

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1904 OF 2020

Smt. Kalmati Ramkrupal Yadav
Aged 55 years, Occ. Social Worker,
R/o Durga Temple Area, Rahetwari,
Chandrapur, Dist. Chandrapur

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Petitioner

Versus

Chandrapur City Municipal
Corporation through its
Commissioner Chandrapur City
Municipal Corporation, Mahatma
Gandhi Chowk, Mahatma Gandhi
Bhawan, Chandrapur, Dist.
Chandrapur

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Respondent

Mr. A. A. Dhawas, Advocate for petitioner.
Mr. M. I. Dhattrak, Advocate for respondent.

CORAM : MANISH PITALE, J.

RESERVED ON : 18/06/2021

PRONOUNCED ON : 24/06/2021

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) **Rule.** Rule made returnable forthwith. The Writ Petition is heard finally with the consent of learned counsel for the rival parties.

(3) The spread of COVID-19 virus and consequent countrywide lockdown imposed in March 2020 has led to a situation wherein the petitioner claims that she has been wrongly held to be disqualified from holding the elected post of member of the Chandrapur Municipal Corporation. The petitioner claims that the impugned order dated 23/06/2021 passed by the respondent is rendered unsustainable, although it is based on a mandatory provision of the Maharashtra Municipal Corporations Act, 1949, because of the situation created by the aforesaid lock-down and orders passed in that context by the Hon'ble Supreme Court in a suo-moto proceeding, with a view to provide succour to individuals like the petitioner who were caught unawares in the crisis created by the COVID-19 virus.

(4) The petitioner was elected as Member of the Municipal Corporation of Chandrapur from a seat reserved for the Other Backward Class (women category). By a notification issued on 23/06/2019 by the Election Officer of the respondent Municipal Corporation, the petitioner was declared as elected. A certificate dated 24/06/2019 issued by the Election Officer of the respondent Municipal Corporation certified that the petitioner stood elected under the said category of reservation.

(5) As per Section 5B of the aforesaid Act, a person contesting election for a reserved seat is mandatorily required to submit Caste Certificate issued by the Competent Authority, as also Validity Certificate issued by the Caste Scrutiny Committee along with the nomination paper. Proviso to the Section 5B of the said Act specifies that a person from the reserved category who has applied to the Caste Scrutiny Committee for verification of caste certificate can also file nomination and contest the election, provided Caste Validity Certificate is produced within a period of twelve months from the date of election of such person. It is further specifically stated in the proviso that if Validity Certificate is not produced within the aforesaid period of twelve months, the election of such person shall be deemed to have been terminated retrospectively and she shall be disqualified from being a Member.

(6) In the present case, it is undisputed that when the petitioner filed her nomination paper to contest from the aforesaid reserved seat, she had already applied before the Caste Scrutiny Committee for grant of Caste Validity Certificate. Therefore, as per the proviso to Section 5B of the aforesaid Act, she was required to produce Caste Validity Certificate within a period of twelve months from being elected. The said period expired on 23/06/2020.

(7) The respondent Corporation through its Commissioner passed the impugned order dated 23/06/2020, holding that the election of the petitioner stood terminated with retrospective effect and she stood disqualified from being a Member in the respondent Corporation, in view of the fact that the twelve months period specified in proviso to Section 5B of the said Act, expired on the said day and the petitioner had admittedly failed to produce the Caste Validity Certificate.

(8) The petitioner filed the present Writ Petition challenging the said order, primarily on the basis that although she had taken all possible steps on her part before the Caste Scrutiny Committee for grant of Caste Validity Certificate, but, due to the sudden countrywide lock-down imposed on 22/03/2020 following the COVID-19 pandemic, the Caste Scrutiny Committee could not hold sittings and the application filed by the petitioner could not be decided. The petitioner claimed that the drastic consequence of deemed termination of election of the petitioner with retrospective effect and her disqualification ought not to visit her under Section 5B of the said Act, as the COVID-19 pandemic and the consequent lock-down had created an unprecedented and unimagined situation, wherein the mandatory requirement of law could not be satisfied.

