

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1365 OF 2019

Sanjay Nathalal Gohil

Age : 47 years, occ : business
and social work,
R/o Deshmukhwadi, Pachora,
District Jalgaon.

Petitioner

Versus

1. Ajay Bhaskar Ahire
Age : 46 years, occ : service
R/o Vivekanand Nagar,
Bhadgaon Road, Pachora,
District Jalgaon.

2. The Collector, Jalgaon
District Jalgaon

3. The Chief Officer,
Pachora Municipal Council,
Pachora, Dist. Jalgaon.

Respondents

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Mr. Subodh P. Shah, Advocate for the petitioner.
Mr. Mahesh Deshmukh, Advocate for respondent No. 1.
Mr. R.D. Sanap, A.G.P. for State.

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WITH
CIVIL APPLICATION NO. 6643 OF 2020
IN
WRIT PETITION NO. 1365 OF 2019

1. Satish Shravan Bramhane
Age : 45 years, occ : service,
R/o Plot No. 5, Bhimai Bhavan,
Sangmitra Housing Society,
Pachora, District Jalgaon.

2. Sindhu w/o Panditrao Shinde
Age : 68 years, occ : household
R/o Plot No. 380, Bhadgaon Road,
Vivekanand Nagar, Pachora,
District Jalgaon.

3. Vishnu Ramdas Ahire
Age : 52 years, occ : agri.,
R/o Hanuman Nagar,
Pachora, District Jalgaon.

Applicants/
Interveners

Versus

1. Ajay Bhaskar Ahire
Age : 46 years, occ : service
R/o Vivekanand Nagar,
Bhadgaon Road, Pachora,
District Jalgaon.
2. The Collector, Jalgaon
District Jalgaon
3. The Chief Officer,
Pachora Municipal Council,
Pachora, Dist. Jalgaon
4. Sanjay Nathalal Gohil
Age : 47 years, occ : business
and social work
R/o Deshmukhwadi, Pachora,
District Jalgaon.

Respondents

Mr. R.N. Dhorde, Senior Counsel i/b
Mr. V.R. Dhorde, Advocate for the applicants/interveners
Mr. Mahesh Deshmukh, advocate for respondent No. 1.
Mr. R.D. Sanap, A.G.P. for the State.
Mr. S.P. Shah, Advocate for respondent No. 4.

CORAM : N.J. JAMADAR, J.

Judgment reserved on : 22nd March 2021.
Judgment pronounced on : 4th May 2021.

JUDGMENT :

Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties, heard finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India takes exception to an order passed by the District Collector, dated 23rd January 2019 on Application No. 27/2019, whereby the election of the petitioner as the President of the Municipal Council, Pachora was declared to be deemed to have been terminated for failure to submit the caste validity certificate within the period stipulated under Section 51-1B of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act, 1965 (Act 1965).

3. The background facts, leading to this petition, can be stated in brief as under :

a) The petitioner had contested election to the post of the President of Pachora Municipal Council, which was reserved for the candidates belonging to Scheduled Caste. On 28th November 2016, the petitioner was declared elected for the post of the President of Municipal Council. While submitting nomination form, the petitioner had furnished true copy of the application preferred by him to the Scrutiny Committee for issue of validity certificate and an undertaking that he would submit the validity certificate within a period of six months from the date he was declared elected, in conformity with the proviso to Section 51-1B of the Act 1965.

b) As the Caste Scrutiny Committee did not expeditiously determine the petitioner's claim, the petitioner

preferred Writ Petition bearing No. 5605 of 2017. A Division Bench of this Court, by an order dated 26th April 2017, directed the Caste Scrutiny Committee to take decision on the proposal of the petitioner within a period of six months thereof and also directed the Collector – respondent No. 3 in the writ petition, not to take any adverse action against the petitioner on the ground of his failure to submit validation certificate. It was further observed that appropriate steps could be taken depending upon the result of the proposal for caste validity certificate.

c) As the claim could not be decided by the Scrutiny Committee within the aforesaid period as well, the petitioner was again constrained to institute a petition, being Writ Petition No.12443 of 2017. By an order dated 11th October 2017, a Division Bench of this Court disposed of the writ petition on the premise that the order passed by this Court on 26th April 2017 in Writ Petition No. 5605 of 2017 adequately protected the interest of the petitioner and no fresh orders were warranted.

