

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6 OF 2020

(Sau. Aparna w/o Gajanan Raut alias Ku. Antkala d/o Motiram Chaudhari Vs.
Divisional Commissioner, Amravati, Dist. Amravati and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Piyush S. Girdekar, Advocate for Petitioner.
Shri A.A. Madiwale, AGP for Respondent Nos.1 & 2.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 13th JANUARY, 2020.

1] The petitioner is aggrieved by her disqualification on account of non-furnishing of the validity certificate under section 10-1A of the Maharashtra Village Panchayat Act, 1958 dated 26.07.2019 and by order dated 10.11.2019 passed by the Divisional Commissioner, Amravati confirming the disqualification.

2] The non-contesting Respondent no.3 has been served by the petitioner. A pursis dated 13.01.2020 is placed on record to indicate that the Secretary of the Gram Panchayat was served with a communication dated 10.01.2020 indicating that this petition will be taken up today for hearing. The acknowledgment stamp of respondent no.3 is also visible. Yet, no appearance is entered.

3] The petitioner was elected as the Member of the village Gram Panchayat Januna, Taluka Barshitakli, District Akola on 09.10.2017. She had contested from the O.B.C. category as she belong to the "Kunbi" caste and the seat was

reserved for the said category. She received her caste validity certificate on 01.10.2018 and tendered it on 14.11.2018. Yet, respondent no.2 District Collector has disqualified her on 26.07.2019 on the ground that she has failed to submit her caste validity certificate within the prescribed time. Respondent no.1 Divisional Commissioner has dismissed her appeal by order dated 10.11.2019.

4] The learned AGP submits that the caste validity certificate and the caste certificate indicated by the petitioner, belong to two different persons and these two persons namely Antkala d/o Motiram Chaudhari, is an altogether different person than the petitioner. He further submits that the documents placed on record by the petitioner tendered across the bar in the form of an affidavit dated 12.01.2020 and the documents accompanying thereto, have been produced for the first time. These documents were not before the lower authority. He further submits that a pursis dated 13.01.2020 and another pursis of the same date with accompanying documents, were not before the lower authority.

5] The learned Advocate for the petitioner submits that the name Antkala Motiram Chaudhari is the maiden name of the petitioner. After marriage to Gajanan Raut, her name changed to Aparna Gajanan Raut. She derives her caste from her father, who is also "Kunbi" falling under O.B.C. and it is not her case that she has derived her caste from her husband. He further submits that the caste validity certificate, which is placed on record rightly mentions her maiden name, as it is settled law that a person derives

his/her caste from the father.

6] The learned AGP submits that the appropriate procedure would be to remit this matter to the first respondent and direct the petitioner to produce a copy of the police vigilance report of the caste validation committee available with the validity committee and also the documents which the petitioner relies upon so as to enable respondent no.1 to scrutinize the record and consider the case accordingly.

7] Though, I was inclined to entertain this petition rather than remitting the same to the office of respondent no.1, I find that the submissions of the learned AGP are appropriate that respondent no.1 should scrutinize the record, which was relied upon by the caste validity committee and the police vigilance report so as to test the case of the petitioner that Ku. Antkala Motiram Chaudhari is the same person who is Sau. Aparna w/o Gajanan Raut. The documents produced in the Court today were never produced before the lower authorities.

8] I find that if eventually respondent no.1 appreciates that the police vigilance report and the documents presented before the caste validity committee indicate that Ku. Antkala Motiram Chaudhari is the same person Sau. Aparna Gajanan Raut and the caste certificate indicates her maiden name and the caste validity therefore, rightly mentions her maiden name, she would then be entitled for the protection of Maharashtra Ordinance No.XXI of 2018 dated 11.10.2018 vide which, the period for tendering such a caste validity certificate is extended to

twelve months, in as much as, the case of the petitioner would be covered and so also the petitioner would be benefitted from Maharashtra Ordinance No.II of 2019 dated 14.02.2019 vide which, time to tender the caste validity certificate has been extended upto 14.05.2019.

9] In view of the above, this petition is partly allowed. The impugned order dated 10.11.2019 passed by the first respondent is quashed and set aside and the matter is remitted to respondent no.1 office.

10] The petitioner shall cause an appearance before respondent no.1 on 03.02.2020 at 03:00 p.m. and shall abide by the dates of hearing on which the matter is posted. She is granted the opportunity of producing the above mentioned documents so as to convince respondent no.1 that Ku. Antkala Motiram Chaudhari is the same person by marital name Sau. Aparna Gajanan Raut.

11] In view of the above, respondent no.1 would then issue notice even to the Gram Panchayat, though non-contesting, and shall decide the proceedings as expeditiously as possible and preferably on or before 15.04.2020. Until then, though the petitioner would not be reinstated in her position as Member of the Gram Panchayat, no elections would be held to fill in the said post, until the decision of respondent no.1.

(Ravindra V. Ghuge, J.)