

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.685 of 2018

(Prakash Ganyansing Bassi .vs. Collector, Buldhana and another.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. S.P. Bhandarkar, Advocate for Petitioner.
Ms. Ritu Kalia, AGP for Respondent Nos. 1 & 2.

CORAM : Manish Pitale, J.

DATED : February 5, 2019.

Civil Application No. 275 of 2019.

This is an application filed on behalf of the petitioner for grant of leave to amend the writ petition. The proposed amendment has been occasioned due to subsequent events that have occurred during the pendency of the present writ petition. The petitioner intends to incorporate certain documents concerning the subsequent events. The petitioner has also sought addition of the Scheduled Tribe Certificate Scrutiny Committee, Amravati Region, Amravati, as a party respondent in present writ petition and certain additional prayers are also sought to be added. Although the learned AGP appearing on behalf of the respondent nos. 1 and 2 has opposed the present application, for the reasons stated in the application, the application is allowed and the petitioner is permitted to carry out the amendment forthwith. Civil Application No. 275 of 2019 is disposed of.

Writ Petition No. 685 of 2018

By this writ petition, the petitioner has challenged order dated 29.01.2018 passed by the respondent no.1 Collector, thereby cancelling the election of the petitioner as Member of the Panchayat Samiti. The said order has been passed on the basis of Section 12-A of the Maharashtra Zilla Parishad and Panchayat Samits Act, 1961, as the petitioner failed to submit caste validity certificate within a period of six months of being declared, although he contested and he was elected from the seat ear-marked for the reserved category. On 05.02.2018, this Court had issued notice but refused to grant interim relief in favour of the petitioner. The said order of this Court was challenged by the petitioner by filing Special Leave Petition No. 9754 of 2018 before the Hon'ble Supreme Court. On 23.08.2018, the Hon'ble Supreme Court issued notice in the special leave petition and granted stay of the order dated 29.01.2018 passed by the Collector and the order dated 05.02.2018 passed by this Court.

2. Subsequently, the aforesaid petition of the petitioner was listed along with a group of special leave petitions, taken up for consideration by the Hon'ble Supreme Court. The subject matter for consideration before the Hon'ble Supreme Court was a *pari materia* provision i.e. Section 9A of the Maharashtra Municipals Councils, Nagar Panchayats and Industrial Township Act, 1965, under which also the elected candidates were required to mandatorily submit caste validity certificates

within a period of six months of being elected. The Hon'ble Supreme Court considered the correctness of Full Bench judgment of this Court on the said issue in the case of **Anant H. Ulahalkar and another .vs. Chief Election Commissioner and ors.** reported in **2017 (1) Mh.L.J. 431**. By the judgment and order dated 23.08.2018, the Hon'ble Supreme Court dismissed the bunch of special leave petitions including the special leave petition filed by the petitioner herein. While doing so, the Hon'ble Supreme Court held as follows:-

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

Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain

language used can lead to only one conclusion, namely, that the legislative intent was to make the provision of the statute mandatory irrespective of individual hardships.”

3. Therefore, it becomes clear that the Hon'ble Supreme Court has agreed with the Full Bench judgment of this Court in the case of **Anant H. Ulahalkar and another .vs. Chief Election Commissioner and ors** (supra) and applying the ratio to the facts of the present case, it becomes evident that the petitioner was mandatorily required to submit caste validity certificate as per Section 12-A of the aforesaid Act of 1961. Although there has been an amendment in the proviso to Section 12-A on 14.12.2018 made effective from 07.05.2016, whereby the time period of six months has been substituted by twelve months, but it is an admitted position that till date the petitioner has not been able to submit caste validity certificate before the concerned authority. Therefore, no fault can be found with the impugned order passed by the Collector cancelling the election of the petitioner.

4. The learned counsel appearing for the petitioner has invited the attention of this Court to another aspect of the matter i.e. the petitioner suffering due to pendency of the proceedings before the Scrutiny Committee and the said remaining pending for long period of time. The writ petition has been amended by the petitioner to contend that he should not be made to suffer due to the delay in disposal of the proceedings by the Caste Scrutiny Committee i.e. the newly added

respondent no.3 before this Court. Apart from other prayers, by one of the prayers i.e. the prayer 3(d), the petitioner has sought a direction to the respondent no.3 -Scrutiny Committee for expeditious disposal of the proceedings initiated by him for grant of validity certificate.

5. In the light of the above, although it is found that no relief can be granted to the petitioner on merits and the writ petition is dismissed, it would be appropriate that a direction is given to the newly added respondent i.e. respondent no.3 Caste Scrutiny Committee to dispose of the application filed by the petitioner expeditiously.

6. Accordingly, the writ petition is dismissed. The respondent no.3 Caste Scrutiny Committee is directed to dispose of the application for grant of validity certificate filed by the petitioner, as expeditiously as possible and in any case within a period of three months from today.

JUDGE