d) Eventually, the Caste Scrutiny Committee validated the claim of the petitioner by an order dated 8th November 2017. The petitioner submitted validity certificate on 29th November 2017.

e) Respondent No. 1, who had contested the election against the petitioner, lodged a dispute with the Collector, Jalgaon on 7th September 2018 contending that the petitioner did not submit the validity certificate within the period of six months

from the date of declaration of results and, thus, the election of the petitioner to the post of the President stood terminated retrospectively. Respondent No.1 banked upon the Full Bench judgment of this Court in the case of *Anant H. Ulhalkar and another vs Chief Election Commissioner and others, 2017 (1) AIR Bombay 327*. The petitioner resisted the dispute by filing objection thereto.

f) After appraisal of the rival contentions and submissions canvassed on behalf of the petitioner and respondent No. 1, the Collector, Jalgaon was persuaded to enter a finding that the petitioner failed to submit the caste validity certificate within twelve months of the declaration of results in terms of Mumbai Municipal Corporation Act, Maharashtra Municipal Corporations Act and Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Ordinance, 2018, which came into force w.e.f. 27th September 2018 and whereunder the period prescribed in the second proviso to Section 51-1B of the Act 195 for submission of validity certificate stood extended to "twelve months". It was held that the validity certificate ought to have been submitted on or before 27th November 2017, and, thus, submission of the certificate on 29th November 2017 was beyond the stipulated period and, consequently, the election of the petitioner stood terminated.

g) Being aggrieved by the aforesaid order of disqualification passed by the Collector, the petitioner has

invoked the writ jurisdiction of this Court principally on two grounds. One, the submission of the validity certificate on 29th November 2017, in the backdrop of the declaration of results on 28th November 2016 was, in fact, within the stipulated period of 12 months, if time is computed in conformity with law. Two, the election of the petitioner is saved by Section 9 of the Ordinance 2018 which incorporated a deeming provision to the effect that a person who has obtained the caste certificate and validity certificate prior to the date of commencement of the said ordinance, shall not be deemed to be disqualified if he submits such certificate within a period of 15 days from the date of the commencement of the said ordinance. Since the petitioner has submitted the validity certificate even before the commencement of the said Ordinance, the petitioner cannot be said to have incurred disqualification.

4. An affidavit in reply is filed on behalf of respondent No.1 in support of the impugned order.

5. Mr. Satish Brahmane, Sou. Sindhu Shinde and Mr. Vishnu Ahire have filed an application, being Civil Application No. 6643 of 2020, for intervention. Applicant Nos. 2 and 3 claim to be sitting Councillors and applicant No.1 claims to be a registered voter. The applicants professed to support the impugned order.

6. Intervention of the applicants is opposed by the petitioner by filing an affidavit in reply questioning their *locus standi* to intervene in this petition.

7. In the wake of the aforesaid facts and pleadings, I have heard Mr. Subodh P. Shah, the learned Counsel for the petitioner, Mr. Mahesh S. Deshmukh, the learned Counsel for respondent No.1 and Mr. R.N. Dhorde, the learned Senior Counsel for the intervener applicants, at some length.

8. Mr. Shah, the learned Counsel for the petitioner advanced multifold submissions. First and foremost, according to Mr. Shah, the Collector committed a manifest error in recording a finding that the petitioner ought to have submitted validity certificate on or before 27th November 2017. The Collector misdirected himself in construing the period from 28th November 2016, the day of declaration of results, urged Mr. Shah. In view of the settled legal position that, while computing the period, the first day is required to be excluded, the submission of the validity certificate on 29th November 2017 was within twelve months, urged Mr. Shah. Secondly, the disqualification of the petitioner, even if it is assumed to have been occasioned, was expressly saved by Section 9 of the Ordinance 2018. The Collector was in error in not extending the benefit of Section 9 to the petitioner. Thirdly, the question of disqualification could not have been gone into by the Collector at

all as this Court, by the orders dated 26th April 2017 and 11th October 2017, protected the petitioner and specifically restrained the Collector not to take any adverse action on the count of failure to submit the validation certificate. In the face of these orders, the Collector could not have entered into the issue of disqualification, canvassed Mr. Shah.