(9) It was also stated in the Writ Petition that as soon as the Caste Scrutiny Committee could resume its work, the petitioner pursued the matter and on 08/07/2020, Validity Certificate was issued in her favour by the Caste Scrutiny Committee, thereby showing that the Petitioner indeed belongs to the Other Backward Class. A copy of the Validity Certificate was placed on record with the Writ Petition and it was prayed that the impugned order be set aside. On 16/07/2020, this Court issued notice in the Writ Petition and directed that further steps may not be taken for filling the vacancy created by the impugned order passed against the petitioner. Thereafter, on 08/09/2020, this Court took note of the fact that the petitioner placed reliance on an order dated 23/03/2020 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020, wherein it was directed that period of limitation prescribed under general law or Special Laws whether condonable or not, stood extended w.e.f. 15/03/2020 until further orders, in view of the challenge faced by the Country on account of the COVID-19 virus. This Court also found that, to appreciate the contentions raised on behalf of the petitioner, it would be necessary that an additional affidavit is placed on record to show as to what steps the petitioner had taken in respect of the pending proceeding before the Caste Scrutiny Committee, in order to examine whether the contentions raised on her behalf were justified. The petitioner filed an

additional affidavit with documents to show the manner in which the proceedings before the Caste Scrutiny Committee had taken place till issuance of Cast Validity Certificate on 08/07/2020.

(10) The respondent Municipal Corporation filed its written submission opposing the Writ Petition, primarily on the basis that the requirement of Section 5B of the aforesaid Act, is mandatory, which has been so held by this Court, as well as the Hon'ble Supreme Court. On this basis, it was contended that the Writ Petition deserved to be dismissed.

(11) Mr.A.A.Dhawas, learned counsel for the petitioner, submitted that the admitted facts of the present case demonstrated that the unprecedented situation created by the COVID-19 virus and the consequent lock-down, was solely responsible for the petitioner being unable to submit Caste Validity Certificate within twelve months of being elected as a Member of the respondent Municipal Corporation. It was submitted that such a crisis was faced by humanity after about a century and that this factor was required to be taken into consideration before applying the said provision, which had the deeming effect of terminating election of the petitioner with retrospective effect and disqualifying her from being Member of the respondent Municipal Corporation. By inviting attention to the additional affidavit placed on record

and the documents filed therewith, the learned counsel for the petitioner vehemently submitted that the chronological events that occurred during the progress of the proceedings pertaining to application for grant of Validity Certificate submitted by the petitioner before Caste Scrutiny Committee, demonstrated that the petitioner had been diligently pursuing the matter and if the COVID-19 crisis had not intervened the proceedings before the Caste Scrutiny Committee would have been completed and the petitioner would certainly have been able to satisfy the requirement of Section 5B of the aforesaid Act.

(12) It was further submitted that failure to submit the Caste Validity Certificate within the aforesaid period of twelve months could not be attributed to the petitioner and that therefore, the impugned order deserved to be set aside. It was further submitted that the Hon'ble Supreme Court had initiated Suo Motu proceeding in the form of Writ Petition (Civil) No.3 of 2020, in view of the COVID-19 crisis and by order dated 23/03/2020, it was specifically directed that in view of the said crisis and to obviate difficulties faced by the litigants, the period of limitation prescribed under general law or Special Laws whether condonable or not stood extended w.e.f. 15/03/2020 until further orders. The learned counsel for the petitioner also relied upon the

subsequent orders passed by the Hon'ble Supreme Court in the proceedings to contend that the relief granted by the Hon'ble Supreme Court in the context of COVID-19 crisis not only applied to limitation period specified in statutes, but also to cases where the time to perform of a particular act expired during the period of lock-down. On this basis it was submitted that the impugned order dated 23/06/2020, could not have been passed by the respondent Corporation and that it deserved to be set aside.

