

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6493 OF 2019

Ramesh Keda Bachhav and Ors.

... Petitioners

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Amol R. Patil for the petitioner.

Smt. G.U. Shinde, AGP for respondent nos. 1, 3 and 4.

Mr. J. D. Khairnar for respondent no.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th June, 2019.

P.C. :

Heard respective counsels.

2 Petitioner incurred disqualification for non submission of certificate as contemplated u/sec. 14(1)J-5(i) of the Maharashtra Village Panchayat Act, about having and using a toilet at the place of residence. By the impugned orders which are passed by the Collector and confirmed in Appeal by the Commissioner, it is held by the authorities that the petitioners have failed to submit certificate as stated herein above within the time stipulated.

3 While questioning these findings, learned counsel for petitioners would urge that in view of proviso to section 14(1)J-5 of the Act, which is inserted in the statute book on 10/01/2011, such certificate can be tendered in the extended period of one year. According to him, the petitioner submitted such certificate on 23/10/2015 along with a resolution of Gram-Sabha. As such, the submission is, compliance pursuant to proviso to sub section J-5 of section 14(1) of the Maharashtra Village Panchayat Act, 1959 was reported within stipulated period.

4 *Per contra*, the learned counsel for respondents submits that the proviso to section 14(1)J-5 of the Act will not be attracted in the case of the petitioners as by virtue of said proviso, protection was extended to such members of village panchayat who were holding the office of member of panchayat on the date of commencement of Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (second amendment)(Act 2010) i.e. Maha. Act No. 33 of 2010. According to him, the statute itself put an embargo on the rights of the petitioners thereby limiting the period to 90 days, for submission of such certificate from the date of election of the returned candidate. As such, according to him, the petition is liable to be dismissed.

5 Considered rival submissions.

6 The submission of the certificate of use of toilet along with the resolution of Gramsabha by the petitioners on 23/10/2015 in response to election dated 24/04/2015 is not disputed.

7 What is required to be appreciated is, the provisions contemplates such certificates are to be submitted by the petitioners within a period of 90 days from the date of election and failure attracts the disqualification under section 14(1)J-5 of the Act. Admittedly, the petitioners have not submitted such certificate within a period of 90 days from the date of decision of the Result of Election.

8 Petitioners have tried to rely on the amendment carried out to the section 14(1)J-5 of Maharashtra Village Panchayat Act on January 10th, 2011. Such amendment by virtue of 1st proviso, extend protection from disqualification as provided in section J-5, only to such members of the village panchayat who have submitted the certificate of having and using a toilet within a period of one year from 10.01.2011. As such, the first proviso to section J-5 cannot be made applicable to the case of the petitioners as his election is post 10/01/2011 i.e. of 24/04/2015 and as

such, the period of 90 days has prescribed in second proviso to sub section J-5 will be attracted in the case in hand.

9 2nd Proviso to the said sub section inserted by an amendment dated October 5, 2011 is required to be read in contest of the main section. If the contention of the petitioner is accepted, same will amount to making violence to the main section as the cut-off date i.e. 10/01/2011 prescribed in first section will be rendered redundant.

10 The protection under amendment was restricted to the extend of time period of one year from the date prescribed therein i.e. January 10, 2011. Statute does not prescribe for protection or submission for caste certificate within one year from the date of declaration of the result of the election, post one year from the cut-off date i.e. 10/01/2011 of Grampanchayat Election.

11 That being so, no case for interference is made under the extra ordinary jurisdiction. The petition fails and is accordingly dismissed.

(N. W. SAMBRE, J.)