9. In opposition to this, Mr. Mahesh Deshmukh, the learned Counsel for respondent No. 1 submitted that none of the grounds pressed into service on behalf of the petitioner are worthy of consideration. Even if the case of the petitioner is taken at par and the day of declaration of results is excluded, yet, the twelve months period expired on 28th November 2017. The submission of validity certificate on 29th November 2017 was, thus, beyond the statutory period. Mr. Deshmukh strenuously urged that the petitioner is not entitled to the benefit of Section 9 of the Ordinance 2018 as the election of the petitioner stood terminated before the commencement of the said Ordinance 2018. It was further submitted that the support ought to be drawn from the orders passed by this Court in Writ Petition No.5606 of 2017, dated 26th April 2017, and Writ Petition No. 12443 of 2017, dated 11th October 2017, is also misplaced in view of the Full Bench judgment in the case of **Anant H. Ulhalkar** (supra), wherein Section 9A of the Act 1965 which contains identical provision regarding the submission of validity certificate

for contesting election to the reserved seats, was held to be mandatory and that the failure to produce the validity certificate within the stipulated period would lead to termination of the election retrospectively.

10. Mr. Dhorde, the learned Senior Counsel for the applicants, endeavoured to lend support to the submissions of Mr. Deshmukh by canvassing a submission that in view of the Full Bench judgment in the case of *Anant H. Ulhalkar* (supra), the order passed by this Court on 26th April 2017 in Writ Petition No. 5605 of 2016 was of no avail to the petitioner. The said order could not be construed to have extended the statutory period for submission of the validity certificate, which was held to be mandatory. The Ordinance 2018 would also not come to the aid of the petitioner for his election stood terminated automatically upon his failure to submit the validity certificate in time, submitted Mr. Dhorde. On facts, it was urged that the material on record shows that the validity certificate was delivered to the petitioner on 25th November 2017 and, thus, the delay in submission of the validity certificate was at the peril of the petitioner.

11. At the outset, it may be advantageous to note the provisions contained in Section 51-1B of the Act 1965 as amended by Ordinance 2018. They read as under :

51-1B. Person contesting election for reserved office of President to submit Caste Certificate and Validity Certificate

Every person desirous of contesting election to the office of the President reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, alongwith 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 (XXIII of 2001).

Provided that, for the elections for the post of President for which the last date of filing of nomination falls on or before the 31st December 2017, in accordance with the election programme, a person who has appointed 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, alongwith the nomination paper -

(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 twelve months from the date on which he is declared elected, the Validity Certificate issued by the Scrutiny Committee:

Provided further that, if the person fails to produce the Validity Certificate within a period of twelve months from the date on which he is declared elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a President.

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"

(Underlined – as amended by Ordinance 2018)

12. It would be expedient to immediately notice the provisions contained in Sections 7, 8 and 9 of the Ordinance 2018. They read as under :

"7. In section 51-1B of the Municipal Councils 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 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 (Amendment) Ordinance, 2018, the period of "six months" specified in such undertaking shall be deemed to have been substituted as "twelve months".

8. Nothing in this Ordinance shall affect the elections conducted by the State Election Commission for conducting the elections or any programme declared by it therefor, prior to the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships (Amendment) Ordinance, 2018, for filling up the resultant vacancy in view of the provisions of section 5B or sub-section (2A) of section 37 of the Mumbai Municipal Corporation Act, section 5B or sub-section (1B) of section 19 of the Maharashtra Municipal Corporations Act, section 9A or section 51-1B of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, as it stood prior to such date of commencement.

9. Any person, who has obtained the Caste Certificate and validity certificate but has not filed such certificate prior to the date of commencement of this Ordinance, shall not be deemed to be disqualified under the provisions of the relevant Municipal law, if he submits such certificate within a period of fifteen days from the date of commencement of this Ordinance :

Provided that, the provisions of this section shall not apply where the State Election Commission has already prior to the date of commencement of this Ordinance held elections to fill the vacancy of such person or declared the programme for holding of such election”.

