

Amberkar / Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8257 OF 2021

Varsha Krushnadev Chougule
Aged 27 years, Occu : Social Work
R/o. Agran Dhulgaon,
Tal. Kavathe-Mahankal
District : Sangli.

.. Petitioner.

Versus

1. The State of Maharashtra,
Through the Secretary,
Rural & Water Conservation,
Department, Mantralaya,
Mumbai.
2. The Collector, Sangli,
Collector Office Compound,
Vijay Nagar, Sangli.
3. Tahasildar, Kavathe-Mahankal
Tal. Kavathe-Mahankal,
District : Sangli.
4. Grampanchayat, Agran Dhulgaon,
Taluka : Kavathe-Mahankal,
District : Sangli.
Through its Sarpanch / Gramsevak.
5. Raju Nivrutti Hajare,
Age 34 years, Occu: Agriculture,
R/o. Agran Dhulgaon,
Tal. Kavathe-Mahankal,
District : Sangli.

.. Respondents.

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- Mr. Nagesh Y. Chavan for the Petitioner.
 - Ms. M.P. Thakur, AGP for the Respondent Nos. 1 to 3

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

DATE : NOVEMBER 30, 2021

JUDGMENT (PER : S.J. KATHAWALLA & MILIND N. JADHAV, JJ.)

. By the present Writ Petition, the Petitioner has, *inter alia*,
prayed for the following relief:

"(b) This Hon'ble Court be pleased to issue the writ of mandamus or certiorari or any other appropriate writ / direction / order in the nature of writ of mandamus or certiorari under Articles 226 & 227 of the Constitution of India, 1950, to quash and set aside the impugned Judgment and order bearing No. G.P./Appeal/S.R. 22/2021 dated 28.10.2021 passed by the Ld. Collector, Sangli;"

2. Briefly stated the facts are as under:-

2.1. Petitioner is a resident of Village Agran Dhulgaon, Tal. Kavathe-Mahankal, District Sangli. Petitioner contested the general election of the Respondent No.4 - Grampanchayat, Agran Dhulgaon on 27.05.2018 and was elected from Ward No.3 under the seat reserved for 'Women-Backward Class'. Subsequently the Petitioner was elected as Deputy Sarpanch.

2.2. Petitioner claims to belong to N.T.C. (Dhangar caste). After her election, the Petitioner gave an undertaking to submit her caste validity certificate within the prescribed time limit of 12 months.

2.3. On 03.05.2018, the Petitioner had applied to the Caste Scrutiny Committee, Kolhapur (for short: "**the Committee**") for seeking validity of the caste certificate.

2.4. In September 2018, since the Petitioner was pregnant, she did not pursue her Application with the Committee pertaining to her cast validity certificate.

2.5. On 11.04.2019, the Committee in absence of the Petitioner disposed of her application on the ground of non prosecution and granted liberty to the Petitioner to apply afresh as and when required.

2.6. Petitioner states that she gave birth to her child on 10.05.2019.

2.7. Petitioner states that between 2018 to 2021 due to the Petitioner's pregnancy and subsequent birth of her child, it was not possible for the Petitioner to collate and collect the necessary information and documents from her parental home which were required for scrutiny of her caste certificate.

2.8. On 09.07.2021, the Respondent No.5 - original complainant filed Complaint No.22 of 2021 before the Respondent No. 2 Collector, Sangli under the provisions of Section 10-1A of the Maharashtra Village Panchayats Act, 1958 ("**the said Act**"), *inter alia*, stating that the Petitioner should be disqualified as she did not

produce her caste validity certificate within the stipulated statutory period.

2.9. On 20.07.2021, the Petitioner filed a fresh application along with necessary documents before the Caste Scrutiny Committee, Kolhapur seeking validity of her caste certificate.

2.10. On 24.08.2021, the Caste Scrutiny Committee, Kolhapur, passed an order validating the caste certificate of the Petitioner as N.T.C. (Dhangar category) Backward Class.

2.11. On 08.09.2021, the Petitioner approached the Collector and filed a detailed reply and submitted her caste validity certificate dated 24.08.2021. On 28.10.2021, the Respondent No.2 Collector, Sangli passed an order declaring that the Petitioner stood disqualified under the provisions of Section 10-1A of the said Act for holding the post of member of the Respondent No.4 Grampanchayat.

