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

WRIT PETITION NO.14824 OF 2021

Fakira S/o Devram Sansare,
Age: 50 years, Occu: Agril
and Social worker,
R/o. Kanadgaon, Tq. Rahuri,
Dist. Ahmednagar

....PETITIONER

VERSUS

1. The Collector,
Ahmednagar, Dist. Ahmednagar

2. The Tahsildar, Rahur,
Tq. Rahuri, Dist. Ahmednagar

3. Bhausahab S/o Baburao Chokhar,
Age: 40 years, Occu: Nil,
R/o. Village Kanadgaon,
Tq. Rahuri, Dist. Ahmednagar

....RESPONDENTS

Mr S. R. Andhale, Advocate for petitioner;
Mr A. S. Jagatkar, A.G.P. for respondent Nos.1 & 2
Mr T. J. Momin, Advocate for respondent No.3

CORAM : SMT. BHARATI DANGRE, J.

DATE : 2nd February, 2022

JUDGMENT:

1. The petitioner raise a challenge to his disqualification as a
Member/Sarpanch of village panchayat, Kanadgaon, Tq. Rahuri,

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Dist. Ahmednagar, by invoking the provisions of Section 10(1-A) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as “the said Act”)

2. The petitioner approached this Court and on 27/12/2021, notice was issued to the respondents. On the respondents being heard, the parties expressed their consensus to argue the writ petition finally. Hence, Rule. Rule made returnable forthwith. Heard by consent of the parties.

3. I have heard learned Counsel Shri. S. R. Andhale for the petitioner, learned Asstt. Government Pleader Shri. P. G. Borade for respondent Nos.1 and 2 and learned Counsel Shri. T. J. Momin, for respondent No.3.

4. The petitioner contested the elections and came to be elected as a ‘Sarpanch’ of village panchayat, Kanadgaon, Tq. Rahuri, Dist. Ahmednagar from the seat reserved for scheduled category. The result came to be declared on 10/01/2020. Since the post of Sarpanch was reserved for scheduled caste, and the petitioner claimed to be belonging to the said caste, before his

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election, he preferred an application to the District Caste Scrutiny Committee, Ahmednagar, for being conferred with validity certificate and pending the receipt of the said certificate, he contested the elections and was declared elected to fill up the post reserved for scheduled caste.

5. Respondent No.3 preferred an application before the Collector, Ahmednagar on 25/01/2021, inviting attention of the Collector to the fact that the petitioner, who was elected as a Sarpanch of village panchayat Kanadgaon to fill up the post reserved for scheduled candidate, had submitted an affidavit before the Returning Officer while filing of his nomination form and had undertaken to produce the validity certificate within a period of one year from being declared elected, but till date, he has not obtained the validity certificate and hence, he has incurred a disqualification to continue as a Sarpanch and his election shall be deemed to have been terminated retrospectively.

6. Pertinent to note that, on 15/11/2021, the Collector, Ahmednagar issued a notice to the petitioner by inviting his attention to Section 10-1A of the Maharashtra Village Panchayats

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Act as amended by the Government Notification dated 14/12/2018, which made it mandatory for a candidate elected upon the reserved post, to produce the validity certificate within a period of one year from the date of he being declared as elected, and on failure to produce the validity certificate, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Member. By the aforesaid notice, the petitioner was specifically reminded that he was elected on the post of Sarpanch reserved for scheduled category, on 09/01/2020 and therefore, he should produce a proof of submitting his caste certificate for verification to the Caste Validity Committee, on or before 26/11/2021. Failing to abide by the same, he shall incur a disqualification.

7. The petitioner responded to the said communication on 25/01/2021, wherein he stated that he had forwarded his caste certificate for its verification to the Scrutiny Committee, but he has not yet obtained the said certificate and therefore, he cannot produce the same. He specifically pleaded that he is not at fault, as he had forwarded his certificate for verification prior to his

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election, but the Committee has not yet issued him a validity certificate. This delay was sought to be condoned and he sought the time to be extended, to submit the validity certificate. Along with his application, he also forwarded a letter addressed to the Committee on 20/08/2020, by which he had forwarded some documents to the Committee, which were found to be deficient in determining his claim.