13. From a plain reading of Section 7 of the Ordinance 2018, it becomes evident that the period for submitting the validity certificate stood extended to “twelve months” from “six months” as originally provided. Secondly, the said period stood extended to twelve months retrospectively w.e.f. 7th April 2015. Thirdly, the period of six months specified in the undertaking furnished by the candidate in terms of clause (ii) of the first proviso also stood extended to “twelve months”.

14. So far as the extension of the period to submit the validity certificate from the date of declaration of results, there is not much quarrel. Since the elections were held on 27th

November 2016 and the results were declared on 28th November 2016, the petitioner could lawfully submit the validity certificate within a period of twelve months from the date of his election. The pivotal question which crops up for consideration is, whether the submission of the validity certificate on 29th November 2017 was within the period of "twelve months"?

15. Before advertizing to deal with this contentious issue, I deem it appropriate to consider the challenge to the impugned order based on the orders passed based by this Court in Writ Petition Nos. 5604 of 2017 and 12443 of 2017. As indicated above, the Writ Petition No. 5606 of 2017 came to be disposed of by this Court on 26th April 2017 with the following observations.

"1. This petition can be disposed of by issuing direction to respondent No.4 committee to take decision on the cast certificate verification proposal of the petitioner pending with the committee, as expeditiously as possible and preferably within a period of six months from today and it is accordingly directed. The petitioner undertakes to cooperate with the scrutiny committee for disposal of the validation claim. In the meanwhile, respondent No.3 is directed not to take any adverse action against the petitioner on the ground of his failure to submit validation certificate and appropriate steps can be taken depending upon the result of the caste certification verification proposal which is pending with respondent No.2 committee".

16. Mr. Shah would urge that in view of the aforesaid order, it was not open for the Collector to embark upon an enquiry as to whether the validity certificate was submitted

within the stipulated period as this Court had restrained the authorities from initiating any action till the decision was taken by the Caste Scrutiny Committee. Laying emphasis on the observations that, "appropriate steps can be taken depending upon the result of caste certificate verification proposal", it was urged that once the Scrutiny Committee validated the caste claim, nothing survived for consideration.

17. The learned Counsel for respondent No.1 countered the aforesaid submission by placing reliance upon the Full Bench judgment of this Court in the case of **Anant H. Ulhalkar** (supra). In the case of **Anant H. Ulhalkar** (supra), the main issue involved in the reference to the Full Bench was, whether the stipulation of six months (as it ordinarily stood) for production of validity certificate is directory or mandatory?

18. The Full Bench answered the reference in the following terms :

98] In the present case also the legislature in enacting Section 9A has provided for a statutory fiction, which is evident from the use of expression "his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councilor". The statutory fiction must be allowed to have its full play. No other provision or reason has been pointed out to take the view that consequences prescribed under second proviso to Section 9A are not automatic or would require any further adjudication once it is established that the person elected has failed to produce the Validity Certificate within a stipulated period of six months from the date of his election.

99] The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to Section 9A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100] In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory”.

19. In the backdrop of the aforesaid pronouncement, wherein it was empathetically held that the time limit prescribed in two proviso of Section 9A of the Act 1965 is mandatory and the failure to produce the validity certificate entails the consequence of termination of election retrospectively and disqualification for being a Councillor, the petitioner cannot draw any mileage from the aforesaid order passed by this Court. Once the provision is held to be mandatory, the Court could not have extended the stipulated period by assuming it to be directory. Nor the order passed by this Court could be construed as foreclosing the issue as to whether the petitioner submitted the validity certificate in

conformity with the first and second proviso to Section 51-1B of the Act 1965.

20. This takes me to the core challenge. A two-pronged submission was advanced by Mr. Shah as regards the computation of the period of twelve months. One, the date of declaration of results i.e. 28th November 2016 ought to have been excluded. Two, if the period is reckoned from 29th November 2016, the submission of the validity certificate on 29th November 2017 is in order.

21. On the first count, Mr. Shah would urge that it is well recognized principle to exclude the first day, while computing the period of limitation. Inviting the attention of the Court to the text of first and second proviso to Section 51-1B, which employ the expression, "from the date on which he is declared elected", it was submitted that the day of declaration of results could not have been taken into account.