(13) On the other hand, Mr. M.I.Dhatrak, learned counsel for the respondent Corporation submitted that the requirement of Section 5B of the aforesaid Act is mandatory. This was so held pertaining to a pari materia provision by Full Bench of this Court and that the Hon'ble Supreme Court had also specifically held the said provision to be mandatory in nature. In this context, it was submitted that this Court had also held that individual hardship could not be a ground for permitting non-compliance with the aforesaid provision and that once it was found that the elected Member of the Municipal Corporation from reserved seat had failed to produce Validity Certificate within a period of twelve months, the election stood deemed to be terminated with retrospective effect. On this basis, it was submitted that there was no substance in the contention raised on behalf of the petitioner. As

regards the Suo Motu orders passed by the Hon'ble Supreme Court in the context of the COVID-19 crisis, it was submitted that the said orders applied to litigants who sought to file suits, petitions, applications, appeals and other such proceedings wherein periods of limitation were prescribed under general law of limitation or under Special Laws. It was submitted that the said orders were not applicable to the facts of the present case, wherein the petitioner was mandatorily required to satisfy the statutory requirement.

(14) The learned counsel for the respondent placed reliance on judgment of this Court in the case of **Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra and others**¹ and judgment of Hon'ble Supreme Court in the case of **Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra and others**²

(15) 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 consequent imposition of countrywide lock-down, the petitioner could claim that her election could not be held to be terminated retrospectively under Section 5B of the said Act.

1 2017(2) Mh.L.J. 368

2 (2019) 3 SCC 220

(16) There is no dispute about the fact that the application for grant of Caste Validity Certificate filed by the petitioner before the Caste Scrutiny Committee was pending for consideration when she filled her nomination form and stood elected from a reserved seat as Member of the respondent Corporation on 24/06/2019. Section 5B of the said Act provides for the statutory requirement to be satisfied by such a person who is elected as Member of the Municipal Corporation during pendency of application for grant of Validity Certificate before the Caste Scrutiny Committee. The provision reads as follows :-

“5B. 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, (Mah. XXI of 2018) 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 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 papers,-

(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 of his election, 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 of his election, 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".]”

(17) The learned counsel for the petitioner conceded that, as per the law laid down by this Court and the Hon’ble Supreme Court, the

requirement under the above quoted provision of law, has been held to be mandatory. This is evident from the judgments rendered by a Single Judge of this Court in the case of Shankar s/o Raghunath Devare vs. State of Maharashtra and others (supra), as also the Hon'ble Supreme Court again in the case of Shankar s/o Raghunath Devare vs. State of Maharashtra and others (supra) in the context of pari materia provision in another statute, as well as the specific requirement of the above quoted provision i.e. Section 5B of the aforesaid Act. As per the said mandatory provision, the petitioner was required to submit Caste Validity Certificate issued by the Caste Scrutiny Committee within twelve months from the date of her election. There is no dispute about the fact that the petitioner could not submit such Caste Validity Certificate. This was recorded in the impugned order dated 23/06/2020, passed by the Commissioner of the respondent Corporation, holding that since the petitioner had failed to comply with the aforesaid mandatory requirement of law, her election stood terminated with retrospective effect and she stood disqualified as Member of the Municipal Corporation.

(18) On the face of it, by operation of the Section 5B of the aforesaid Act, the impugned order passed by the respondent appears to be in terms of the position of law. But, the unprecedented situation created by the

COVID-19 crisis and the consequent countrywide lock-down, is a factor which needs to be taken into consideration, while examining the contentions raised on behalf of the petitioner. There is no dispute raised by the respondent Corporation about the fact that the countrywide lock-down was imposed w.e.f 22/03/2020, in view of the COVID-19 crisis. As a consequence, filing of proceedings and hearing of pending proceedings before the Caste Scrutiny Committee had become impossible.

(19) A perusal of the additional affidavit filed by the petitioner along with the documents filed therewith shows that the petitioner had been pursuing the matter before the Caste Scrutiny Committee for grant of Caste Validity Certificate. The petitioner obviously had no control over the said proceeding, the Scrutiny Committee being a quasi judicial authority. The documents provided by the Caste Scrutiny Committee to the petitioner show that during the proceedings for examining the Caste claim of the petitioner, on 25/06/2019, the Caste Scrutiny Committee had issued a letter to the office of respondent for supplying list of elected candidates as Members of the Corporation and that this information was provided on 08/07/2019 by the Deputy Commissioner of the respondent Corporation. On 20/07/2019 the petitioner was called upon to furnish the documents and proof. Such

documents were supplied and the petitioner complied with the said requirements on 07/10/2019. On 08/11/2019, the Caste Scrutiny Committee issued a letter to the Village Development Officer for original tax register and also issued summons to Head Master of the Primary School for producing the registers, to verify the claims made by the petitioner.