2.12. Being aggrieved, the Petitioner has impugned the above order of disqualification passed by the Respondent No.2 Collector, Sangli in the present Writ Petition.

3. Shri. Nagesh Chavan, learned Advocate appearing for the

Petitioner made the following submissions :-

- (i) that there has been an admitted delay on the part of the Petitioner in complying with the statutory provisions of Section 10-1A of the said Act;
- (ii) that since the Petitioner has now been successful in obtaining the caste validity certificate from the Committee, this Court should condone the delay in submitting the caste validity certificate and in the interest of justice quash and set aside the impugned order passed by the Respondent No. 2 Collector, Sangli;
- (iii) that the Petitioner had faced genuine difficulties initially because of her pregnancy and subsequently after the birth of her child during the years 2018-2019 because of which she could not approach the Committee and pursue her original application; that the difficulties expressed by the Petitioner were genuine;
- (iv) that from March 2020 due to Covid-19 restrictions and lockdown the Petitioner could not visit her parental home and collect the necessary documents which led to the delay; that the Petitioner's difficulty was beyond her control.

3.1. Advocate Chavan has therefore prayed for setting aside and quashing of the impugned order dated 28.10.2021 passed by the

Respondent No. 2 Collector, Sangli.

3.2. Advocate Chavan has referred to and relied upon a decision of the learned Single Judge of the Nagpur Bench of this Court in the case of *Kalmati Ramkrupal Yadav Vs. Chandrapur City Municipal Corporation, through its Commissioner*¹ and contended that in the said case there were similar identical facts wherein the Petitioner was unable to submit her caste validity certificate within the prescribed time and the Court while referring to the principle of *impotentia excusat legem* i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of law is excused, held that it is recognized jurisprudence and came to the conclusion that there was no fault on the part of the Petitioner therein and as such the delay in submitting the caste validity certificate deserved to be condoned. He has referred to and relied upon paragraph No. 28 of the said Judgment which reads thus:-

"28. There is another angle from which the peculiar facts and circumstances of the present case can be viewed. The principle of *impotentia excusat legem* i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of law is excused, is recognized in jurisprudence. This principle has been referred to in a recent judgment of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, wherein it has been held that the mandatory requirement of law is to be excused when it is demonstrated that despite all efforts made by the party required to satisfy the mandatory requirement, due to no fault of such person, the requirement could not be satisfied. In the said case, the party had made all efforts

1 2021 SCC OnLine Bom 916 :: (2021) 4 AIR Bom R 788

for grant of requisite certificate under the provisions of the Evidence Act, but the concerned authority, which was supposed to issue the certificate failed to issue the certificate to the party."

4. *PER-CONTRA*, Ms. M.P. Thakur, learned AGP appearing on behalf of the State made the following submissions in support of the order dated 28.10.2021:-

(i) that the Petitioner is admittedly guilty of gross delay and laches on her part; though she was elected on 27.05.2018 for a tenure of 5 years i.e. upto 2023, by her own admission she has not been able to pursue her case seeking validity of her caste certificate within the prescribed statutory period;

(ii) that there is virtually no explanation whatsoever from the Petitioner as to why she could not appear before the Committee on 11.04.2019, save and except that some time in the month of September 2018 she was pregnant and gave birth to her child on 10.05.2019;

(iii) that the Petitioner's case that she was unable to collect the necessary information and documents from her parental home because of her pregnancy is unbelievable as the Petitioner has failed to give any cogent explanation for her inaction during the period

between 03.05.2018 to September 2018 i.e. until she realized that she was pregnant;

(iv) that individual hardship expressed by the Petitioner cannot be a ground for permitting non-compliance with the statutory provisions of Section 10-1A of the said Act and once it is found that the elected member of the village panchayat from a reserved seat has failed to produce the caste validity certificate within the prescribed period of 12 months, the election is deemed to be terminated with retrospective effect;