22. The aforesaid submission appears well merited. Section 10 of the Maharashtra General Clauses Act, 1904 governs the aspect of commencement and termination of time. Sub-section (1) of section 10 provides that "In any Bombay Act or Maharashtra Act made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of

days or any other period of time, to use the word "to". Thus computed the day in question i.e. the day of declaration of results, from which the period of twelve months is to be computed, is required to be excluded.

23. Reliance placed by Mr. Shah on a judgment of the Supreme Court in the case of *Bibi Salma Khatoon vs State of Bihar and others, (2001) 7 SCC 197* and the learned Single Judge of this Court in the case of *Jagdish Ramchandra Samanpelliwar vs State of Maharashtra and others, 2019 (3) Mh.L.J. 694* appears to be well founded. In the later case, it was observed that, "*the date on which the election results have been declared can never be construed to mean that the said day is to be reckoned. It hardly requires any debate that when the results of the elections are declared on 14-12-2017, that day cannot be included in the 30 days period, lest it would mean that by the time the results are declared, one day already stands deducted from the limitation period of 30 days*".

24. On the aspect of computation of twelve months, Mr. Shah stoutly submitted that the period would expire on the corresponding date in the twelfth month. According to him, the period for submission of the validity certificate would commence from 29th November 2016 and expire on 29th November 2017, the day on which the petitioner indisputably submitted the validity certificate.

25. Under Clause (30) of Section 3 of the Maharashtra General Clauses Act, 1904, "month" shall mean a month reckoned according to the British calendar. This means Gregorian calendar. The issue which, thus, wrenches to the fore is the method of computation of months.

26. In the case of ***Bibi Salma Khatoon*** (supra), the aforesaid issue arose in the backdrop of the following facts : Under Section 16 (3) of the Bihar Land Reforms Act 1961, the person claiming right of pre-emption was required to make an application before the Collector within three months of the date of registration of the document of transfer. The sale deed in the said case was registered on 30 January 1988. An application was filed by the appellant on 30th April 1988. In the said context, after excluding the first day, the Supreme Court held that the application filed by the appellant on 30th April 1988 was within limitation. The Supreme Court referred to the method of computation of 'month' in Halsbury's Laws of England as under :

"In Halsbury's Laws of England, 4th Edn., para 211 method of computation of month is given as follows :

211 : Calendar month running from arbitrary date-when the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month.

If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or not a leap year".

27. The aforesaid pronouncement was followed by the Supreme Court in the case of ***State of Himachal Pradesh and another vs Himachal Techno Engineers and another, (2010) 12 SCC 210***, wherein the Supreme Court was confronted with a question as to whether the period of three months prescribed under Section 34 (3) of the Arbitration and Conciliation Act, 1996 for setting aside arbitral award can be counted as ninety days? The Supreme Court held that it was erroneous to count three months period as 90 days. The following observations of the Supreme Court are material :

"14. The High Court has held that 'three months' mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A 'month' does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty one days. If the month is February, the period will be twenty nine days or twenty eight days depending upon whether it is a leap year or not.

16. Section 3 (35) of the General Clauses Act, 1897 defines a month as meaning a month reckoned according to the British calendar.

17. In Dodds v. Walker - (1981) 2 All ER 609, the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in

the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar.

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days'.

(emphasis supplied).

28. In the light of the aforesaid enunciation, the situation which thus obtains is that the period in the instant case is required to be reckoned to have commenced on 29th November 2016 and the twelve months period expired on corresponding date in the twelfth month i.e. 29th November 2017. Thus computed, submission of the validity certificate on 29th November 2017 appears to be in conformity with the provisions of the Act 1965.

29. This propels me to second limb of the submission on behalf of the petitioner, based on the provision contained in Section 9 of the Ordinance 2018 extracted above. Mr. Shah would urge that the said provision which was incorporated to save disqualifications by providing that a person who has obtained caste certificate and validity certificate prior to the commencement of the said Ordinance, shall not be deemed to be disqualified if he submits the certificate within a period of 15 days from the date of the commencement of the said Ordinance,

is required to be construed in a purposive manner. A person who has obtained the caste validity certificate and already submitted the same, cannot be at a disadvantage than the person who despite having obtained the certificate has yet not submitted the same. It would lead to absurdity if the later person gets the benefit of the said provision and the former is disqualified, submitted Mr. Shah.