(20) On 18/12/2019, the Caste Scrutiny Committee called upon the petitioner to furnish additional proof and on 23/12/2019 the Village Development Officer to produce the original record of tax demand register. On 24/12/2019, the claim of the petitioner was forwarded for domestic inquiry to the vigilance cell. On 23/01/2020, the vigilance cell forwarded vigilance report to the Caste Scrutiny Committee. On 30/01/2020, the Caste Scrutiny Committee issued a letter to the petitioner to furnish additional evidence, which the petitioner submitted on 12/02/2020. On 16/03/2020, the petitioner also submitted his original birth certificate.

(21) At this stage on 22/03/2020, lock-down was imposed due to which the Caste Scrutiny Committee could not function effectively. The Committee could not hold sittings and parties were not allowed to enter the office of the Caste Scrutiny Committee, as a consequence of which, it was only on 22/05/2020 that the Caste claim of the petitioner was taken up for

consideration. On 11/06/2020, the Caste Scrutiny Committee issued a letter to the Gram Panchayat to produce all original records pertaining to the petitioner. On 03/07/2020, the matter was again sent for vigilance report by the Caste Scrutiny Committee and such report was received on 06/07/2020. Eventually, on 08/07/2020, the Caste claim of the petitioner stood decided, when the Caste Scrutiny Committee found that the claim of the petitioner was justified and accordingly, Caste Validity Certificate dated 08/07/2020, was issued to her.

(22) This Court has referred to the proceedings before the Caste Scrutiny Committee in detail, because the chronological events do indicate that the time consumed in the said proceedings was attributable to the procedure adopted by the Caste Scrutiny Committee and that no conclusion could be drawn that the petitioner had deliberately delayed such proceedings. Imposition of lock-down due to COVID-19 crisis certainly delayed the proceedings before the Caste Scrutiny Committee, due to which the Caste Validity Certificate could be eventually issued only on 08/07/2020. This was beyond the period of twelve months from the date of election specified in Section 5B of the said Act. Yet, it needs to be examined whether the learned counsel for the respondent Corporation is justified in contending that

individual hardship of the petitioner could not be a ground to escape the consequences of failure to satisfy the mandatory requirement of the said provision.

(23) The circumstances created by the COVID-19 crisis adversely affected the entire globe and human kind at large, thereby showing that it could not be said that the petitioner was faced with individual hardship. The scale of the crisis is unprecedented, due to which the highest Court of the land was required to issue hitherto unknown directions. Due to the challenge faced by the entire country on account of COVID-19 crisis, the Hon'ble Supreme Court took suo motu cognizance and initiated proceedings in Suo Motu Writ Petition(Civil) No.3 of 2020. In the order dated 23/03/2020, passed in the said proceeding, the Hon'ble Supreme Court took note of the situation and the resultant difficulties faced by the litigants across the country. To obviate such difficulties, the Hon'ble Supreme Court in the said order directed 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.”

(24) It is contended on behalf of the respondent Corporation that the said directions given by the Hon’ble Supreme Court were limited to relief for litigants who intended to file suits/petitions/applications/appeals and other such proceedings for which periods of limitation are prescribed under the general law of limitation or Special Laws. It was contended that the said direction and relief granted to litigants by the Hon’ble Supreme Court by exercising power under Article 142 read with Article 141 of the Constitution of India was not meant for persons like the petitioner herein. It was submitted that the mandatory requirement of Section 5B of the aforesaid Act, could not be diluted by such directions.

