

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3566 OF 2021

Farida Noormahamad Mujawar,
Age : Adult, Occupation : Housewife,
R/o. - Village Hatkanangale,
Taluka - Hatkanangale, District - Kolhapur. .. Petitioner

Versus

1. State of Maharashtra,
Through its Department for Urban
Development.
2. Collector Kolhapur, Kolhapur.
3. Hatkanangale Municipal Council,
Taluka Hatkanangale, District - Kolhapur.
4. Chief Executive Officer,
Hatkanangale Municipal Council,
Taluka Hatkanangale, District - Kolhapur.
5. The District Caste Scrutiny Committee,
Kolhapur. .. Respondents

.....
Mr. Ruturaj Pawar a/w. Mr. Mandar G. Bagkar for the Petitioner.
Ms. M.P. Thakur, AGP for the Respondents - State.
.....

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 12 AUGUST, 2021

P. C. :

. By the present Writ Petition, the Petitioner has prayed for the
following reliefs:

"A) That this Hon'ble Court be pleased to issue a writ of
certiorari or any other writ, order or direction in the nature of
certiorari thereby be pleased to quash and set aside order dated

27th April 2021 passed by respondent no.1 at "**Exhibit-P**" hereto as the same being illegal and void ab-initio;

B) That this Hon'ble Court be pleased to issue a writ of *certiorari* or any other appropriate writ, order or direction in the nature of *certiorari* thereby be pleased to quash and set aside order dated 27th April 2021 passed by respondent no.4 at "**Exhibit-O**" hereto as the same being illegal and void ab-initio."

2. By the aforesaid two impugned orders, election of the Petitioner as member of the Council has been set aside and the Petitioner has incurred disqualification on the ground that she has failed to submit her caste validity certificate within the prescribed period of 12 months from the date of election / result. The last date for submission of the caste validity certificate was 28.12.2020, whereas the Petitioner submitted her caste validity certificate on 18.01.2021. Petitioner claims that the impugned orders be rendered unsustainable, although they are based on the mandatory provisions of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (for short "**the said Act**"), because of the unprecedented Covid crisis resulting in delay on the part of the Respondent No.5 - District Caste Scrutiny Committee (for short "**Committee**") in conducting the hearing, adjudication and issuing the caste validity certificate in favour of the Petitioner.

3. Briefly stated the facts are as under:-

3.1. Petitioner is elected councilor of Respondent No.3 - Hatkanangale Municipal Council, Taluka Hatkanangale, District Kolhapur (for short "**Council**").

3.2. The election of members of the Council was held in December 2019 and result was declared on 29.12.2019. There were 17 wards in total, out of which 8 wards were for reserved category. Petitioner contested the election from ward No.10 as a reserved candidate from Other Backward Class women category as belonging to "Fakir" caste, which is recognized as Other Backward Class at Sr. No.335 under Maharashtra Government Resolution CBC-1098/C.R.-185/MVK-5 dated 09.12.2019.

3.3. Simultaneously Petitioner had applied for procuring caste certificate from the Sub Divisional Officer, Ichalkaranji by submitting the relevant documents. Sub Divisional Officer, Ichalkaranji issued caste certificate dated 09.12.2019 to the Petitioner, certifying that Petitioner belonged to "Fakir" caste.

3.4. On the same date i.e. 09.12.2019 Petitioner applied to the Respondent No.5 - District Caste Scrutiny Committee, Kolhapur (for short "**Committee**") constituted under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2000 for seeking caste validity certificate of the caste certificate dated 09.12.2019.

3.5. In December 2019 Petitioner filed her nomination form and submitted undertaking that she would submit her caste validity certificate within the prescribed period of 1 year as prescribed if elected, under the provisions of Section 9-A of the said Act.

3.6. Petitioner contested the election and was declared successful from ward No.10 on 29.12.2019.

3.7. Petitioner has raised a grievance that due to the ensuing pandemic in the year 2020 and the lockdown which was imposed since March 2020, Respondent No.5 - Committee did not conduct any hearing prior to September 2020.

3.8. On 23.09.2020 Petitioner received notice from the Respondent No.5 - Committee to file her say before the Committee.

3.9. On 13.10.2020 Petitioner received notice for hearing to be held on 20.10.2020. Petitioner appeared before the Respondent No.5 - Committee on 20.10.2020, but no hearing was conducted due to lack of quorum.

3.10. Subsequently the hearing was fixed on 02.11.2020, but once again it was adjourned due to lack of quorum.

3.11. On 07.12.2020 Petitioner filed application before the Respondent No.5 - Committee seeking early hearing of her caste scrutiny claim considering the time constraint. However no hearing could be conducted as one of the member of the Committee was suffering from Covid-19 at that time.

3.12. On 01.01.2021 Petitioner received notice for fixing the hearing on 09.01.2021. Petitioner appeared before the Respondent No.5 - Committee and thereafter the Committee passed the order dated 15.01.2021. The Respondent No.5 - Committee issued the caste validity certificate in favour of the Petitioner. Immediately after receiving the caste validity certificate

Petitioner submitted the same before the Respondent No.2 on 18.01.2021.

3.13. On 27.04.2021 Petitioner received a communication addressed by Respondent No.4 - Chief Executive Officer, *inter alia*, stating that her election has been retrospectively terminated. Petitioner also received order dated 27.04.2021 issued by Respondent No.1 along with the above letter terminating the Petitioner's election as Councillor. Both, the above communication and order are impugned in the present Writ Petition.