30. Per contra, Mr. Mahesh Deshmukh and Mr. Dhorde were in unison on the point that the said provision is of no avail to the petitioner as the disqualification was already incurred in terms of the Full Bench judgment.

31. From the phraseology of section 9, it becomes abundantly clear that its avowed object was to provide, by a deeming provision, that the person who had obtained the validity certificate prior to the commencement of the Ordinance 2018, is insulated from the consequences of disqualification, provided he submits the validity certificate within a period of 15 days thereof. The proviso to the said section, however, sought to exclude those cases of disqualification where the Election Commission had already held elections to fill the vacancy which arose or declared the programme for holding election. The legislative intent, thus, becomes explicitly clear that where consequent to the failure to produce the validity certificate the election of a person stood terminated and Election Commission took positive

steps to fill the vacancy, the benefit of extended period to submit the validity certificate cannot be availed.

32. The moot question which comes to the fore is, whether the said provision saves the disqualification of a person who has already filed such certificate? For an answer recourse to the statement of objects of the said Ordinance may be advantageous.

"3. The Caste Scrutiny Committees are overburdened with the task of issuing the validity certificates and this results in difficulties for the elected candidates to obtain the Caste Validity Certificate. In view of the provisions of the relevant Municipal law, in case the elected candidate fails to produce the validity certificate, within a period of six months from the date of his election, his election shall stand to be terminated retrospectively and shall stand disqualified for holding the post.

4. To ensure that the elected candidates who have already obtained the Caste Certificate and the Validity Certificate would not be disqualified merely because of failure to produce the Caste Validity Certificate issued by the Caste Scrutiny Committee in time as per the undertaking furnished by him, it is considered expedient to provide for further extension of six months to the elected candidates for submitting such certificate. In view of this, it is expedient to suitably amend section 5B of the Mumbai Municipal Corporation Act (III of 1988) and of the Maharashtra Municipal Corporations Act (LIX of 1949) and section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (Mah. XL of 1965), retrospectively, i.e. the date of commencement of the Maharashtra Act No. XIII of 2015.

It is also considered expedient to make similar provisions in respect of elected Mayors of the Municipal Corporations or, as the case may be, the Presidents of the Municipal Councils or Nagar Panchayats.

In view of such amendments, with retrospective effect, it is expedient to incorporate the suitable saving provisions and also the provision for removal of difficulty, which may arise in giving effect to the provisions of the said Acts, due to the proposed amendment'

33. It becomes evident that the Legislature was aware of, and concerned with, the fact that the Caste Scrutiny Committees were overburdened and difficulties were experienced in obtaining the validity certificates within time. Thus, to ensure that the elected candidates who had already obtained the validity certificate would not be disqualified merely because of failure to produce the caste validity certificate in terms of the undertaking, it was considered expedient to provide further extension of time. The Legislature also thought it expedient to save certain disqualifications, which were already incurred.

34. It is trite that the statement of objects and reasons can be resorted to for the purpose of comprehending the factual background, prior state of legal affairs, attendant circumstances in respect of the particular statute and the mischief the statute sought to address. In the case of ***State of Gujrat vs Mirzapur Moti Kureshi Kassab Jamad and others***, (2005) 8 SCC 534, a Constitution Bench of the Supreme Court enunciated that, "*reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to statute, and the evil which the statute*

has sought to remedy. The facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law”.

35. The marginal note appended to Section 9 is also of assistance in ascertaining the legislative intent. It professes to save certain qualifications. Even a marginal note can, in a given case, be resorted to as an aid to interpretation. In the case of ***N.C. Dhoundial vs Union of India and others, (2004) 2 SCC 579***, it was enunciated that it is settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent.

36. In the case at hand, the proviso to section 9 also assumes significance. In a given case, a proviso appended to the section may give an indication as to its true import. The normal rule is that but for the proviso the enacting part of the section would have included the subject matter of the proviso. Thus, the enacting part ought to be so construed as to leave a field for the operation of the proviso.

37. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Kush Sahgal and others vs M.C. Mitter and others, (2000) 4 SCC 526*** wherein the function of the proviso was expounded as under :

"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject matter of the proviso, the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided".

