

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 9960 OF 2017

Varsha Bhimrao Sathe ..Petitioner.
Vs
State Election Commission & Ors ..Respondents.

Mr. Nitin S. Dhumal, Advocate for the Petitioner.
Ms. Sarika Shetye i/by S.B. Shetye for Respondent No.1.
Mr. Abhijit P. Kularni for Respondent Nos. 2 and 3.
Mrs. A.A. Purav for Respondent Nos. 4 and 5.

CORAM : S.J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED :- 8th JANUARY, 2020.

P.C. :-

1. By the above Writ Petition, the petitioner seeks the following relief:-

(b) That this Court may be pleased to issue appropriate Writ, Order or direction declaring that the provisions of Section 5B of the Maharashtra Municipal Corporation Act of submission of caste validity certificate within six months is not mandatory and be pleased to further hold and declare that the petitioner has not incurred disqualification due to delayed submission of caste validity certificate.
2. The facts leading to the above Writ Petition are, briefly, set out hereunder :-
3. The petitioner is a resident of Pune. The Petitioner belonged to Mang

caste, which is included in Schedule Caste category at Sr. No.46. The Caste Certificate was issued to the Petitioner in her maiden name, namely Varsha Hanumant Dhade by the Sub-Divisional Officer (Revenue) Madha. The Petitioner contested the election for the post of Municipal Corporator from Ward No.37A Upper-Supper Indira Nagar for a term of five years from 2017-2022. The said Ward was notified as reserved for Scheduled Caste (Ladies) category. The petitioner was declared elected from the said Ward on the reserved seat on 23rd February, 2017 by respondent No.3 – Deputy Commissioner/Election Officer, Pune Municipal Corporation. Since the petitioner was not having caste validity certificate on the date of filing of the nomination, she had filed an application stating that she would submit the caste validity certificate within a period of six months from the date of declaration of the results in compliance with **Section 5B** of the Maharashtra Municipal Corporation Act (for short “the Act”). The Caste Validity Certificate was issued to the Petitioner on 23rd August, 2017. The same was forwarded by the Petitioner to the Respondent No.3 by email on the same day and by hand delivery on 24th August, 2017. According to the Petitioner, though the Respondent No.3 accepted the Caste Validity Certificate, he informed the Petitioner that according to him the last date for submission of Caste Validity Certificate is 22nd August, 2017 and he has no authority to either accept or reject the compliance made by the Petitioner and therefore, he will submit report to the

Respondent No.1 State Election Commission for taking appropriate decision on the issue with regard to disqualifying the Petitioner from being a Councilor and termination of her election retrospectively due to delay in submitting the Caste Validity Certificate.

3. The Petitioner therefore, filed the above Writ Petition seeking relief set out in para 1 above. It appears that there was a delay of one day on the part of the petitioner in submitting the caste validity certificate. Section 5B of the Maharashtra Municipal Corporation Act reads as under:-

“5B. Person contesting election for reserved seat 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, along with 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]

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December, 2017, 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 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 of his election, 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 of his election, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.]

4. The said Section 5B of the Act was amended by Maharashtra Act

No. LXV of 2018. Clause 4 of the said Amendment Act read as follows :-

In Section 5B of the Maharashtra Municipal Corporations Act (hereinafter in this Chapter referred to as “Maharashtra Corporation Act”).

(a) in the first proviso, in clause (ii), for the words “six months” the words “twelve months” shall be substituted and shall be deemed to have been substituted with effect from the 7th April, 2015:

(b) In the second proviso, for the words “six months” the words “twelve months” shall be substituted and shall be deemed to have been substituted with effect from 7th April, 2015.

(c) after the second proviso, the following proviso shall be added, namely :-

“Provided also that, in respect of the undertaking filed by any person under clause (ii) of the first proviso, before the date of

commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 2018, the period of “six months” specified in such undertaking shall be deemed to have been substituted as “twelve months”.”.

4. In view of the amendment which came into effect from 7th April, 2015 the petitioner became entitled to file his caste validity certificate within a period of 12 months from the date of declaration of the results of the election. The results were declared on 23rd February, 2017. The Caste Validity Certificate was forwarded/handed over to Respondent No.3 on 23rd / 24th August, 2017. In view thereof, the submission of the Caste Validity Certificate by the Petitioner to the Respondent No.3 is within time. Respondent No.3 shall accept the caste validity certificate submitted by the petitioner, if not accepted so far. Needless to clarify that respondent no.3 shall be entitled to verify whether the caste validity certificate is in order. The Writ Petition is accordingly disposed of.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)