

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

WRIT PETITION NO. 3879 OF 2020

Moinuddin Mansursab Momin	... Petitioner
Versus	
The State of Maharashtra and others	... Respondents

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Mr. Amit S. Deshpande, Advocate for petitioner
 Mr. S. N. Morampalle, AGP for respondent Nos. 1, 2 and 6
 Mr. S.N.Lale, Yelwatkar, Advocate for respondent Nos.3 & 4 – absent
 Mr. A. B. Kadethankar, Advocate for respondent No.5

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CORAM : R. G. AVACHAT, J.

DATED : 21st JANUARY, 2021

PER COURT :-

. The petitioner was elected as Sarpanch of village Kalmugali, taluka Nilanga, district Latur in October-2017 on the post reserved for other backward category (O.B.C.) The petitioner is 'Momin' by caste, which falls under O.B.C. category. At the time of filing of nomination, he had submitted his caste certificate and a copy of the application made to the District Caste Certificate Scrutiny Committee, Latur. He, however, failed to produce caste validity certificate within a time frame. Respondent Nos. 3 and 4, preferred a complaint to the Collector and urged for removal of the petitioner from the post of Sarpanch. Their complaint was allowed. The

petitioner was held to have been terminated retrospectively vide order dated 30.07.2019. Thereafter, on 10.12.2019, the Caste Certificate Scrutiny Committee granted the petitioner caste validity certificate. The petitioner has, therefore, prayed for direction to respondent No.1 to restore him to the post of Sarpanch.

2. As per Section 10-1A of the Maharashtra Village Panchayats Act, it was mandatory on the part of petitioner to produce caste validity certificate within a period of twelve months from the date of his election to the post of Sarpanch. It seems, he ought to have produce the same on or before 10-10-2018. Failure to produce such certificate within the time frame has a consequence in the nature of his election to be deemed to have been terminated retrospectively and he shall be disqualified for being a member.

3. Similar provision contained in Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, was a subject matter of interpretation before a Full Bench of this Court in the case of **Anant H. Ulahalkar & anr. vs. Chief Election Commissioner & ors. - 2017(1) Bom.C.R. 230**, wherein, it has been held that the said provision is mandatory. Section 9-A provides for a statutory fiction, which is evident from

use of expression “his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councillor”. Statutory fiction must be allowed to have its full play.

4. In view of the aforesaid judgment, the petitioner has no merit in the matter. The writ petition, therefore, fails. The same is dismissed.

[R. G. AVACHAT, J.]

SMS