show that the time limit which is now held to be mandatory has been laid down from time to time to submit the Validity Certificate. Bearing in mind the object sought to be achieved by providing reservation and by requiring Caste Certificate and Validity Certificate to be produced, in our considered view the classification made between the persons who are armed with Validity

Certificate prior to 27.09.2018 and the persons who are unable to do so by that date, is clearly a classification founded on an intelligible differentia having a rational relation to the object sought to be achieved by Article 243-T of the Constitution of India and Section 9-A of the Municipal Councils Act and the subsequent amending Acts including the one questioned herein.

35. This takes us to the submission of the learned advocate for the Petitioners that such classification based on the cut off date is arbitrary and is also discriminatory.

36. As we have noticed herein-above from the legislative history, it is not that for the first time by the impugned Ordinance and Amendment Act the time has been fixed. This has been a consistent phenomenon and the recent amendment has been preceded by as many as three amendments introducing such time or cut off date. Realising that hardships being faced by the elected candidates to procure Validity Certificate that the legislature in its wisdom has come out with Ordinances from time to time which subsequently were replaced by the Amendment Acts. Whenever the Ordinance has culminated in amended Act, the date of coming into effect of the Ordinance has been made the

date for effecting the amendment in the statute. It therefore cannot be said that the time limit fixed is arbitrary.

37. To sum up, we hold that Section 9-A and its two provisos which have undergone amendment from time to time and by the recent impugned amendment easily passes through the test of Article 14 of the Constitution of India.

38. We associate ourselves with the predicament being faced by the Petitioners. Admittedly, they have subsequently received Validity Certificate between the window period i.e. between 27.09.2018 which is the cut off date laid down by first proviso and 12.10.2018, the date by which the candidates who have secured Validity Certificate prior to 27.09.2018, have been made entitle to produce it. But to borrow the phrase of the Full Bench in the case of **Anant H. Ulahalkar (supra)** in every cause there would be martyrs.

39. As has been rightly submitted by the learned A.G.P., the petitioners though have alleged about the impugned amendment having been introduced and the cut off date has been laid down with some malice or ulterior motive, the Petitions being sans any such specific

instance, such emotional argument need only to be discarded. Unless it is pointed out objectively that the cut off date has been fixed to save some specific candidates or to exclude same, the argument cannot be accepted.

40. The principles regarding test of classification under Article 14 of the Constitution of India have been recently considered by the Supreme Court in the case of **Hiral P. Harsora and Others Vs. Kusum Narottamdas Harsora and Others; (2016) 10 Supreme Court Cases 165**. It considered the constitutional validity of Section 2(q) which defines the word 'respondent' contained in the Protection of Women from Domestic Violence Act, 2005, which contained the words 'adult male persons'. It was struck down being violative of Article 14 of the Constitution of India. It has been observed as under:

“(10) Doctrine of classification should not be overemphasised so as to subvert doctrine of equality

Article 14 is in two parts. The expression “equality before law” is borrowed from the Irish Constitution, which in turn is borrowed from English law, and has been described as the negative aspect of equality. The “equal protection of the laws” in Article 14 has been borrowed from the 14th Amendment to the US Constitution and has been described as the positive aspect of equality, namely, the protection of equal laws. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive Article 14 of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of

equality. This admonition seems to have come true in the present case, as the classification of “adult male person” clearly subverts the doctrine of equality, by restricting the reach of a social beneficial statute meant to protect women against all forms of domestic violence. The burden to affirmatively satisfy the court that the twin test of intelligible differentia having a rational relation to the object sought to be achieved by the Article would lie on the State, once it has been established that a particular piece of legislation is on its face unequal. The Court is conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. The microscopic difference between male and female, adult and non-adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, the words “adult male person” are contrary to the object of affording protection to women who have suffered from domestic violence “of any kind”. Hence, the words “adult male” before the word “person” in Section 2(q) are struck down, as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.”

41. It was thus held that the classification sought to be made between adult male person only made a microscopic difference between male and female, adult and non-adult and regard being had to the object sought to be achieved by that Act, such microscopic classification was held to be violative of Article 14 of the Constitution of India. In doing so, a reference was made to catena of earlier pronouncement of the Supreme Court including the decision in the case of **D. S. Nakara and**

Others Vs. Union of India (1983) 1 Supreme Court Cases 305, and particularly the following observations in paragraph 35 are important:

“35. With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned government servant actually retired from service.”

42. As can be seen, a scheme providing for upward revision of pension which was made applicable to the pensioners who were to retire after a cut off date denying the benefit to the employees who stood retired prior to that date was held to be classification which did not stand the test of Article 14 of the Constitution of India.