(25) It is relevant that the Hon'ble Supreme Court in the above quoted order used the expression "all other proceedings". Considering the backdrop, in which the said order was passed, it can be said that proviso to Section 5B of the aforesaid Act provides a specific limitation of time period for submitting Caste Validity Certificate, which is a period of twelve months. As per the above quoted order of the Hon'ble Supreme Court, the period of limitation prescribed by Special Laws, both Central and State laws, stood extended w.e.f. 15/03/2020 till further orders by the Hon'ble Supreme Court. It is significant that in a subsequent order dated 10/07/2020 in the very same suo motu proceeding, the Hon'ble Supreme Court noted that parties had prayed for extension of time where the time to perform a particular act was to expire during the lock-down. In the backdrop of such prayer, the Hon'ble Supreme Court referred to the provisions of the Arbitration and Conciliation Act, 1996, as also, the provisions of the Commercial Courts Act, 2015, which fix specific time periods for doing certain acts and then granted relief of extension of time limits.

(26) In the backdrop of the unprecedented crisis created by the lock-down due to the COVID-19 virus, the Hon'ble Supreme Court exercised power under Article 142 read with Article 141 of the Constitution of India to

grant such relief of extension of time. The said directions given by the Hon'ble Supreme Court would apply to various situations and in the peculiar facts and circumstances of the present case, to the case of the petitioner also.

(27) This aspect was not taken into consideration by the respondent Corporation at all while passing the impugned order dated 23/06/2020. The Caste Validity Certificate was admittedly issued on 08/07/2020 in favour of the petitioner and therefore, if the directions given by the Hon'ble supreme Court from time to time for extension of time to perform certain acts are applied to the facts of the present case, it becomes evident that the respondent Corporation could not have held immediately upon expiry of the period of twelve months that the election of the petitioner stood terminated with retrospective effect and that she stood disqualified as Member of the respondent Corporation.

(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 vs. Kailash**

Kushanrao Gorantyal³, 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 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.

(29) In the present case, it can not be said that the petitioner did not make efforts for issuance of Caste Validity Certificate before the Caste Scrutiny Committee, as is evident from the details of the proceeding provided by the office of the Committee. Despite efforts made by the petitioner, the proceedings initiated before the Caste Scrutiny Committee could not be terminated before the expiry of the mandatory period of twelve months under proviso to Section 5B of the said Act. The Caste Scrutiny Committee could not hold meetings and it could not proceed with the application of the petitioner due to imposition of lock-down on 22/03/2020. But for the intervening circumstance of COVID-19 crisis and consequent lock-down, the Caste Scrutiny Committee would have been able to complete the proceeding regarding the Caste Validity Certificate of the petitioner.

3 (2020) 7 SCC 1

(30) The Caste Scrutiny Committee was also not to blame for such a predicament because imposition of lock-down resulted in a situation where the Caste Scrutiny Committee could not hold meetings and even the parties before the Committee were not permitted to physically enter the office of the Committee. It can be said that the performance of the act by the petitioner, mandatorily required under the provisions of the aforesaid Act, could not be completed due to factors beyond the control of the petitioner and necessarily due to a factor like the act of God. In the present case it could be said to be the act of the dreaded virus. The maxim *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia* i.e. the law does not demand the impossible.

(31) Both these maxims have been referred to and relied upon by the Hon'ble Supreme Court in the aforesaid judgment of Arjun Paditrao Khotkar vs. Kailash Kushanrao Gurantyal and others (supra), while holding in favour of the respondent in the context of excusing the said respondents from satisfying the mandatory requirement of the relevant provision of the Evidence Act.

(32) If the said position of law is applied to the peculiar facts

of the present case created by the lock-down imposed due to the COVID-19 crisis, it can be said that the aforesaid legal maxims apply and that there is substance in the contention raised on behalf of the petitioner that the impugned order deserves to be set aside.

(33) In view of the above, the Writ Petition is allowed. The impugned order dated 23/06/2020 is set aside. It is held that the petitioner cannot be said to have incurred disqualification under Section 5B of the aforesaid Act, only because she could not submit the Caste Validity Certificate within the stipulated period of twelve months. It is held that she is entitled to protection of the directions issued from time to time by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020, in the backdrop of the COVID-19 crisis.

(34) Rule made absolute in above terms.

[MANISH PITALE J.]