4. Mr. Ruturaj Pawar, learned counsel appearing for the Petitioner has stated that the impugned communication and order, both dated 27.04.2021 have been issued in complete violation of the principles of natural justice without giving any notice to the Petitioner nor giving an opportunity to the Petitioner to put her say. He submitted that the Petitioner had approached the Respondent No.5 - Committee well in time but the said Committee could not conduct the hearing and complete scrutiny of her caste certificate within the prescribed period due to the Covid wave and the lockdown that was imposed during the year 2020. He submitted that under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Rules, 2012, the Respondent No.5 - Committee has failed to decide claim of the Petitioner within the prescribed time, but however subsequently the Petitioner's caste claim was found to be valid and therefore the Petitioner cannot be blamed for the delay. He submitted that even

though there is a mandate under the above Rules that the caste claim is required to be decided by the Committee within a period of 12 months, the Respondent No.5 - Committee was unable to do so due to the Covid-19 pandemic and the lockdown imposed thereunder. He submitted that the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* by an order dated 23.03.2020 extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders and the said order was thereafter extended from time to time till 08.03.2021. Therefore in view of the aforesaid order passed by the Supreme Court, the delay in submission of the caste validity certificate by the Petitioner needed to be condoned in the interest of justice. He has further relied upon the order dated 27.04.2021 passed in Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020 by the Supreme Court, *inter alia*, directing that period(s) of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not shall stand extended till further orders. He has therefore prayed that the impugned order and communication, both dated 27.04.2021 passed by Respondent Nos.1 and 4, setting aside the election of the Petitioner be quashed and set aside.

5. Learned AGP submitted that since the Petitioner failed to produce the validity certificate as mandated under Section 9A of the Act, her election stood terminated and she stood disqualified from being a Councillor.

6. Having heard the learned counsel for the rival parties and

having perused the material on record, as also the relevant provisions of law, it needs to be examined whether in the peculiar facts and circumstances created by the Covid-19 crisis and the consequent imposition of the countrywide lockdown, the Petitioner could claim that her election could not be held to be terminated retrospectively under Section 9-A of the said Act.

7. Section 9-A of the said Act reads as under:-

"9-A. 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, 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.]

[Provided that, for the General or bye-elections for which the last date of filing of nomination falls during the period commencing on the date of commencement of the Mumbai Municipal Corporation, the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships (Amendment) Act, 2018 and ending on the 30th June 2019, 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 of 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 Councillor].

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".

8. According to the above provision the successful candidate in the election is required to submit the caste validity certificate duly issued by the District Caste Scrutiny Committee within a period of 12 months from the date of election / result.

9. The circumstances created by Covid-19 and the imminent lockdown affected one and all. Therefore, the Apex Court by its Order dated 23rd March, 2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020* took note of the situation and the resultant difficulties faced by the litigants and in order to obviate such difficulties held as follows.

" This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and / or State).

To obviate such difficulties and to ensure that lawyers / litigants do not have to come physically to file such proceedings in respective Courts / Tribunals across the country including

this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts / Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts / Tribunals within their respective jurisdiction."

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

10. It is relevant that the Apex Court in the above quoted order has also used the expression "all other proceedings". It is also equally true that there is a specific limitation of time period of 12 months for submitting the caste validity certificate under the said Act. However by the above stated order of the Apex Court the period of limitation prescribed by the special laws, both central or state laws stood extended w.e.f. 15.3.2020 till further orders. Further in a subsequent order dated 10.07.2020 passed in the same suo motu proceeding, the Apex Court has noted that parties had prayed for extension of time where the time to perform a particular act was to expire during the lockdown. The Apex Court while referring to the provisions of the Arbitration and Conciliation Act, 1996 and the Commercial Courts Act, 2015, which fix specific time periods for doing certain acts granted relief of extension of time limits.

11. As such the directions given by the Apex Court would therefore apply to various situations / proceedings and to the facts and circumstances

of the present case also. It cannot be said that the Petitioner in the present case did not take any effort for issuance of the caste validity certificate before the Respondent No.5 - Committee. It is also admittedly true that the Committee was not in a position to hold its meeting for adjudication of the caste claim of the Petitioner between March 2020 and September 2020. Thus a substantial amount of time was lost due to the intervening Covid-19 crisis and the consequential lockdown which could have otherwise enabled the Caste Scrutiny Committee to decide the caste validity of the Petitioner. From the above it is deduced that the Petitioner was unable to submit her caste validity certificate due to factors completely beyond the control of the Petitioner akin to factors like force majeure / act of god. In the present case the substantial time loss between March 2020 to September 2020 attributable to the Covid-19 crisis was the main reason beyond the control of the Petitioner. Even thereafter it is seen that the Petitioner made earnest attempt / effort to get her caste validity case heard and decided. The roznama placed on record shows that on more than two occasions the Committee adjourned the Petitioner's case due to lack of quorum. There is no dispute about this fact. The delay of 20 days on the part of the Petitioner in submitting the caste validity certificate therefore, deserves to be condoned.

12. Hence this is a fit case for interference and both the impugned order and communication dated 27.04.2021 passed by Respondent Nos.1 and 4 deserve to be quashed and set aside and the election of the Petitioner deserves to be restored. The impugned order dated 27.04.2021 passed by the

Respondent No.1 is accordingly set aside. Consequently the communication dated 27.04.2021 issued by the Respondent No.4 also stands set aside. As a consequence thereof the Petitioner cannot be said to have incurred disqualification under the said Act only because she could not submit her caste validity certificate within the stipulated period of 12 months.

12. The Writ Petition stands disposed of in the above terms with no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]