43. In the matter in hand, bearing in mind the Aims and Objects of Article 243-T of the Constitution of India and Section 9-A of the Municipal Council Act and its provisos discussed herein-above, the distinction sought to be drawn by the legislature is quite reasonable and aims at achieving the object. Bearing in mind the scope and ambit of

Article 14 of the Constitution of India as interpreted in several judgments including the decision in the case of **D. S. Nakara** and **Hiral P. Harsora** (supra), we find that the impugned amendment making distinction in the candidates holding Validity Certificate prior to 27.09.2018 and those who have obtained or would obtain it after that date is quite reasonable and is based on intelligible differentia having reasonable nexus with the object sought to be achieved.

44. Perhaps, anticipating such a consequence, the petitioners and their learned advocate have prayed that at least, the Amendment Act of 2018 be read down so as to extend the benefit of grace period of fifteen days to submit the Validity Certificate to them since they have obtained the Validity Certificate between 27.09.2018 and 12.10.2018.

45. The doctrine of reading down a provision of a statute would not be applicable in this case since we are upholding the constitutional validity of Section 9-A and its two provisos of the Municipal Councils Act. The doctrine of reading down a provision cannot be resorted when a meaning of a provision is plain and unambiguous and the legislative intent is clear. As a fundamental principle the Court must read the legislation literally and if on such reading and understanding the vice of

unconstitutionality is attracted, if there is some unintended legislative omission which can reasonably be implied without undertaking a legislative exercise the provision or the Act can be read down to save it from becoming unconstitutional. In the case of **Subramanian Swamy and Others Vs. Raju Through Member Juvenile Justice Board and Another; (2014) 8 Supreme Court Cases 390**, it has been observed thus:

“61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the “reading down” doctrine can be summarised as follows. Court must read the legislation literally in the first instance. If on such reading and understanding the vice of the unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without understanding what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well-established and well-accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Swant J. (majority view) in DTC v. Mazdoor Congress which succinctly sums up the position is, therefore, extracted below: (SCC pp. 728-29, para 255)

“255. It is thus clear that the doctrine of reading down or of recasting the statue can be applied in limited situations. It is essentially used, firstly, for saving a statute from being stuck down on account of its interpretations are possible – one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation

which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only is it no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

46. The observations quoted in this case from the majority view in **DTC Vs. Mazdoor Congress; 1991 Supp 1 SCC 600** have also been referred to and relied upon by the Supreme Court in the case of **Hiral P Harsora** (supra) in paragraph no.51.

47. The upshot of these observations and the discussion herein-above is that since we are holding that Section 9A and its provisos are constitutionally valid, and the provision is clear and unambiguous there is no question of any application of the doctrine of reading down so as to extend the benefit of the grace period of fifteen days to the petitioners who have obtained Validity Certificate after the cut off date of 27.09.2018. If it is to be applied, it would tantamount to legislating

something which the legislature did not intend.

48. The learned advocate for the petitioner as a last resort tried to salvage some ground by pointing out that in **Writ Petition No.11386 of 2018** this Court by the **order dated 11.10.2018** (Aurangabad Bench) has directed the Commissioner of Nanded-Waghala Municipal Corporation, Nanded not to take any adverse action against a similarly situated candidate who was elected as a Councillor, for failure to submit the Validation Certificate before the prescribed date. The learned advocate submitted that even the Petitioners are entitled to a similar protection particularly when their case stands on a better footing than the elected Councillor in that Writ Petition whose proposal for caste scrutiny was still before the scrutiny committee and was not decided, whereas the Petitioners have already secured Validity Certificate though belatedly. Therefore the Petitioners are entitled to seek parity.

49. It is apparent that a similarly situated candidate was granted protection in Writ Petition No.11386 of 2018 by the order dated 11.10.2018. However the decision of the Full Bench in the Case of **Anant H Ulhalkar** (supra) was not cited before the Division Bench. There is no escape from the consequence of being not able to produce

Validity Certificate by the cut off date as spelt out in the second proviso to Section 9A. The consequence is axiomatic. When there is a specific provision which speaks about the consequence, in our considered view the decision of the Division Bench cannot be followed as a precedent and the Petitioners are not entitled to seek any parity with the Petitioner therein.

50. In the result we hold that Section 9A of the Municipal Councils Act together with both the provisos as they stand today, subsequent to the impugned Amendment Act are not violative of Article 14 of the Constitution of India. Consequently the Writ Petitions are liable to be dismissed.

51. Both the Writ Petitions are dismissed. The Rules are discharged.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]

52. At this stage, the learned counsel for Petitioners seeks continuation of interim orders passed in the present Writ Petition.

53. We have held that the consequence of non submission of Validity Certificate before the cut off date is axiomatic. However, considering the fact that interim relief was in operation till today, we continue the said interim relief for a period of two (2) weeks from today. It is made clear that on lapse of period of two weeks, protection granted by this Court shall come to an end.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]