38. In the case at hand, the legislature has consciously excluded from the ambit of the remedial clause only those disqualifications where the State Election Commission had either held election or declared the programme for holding election. The enacting part, thus, covers all the cases of disqualification where the elected representative has obtained the caste validity certificate prior to the commencement of the said Ordinance.

39. It is true that the legislature has used the expression "but has not filed such certificate" in Section 9. It is trite that where the words of the Statute are clear and unambiguous, the provision should receive its plain, normal and grammatical meaning. It is equally well settled that where literal interpretation leads to absurdity or defeats the very object of enactment departure from literal rule of interpretation and resort

to purposive interpretation to avoid absurdity may be permissible.

40. The reliance placed by Mr. Shah on the judgment of the Supreme Court in the case of *Afcons Infrastructure limited and another vs Cherian Varkey Construction, (2010) 8 SCC 24*, appears well founded. The observations in para 20 and 21 are instructive and hence extracted below :

"20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the Legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in somewhat different context : "When a procedure is prescribed by the Legislature, it is not for the court to substitute a different one according to its notion of justice. When the Legislature has spoken, the Judges cannot afford to be wiser."

21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the Statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the Legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies

make the literal compliance of a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions’.

41. On the aforesaid touchstone, in my considered view, anomalous and absurd consequences would ensue if a person who has submitted the validity certificate before the commencement of the Ordinance 2018 is not extended the benefit of the said section, for reasons more than one. Firstly, a person who has submitted the validity certificate to the authorities would stand at a disadvantage in comparison to a person who has not submitted the validity certificate though both have obtained the validity certificate before the commencement of the Ordinance 2018. Secondly, if the enacting part and the proviso are read as a whole, it becomes abundantly clear that the intention of the legislature was to save all such persons from disqualification who had obtained the validity certificate before the commencement of the Ordinance, provided the Election Commission had not taken steps to hold the elections for the resultant vacancies. To put it in other orders, the only qualification for removal of disqualification was to obtain the validity certificate before the commencement of Ordinance 2018. Thirdly, the matter of non filing of the validity certificate despite having obtained the same before the commencement of the Ordinance, appears to constitute an artificial distinction. The

reason is not far to seek. The moment an elected representative fails to submit the validity certificate within the stipulated period, his election is deemed to be terminated. The submission or non-submission of the validity certificate after the stipulated period is, thus, of no consequence. A person who submits the validity certificate beyond the said period stands on the same footing as the one who doesn't submit. Thus, non submission of the validity certificate after the stipulated period is over doesn't make any qualitative difference. Nor it constitutes a factor for beneficial treatment. Lastly, even if the expression "but has not filed such certificate", is eschewed from consideration, the enacting part of Section 9 would manifest the same intent, as it would then read :

"Any person, who has obtained the Caste Certificate and validity certificate prior to the date of commencement of this Ordinance, shall not be deemed to be disqualified under the provisions of the relevant Municipal law, if he submits such certificate within a period of fifteen days from the date of commencement of this Ordinance".

42. I am conscious on the fact that the legislature does not use any words as surplusage and no word used by the legislature is to be construed as redundant. But, in the case at hand, absurd and anomalous consequences can only be avoided by construing section 9 in such a fashion that the benefit of saving from disqualification is extended to even those persons who have submitted the validity certificates even before the commencement of the said Ordinance, provided the Election

Commission has not intervened by holding election or declaring programme for holding election, in the intervening period of the date of expiry of twelve months and the commencement of the said Ordinance.

43. For the foregoing reasons, I am persuaded to hold that, on facts, submission of the validity certificate by the petitioner on 29th November 2017 was within 12 months of the declaration of results. And even otherwise, the disqualification incurred by the petitioner is saved by Section 9 of the Ordinance 2018. Consequently, the impugned order of the Collector is legally unsustainable. It deserves to be quashed and set aside.

44. Resultantly, the petition deserves to be allowed. Hence, the following order.

ORDER

- (i) The petition stands allowed.
- (ii) The impugned order passed by the Collector, Jalgaon dated 23rd January 2019 stands quashed and set aside.
- (iii) Rule made absolute in aforesaid terms. No costs.
- (iv) In view of the disposal of writ petition, Civil Application No. 6643 of 2020 also stands disposed of.

(N.J. JAMADAR, J.)