(v) that the grievance of the Petitioner that she should get the benefit of various suo-moto orders passed by the Apex Court in the context of the Covid-19 crisis is also not well founded as the Covid-19 crisis began in March-April 2020 whereas from 03.05.2018 to 10.05.2019, Covid-19 crisis did not exist;

(vi) that even after 10.05.2019 i.e. after giving birth to her child and for the next 10 months thereafter, the Covid-19 crisis did not exist and thus the Petitioner cannot seek to rely on the suo moto orders passed by the Apex Court; the said orders cannot be made applicable to the facts of the present case wherein the Petitioner was mandatorily required to satisfy the statutory requirement

by submitting her caste validity certificate within 12 months from the date of her election (i.e. 27.05.2018) which period expired on 26.05.2019.

4.1. Advocate Ms. Thakur has thus prayed for dismissal of the Writ Petition.

5. We have heard the learned counsel for both the parties and having perused the material on record as also the relevant statutory provisions, it needs to be examined whether in the peculiar facts and circumstances pleaded by the Petitioner, the Petitioner can now claim that her election could not be held to be terminated retrospectively under Section 10-1A of the said Act.

6. The Petitioner was elected on 27.05.2018 on a reserved seat as a Member of the Village Panchayat. Prior to that on 03.05.2018, the Petitioner submitted her application for seeking validity of her caste certificate to the Committee. After her election on 27.05.2018, it was incumbent upon the Petitioner to pursue her application pending before the Committee, however, the Petitioner admittedly did not pursue the same. Since the Petitioner did not pursue her pending application, on 11.04.2019 the Committee passed a formal order on the Petitioner's application, *inter alia*, stating that

since no steps are taken by the Petitioner to present herself before the Caste Scrutiny Committee, the pending application for seeking her caste validity is disposed off granting liberty to the Petitioner to apply afresh as and when she required the caste validity certificate. It is the Petitioner's case that in September 2018 she was pregnant and gave birth to her child on 10.05.2019 and even after the birth of her child, she was unable to gather the necessary documents and information. However the Petitioner's case is conspicuously silent about her inaction between 03.05.2018 and September 2018 and the Petitioner has offered no explanation for the same. On 20.07.2021 Petitioner filed a fresh application seeking caste validity certificate before the Committee i.e after a delay of almost 2 years and 4 months from the date of completion of the statutory period of 12 months (on 26.04.2019) within which time the Petitioner was required to submit her caste validity certificate. The Petitioner has also prayed for giving her the benefit of the Covid 19 crisis during which the Petitioner was unable to move around and collect the necessary information and documents for getting her caste validity certificate. However, the Covid 19 crisis had arisen only from 23.03.2020, which may not come to the aid of the Petitioner. The Petitioner has offered no explanation for the period between 03.05.2018 to September 2018 i.e when according to the Petitioner she realized to have been pregnant and delivered her child on 10.05.2019. Nothing prevented the Petitioner

from approaching the Committee until September 2018 or even thereafter or even after the birth of her child. The Petitioner has given no cogent reason for the same, save and except to state that because of her pregnancy and child birth, she was unable to collect the necessary information and documents. Though it is true that the Petitioner was ultimately granted the caste validity certificate by the Caste Scrutiny Committee on 24.08.2021 and the Petitioner filed the same with the Collector, admittedly there is a delay of 2 years and 4 months from the date of completion of 12 months i.e the prescribed period under the provisions of Section 10-1A of the Act.

7. We may usefully quote the provisions of Section 10-1A of the said Act which are relevant and which reads thus:-

"S.10-1A. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate:

Every person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes, or, as the case may be, Backward Class of Citizens, shall be required to submit, along with 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.

2. In Section 10-1A of the Maharashtra Village Panchayats Act (hereinafter III of in this Chapter referred to as "the Maharashtra Village Panchayats Act"), for the existing provisos, the following provisos shall be substituted, namely :-

Provided that, for the General or by-elections

for which the last date of filing of nomination falls on or before the 28th February 2021, in accordance with the election programme declared by the State Election Commission, a person who has applied to the Scrutiny Committee for 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, along with the nomination papers,- (Mah. Act. No. 4/2020).

(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 such 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 member."