8. The request made by the petitioner to extend the time for filing the validity certificate was not attended to, and his grievance is that the Collector, Ahmednagar, by his order dated 02/12/2021, granted the application filed by respondent No.3 and declared the petitioner to be disqualified to hold the post of Sarpanch and terminated his election to the post of Sarpanch with retrospective effect.

In the impugned order, the Collector recorded a finding to the effect that the elected candidate i.e. the petitioner, who was elected to the post of Sarpanch, has failed to produce validity certificate within a period of one year from the date of declaration of the result of the elections and the necessary consequences that

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on failure to produce the validity certificate within a period prescribed, his election shall be deemed to have been terminated retrospectively. It is this order, which is the subject matter of the present writ petition.

9. The learned Counsel Shri. Andhale appearing for the petitioner would submit that on 15/12/2021, the District Caste Certificate Scrutiny Committee, Ahmednagar, has validated his caste certificate belonging to 'Mahar' caste and certified that his caste claim is found to be correct and his caste certificate dated 02/02/2007 is validated, with a declaration that the petitioner belong to 'Mahar', a scheduled caste.

Relying upon the said certificate, the learned Counsel for the petitioner would vehemently submit that the petitioner had applied for validating his caste certificate to the Scrutiny Committee on 21/12/2019 i.e. much before of his declaration as Sarpanch of the Grampanchayat, but the Committee consumed time in following the procedure before confirming him the status of a scheduled caste and before his caste certificate is validated. The learned Counsel would submit that it is not his fault that the

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Committee did not issue the validity certificate within a period of one year, but for that lapse, he cannot be made to suffer. Ultimately, according to the learned Counsel, as on date, there is a declaration in his favour, that he belong to scheduled caste and is entitled to hold the post of Sarpanch of village Kanadgaon. The impugned order, according to the learned Counsel is clearly prejudicial to the interest of the petitioner when obtaining the validity certificate was not within his control and the submission is, he has complied with the requisite by submitting an application in time and also curing the lacuna, which is pointed by the Committee, by submitting additional documents, but if the Committee did not complete the procedure of verifying his caste status, within a period of one year, he should not suffer the extreme consequence of being removed from the post of Sarpanch, particularly when in the particular period, the whole nation was grappling with the pandemic, even the working of the Scrutiny Committee was affected and he could not be issued the validity certificate, within a period of one year.

The learned Counsel has placed reliance upon an order passed by the Hon'ble Apex Court in Suo-motu Writ Petition (C) No.3/2020, IN RE: cognizance for extension of limitation, and the submission is, in order to avoid the inconvenience to the litigants, and the adversities faced by them in the prevailing conditions, the Hon'ble Apex Court intervened and excluded the period from 15/03/2020 to 28/02/2022 for the purposes of limitation, as may be prescribed under in General or Special Laws in respect to all judicial and quasi judicial proceedings. Relying upon the said order, which was made applicable throughout the country, the learned Counsel would stressfully urge that the petitioner came to be elected on 10/01/2020 and it is during the period when the pandemic was in full bloom, his claim was made over to the Committee and since functioning of all the institutions came to a stand still for certain period of time on account of pandemic, the Scrutiny Committee could not deliver the validity certificate in his favour within a period of one year and if the period of limitation came to be extended by the Hon'ble Apex Court in respect of all judicial and quasi judicial proceedings, there is no reason why the benefit shall not be extended to the

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proceedings before the Scrutiny Committee, which is also a quasi judicial authority.

10. The learned Counsel made every attempt to urge that since obtaining the validity certificate was interrupted by the extraordinary circumstances, he should be benefited and it shall be ensured that for no fault on his part, the action of termination from the post of Sarpanch be set aside.

