

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

WRIT PETITION NO.1553 OF 2019

Mr. Rafiq Gaffar Bagwan,
Age : 28 years, Occ: Business,
R/o: Baherpura, Pachora,
Tq. Pachora Dist. Jalgaon.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through the Ministry of
Urban Development Department.
2. The District Collector, Jalgaon.
3. The Chief Executive Officer,
Pachora Municipal Council, Pachora, Dist. Jalgaon.
4. Ashfaq Jabbar Bagwan,
Age : 28 years, Occu: Labour,
R/o. Rasool Nagar, Baherpura,
Pachora, Tq. Pachora, Dist. Jalgaon.

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Shaikh Mazhar A. Jahagirdar
Advocate for Respondent Nos. 1 and 2 : Mr. K.B. Jadhavar
Advocate for Respondent No.3 : Mr. G.D. Jain
Advocate for Respondent No.4 : Mr. G.R. Syed

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CORAM : MANGESH S. PATIL, J.

DATE : 30.08.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate and the learned AGP for the respondents waives service. With the consent of both the sides, the matter is heard finally at the stage of

admission.

2. By way of this petition under Article 227 of the Constitution of India, the petitioner is impugning the order passed by the District Collector dated 23.01.2019 whereby election of the petitioner as a councilor of the Municipal Council Pachora, District Jalgaon is declared to have been terminated on his failure to submit a Caste Validity Certificate, as stipulated under Section 51-1B of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act, 1965 (Act of 1965).

3. The petitioner contested the Election for a seat which was reserved for scheduled caste. He was declared as elected on 28.11.2016. Pursuant to the provision contained in Section 51-1B of the Act of 1965 which is held to be laying down a mandatory period, in the case of **Anant H. Ulhalkar and Anr. Vs. Chief Election Commissioner and Ors. ; 2017 (1) AIR Bombay 327**, he having failed to submit the Caste Validity Certificate within 12 months i.e. on or before 27.11.2017 and he having filed it only subsequently on 17.09.2018, by the impugned order the learned District Collector declared his election to be cancelled.

4. I have heard the learned advocate for the petitioner, the learned advocate Mr. Syed for the contesting respondent No.4 and the learned AGP.

5. As has been rightly submitted by the learned advocate for the petitioner, the situation in the matter in hand is squarely covered by the decision of this Court in **Writ Petition No.1365/2019** in the case of **Sanjay Nathalal Gohil Vs. Ajay Bhaskar Ahire and Ors., decided on 04.05.2021.**

The learned advocate would submit that though in the matter of **Sanjay Nathalal Gohil** (supra) the Caste Validity Certificate was produced before the Ordinance by which the period of 6 months was extended to read 12 months which was brought into existence with effect from 27.09.2018 and is applicable to the elections declared since 07.04.2015, the petitioner therein had tendered the Caste Validity Certificate within 12 months. The only distinction in the matter in hand is that the petitioner submitted the Caste Validity Certificate beyond the period of 12 months however still it was filed before this Ordinance dated 27.09.2018 was promulgated. He would submit that in the case of **Sanjay Nathalal Gohil** (supra) this Court has elaborately considered the distinction between the act of submission of such Caste Validity Certificates before the Ordinance is promulgated even if it is submitted after a period of 12 months stipulated therein.

6. I have carefully gone through the decision in the case of **Sanjay Nathalal Gohil** (supra) and borne in mind the facts and circumstances of the matter in hand. There is no dispute about the fact that the petitioner had failed to submit the Caste Validity Certificate within 12 months laid down in the Ordinance dated 27.09.2018 which retrospectively extended the period of 6 months to 12 months for the elections declared after 07.04.2015. However, he did tender the Caste Validity Certificate on 17.09.2018 that is even before that Ordinance was promulgated. If this is so, the following observations in the case of **Sanjay Nathalal Gohil** (supra) can certainly be taken recourse to, wherein, a distinction has been clearly described to be

one without any distinction:

“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.

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.

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".

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."

7. Applying the same analogy to the fact situation of the matter in hand, it is quite apparent that the petitioner had submitted the Caste Validity Certificate and would be saved by the provision of Section 9.

8. The learned Collector in spite of having referred to the Ordinance, has not at all considered as to how the case of the petitioner is

not covered by and saved because of the provision.

9. The Writ Petition is allowed. The impugned order passed by the Collector 23.01.2019 is quashed and set aside. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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