7.1. According to the above provisions, a 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 on which he is declared elected, failing which his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member.

7.2. In the present case, the date of result is 27.05.2018. The 12 month period expired on 26.05.2019. The Petitioner has approached the Collector with the caste validity certificate dated 24.08.2021 only after receiving the same in August 2021. Thus,

admittedly there is delay of more than 2 years and 4 months as can be seen from the above dates. The issue, therefore, which needs to be considered is whether in the facts and circumstances of the present case and the subsequent Covid 19 crisis and consequent imposition of the countrywide lockdown, whether the Petitioner can claim that her election need not be held to be terminated retrospectively under the provisions of Section 10-1A of the Act.

8. There is no dispute about the fact that the Petitioner had approached the Caste Scrutiny Committee for revival of her application afresh only on 20.07.2021 i.e. after a delay of almost two years and 4 months after the completion of the 12 month statutory prescribed period within which the Petitioner was mandatorily required to submit her caste validity certificate. Though some period out of the aforesaid delay could be attributable to the Covid 19 crisis, however, a substantial portion of that period was much before the beginning of the Covid 19 crisis. Though the Petitioner has claimed that due to her pregnancy, she was unable to approach the Committee and pursue her application, such explanation of the Petitioner as pleaded in the petition cannot be countenanced in the face of the gross delay that has occurred. The provisions of the statute alluded to herein above are clear and have been legislated with some intent and purpose. As per the statutory provisions, the Petitioner was required

to submit her caste validity certificate within 12 months from the date of her election. The impugned order passed by the Collector clearly records a finding about non-submission of the caste validity certificate by the Petitioner within the aforesaid prescribed period and thus, the election of the Petitioner stood terminated with retrospective effect and she stood disqualified as a Member of the Gram Panchayat. A bare reading of the impugned order clearly suggests that by operation of the provisions of Section 10-1A of the said Act, the impugned order has been passed by the Collector in accordance with law. The Petitioner's claim that her difficulty to collect the documents due to her pregnancy and subsequent Covid 19 crisis be considered as a factor for condoning the delay in filing her caste validity certificate after a period of almost 2 years and 4 months cannot be considered to be valid and cogent in view of the admitted lapses on the part of the Petitioner.

9. In the present case, it is an admitted fact that the Petitioner has made no efforts whatsoever to obtain her caste validity certificate from the Committee within the prescribed period of 12 months as is evident from the details and chronology of events mentioned herein above. For no fault of the Caste Scrutiny Committee and gross dereliction on the part of the Petitioner in ignoring and neglecting the legislative mandate of Section 10-1A of the said Act, the

Petitioner cannot claim any benefit. There is gross delay and laches on the part of the Petitioner in obtaining her caste validity certificate as discussed herein above. The Caste Scrutiny Committee cannot be blamed for the negligence on the part of the Petitioner. In fact, on the application of the Petitioner to the Caste Scrutiny Committee on 20.07.2021, the Caste Scrutiny Committee has acted efficiently and within one month i.e on 24.08.2021 considered the Petitioner's case and granted the Caste Validity Certificate to the Petitioner. Hence, no fault can be attributed to the Committee for the delay. The claim of the Petitioner that the facts and circumstances of the case are peculiar in as much as there was a disability which made it impossible for the Petitioner to obey the law; the alleged disobedience of the law is required to be excused being a well recognized principle of jurisprudence, cannot be allowed in favour of the Petitioner in the facts of the Petitioner's case discussed above. The request of the Petitioner to consider her case as a peculiar case therefore stands rejected. The dates and events mentioned hereinabove clearly indicate that there is gross delay, laches and negligence on the part of the Petitioner in approaching the Caste Scrutiny Committee and therefore, it cannot be said that the Petitioner has made all efforts so as to enable her to seek condonation of delay of 2 years and 4 months. The ratio of the judgment in the case of Kalmati Ramkrupal Yadav (supra) decided by the learned Single Judge of this Court does

not apply to the facts of the present case.

10. In view of the above discussion and findings, the Writ Petition is dismissed. The order dated 28.10.2021 passed by Respondent No. 2 Collector, Sangli stands upheld. However, there shall be no order as to cost.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]