Per contra, the learned Counsel for respondent No.3 and the learned Asstt. Govt. Pleader would submit that the amendment prescribed in Section 10-1A of the said Act is adhered to by the Collector in passing the impugned order and by relying upon the provisions of Section 10-1A, the submission of the respondents is, that as a person who has applied to the Scrutiny Committee for verification of his caste certificate before the date of filing of nomination paper, but has not received the validity certificate on the date of his nomination, shall submit a true copy of the application preferred by him to the Scrutiny Committee for issuance of validity certificate or any proof of having made such an application and he shall also submit an undertaking that within

a period of 12 months from the date on which he declared elected, the validity certificate shall be issued by the Scrutiny Committee. It is submitted that, by virtue of the proviso appended to the said Section, if a person fails to produce the validity certificate within the prescribed period, 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.

By relying upon the decision of the Full Bench of this Court in case of **Anant H. Ulahalkar & anr. Vs. Chief Election Commissioner & others, 2017 (1) B.C.R. 230**, the learned Counsel for the respondents submits that there is no discretion left with the authority to continue the petitioner as a Sarpanch, since the proviso contemplated a deeming fiction, where on failure to produce the validity certificate within a period of 12 months from the date of his election, he shall be deemed to have been terminated retrospectively and disqualified as a Member. The said Section being held to be mandatory, it is argued that the election of the petitioner is deemed to have been terminated w.e.f. 10/01/2020 and no power is left with any authority to save this

deeming consequences as contemplated under the proviso. The learned Counsel, therefore, have prayed for dismissal of the petition, in the light of the imperative nature of the provision, on failure to produce the validity certificate within a period of 12 months from the date of election.

11. The full Bench of the Bombay High Court, in case of **Anant H. Ulahalkar (supra)**, where three questions were referred to the Full Bench for reference, answered the same in following words :

“2. The genesis of this reference is the order dated 11 August 2015 made in the present writ petition by the Division Bench (Coram : Naresh H. Patil and V.L. Achliya, JJ). This order takes cognizance of the aforesaid conflict and opines that in matter be placed before Hon’ble the Chief Justice to consider whether reference needs to be made to the Larger Bench. The order also notes the following questions of law arise :

“(i) Whether the time limit prescribed under Section 9-A of the Maharashtra Municipal, Nagar Panchayats and Industrial Township Act, 1965, for submission of caste validity certificate by elected Councilor is mandatory in nature?

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(ii) Whether failure on the part of the person elected as a Councilor to produce the caste validity certificate within prescribed period of six months from the date of which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce the validity certificate would automatically result in termination of his election with retrospective effect ?

(iii) Whether the validation of caste claim of the elected Councilor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councilor with retrospective operation?”

12. The Full Bench, in the above case was considering Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, which is *pari materia* to Section 10-1A of the Maharashtra Village Panchayats Act, 1959. The Full Bench, after elaborate consideration, held that the requirement of submitting caste certificate within the period stipulated is a mandatory requirement and in the relevant observations from the Judgment of the Full Bench need a reproduction :

“98. In the present case also the legislature in enacting [Section 9-A](#) 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 9-A](#) 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 9-A](#) 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

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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.

Further, in terms of second proviso to [Section 9-A](#) if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly.”

13. This judgment of the Full Bench of the Bombay High Court, came up for consideration before the Hon’ble Apex Court in case

of **Shankar Raghunath Devre (Patil) Vs. State of Maharashtra & others, 2019 (3) SCC 220** and the Hon'ble Apex Court, after noticing the provision, upheld the decision of the Full Bench of the Bombay High Court that the Statute engrafts mandatory requirement in law and the observations of the Hon'ble Apex Court read as under :

“7. A proviso to the aforesaid main provision of the Statute was brought in subsequently which permitted a candidate to file his/her nomination even in absence of validity certificate, provided, he/she enclose with the nomination a true copy of the application filed by him/her before the Scrutiny Committee and an undertaking that he/she shall submit within period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.

8. There is Second proviso which contemplates that on failure of the person(s) concerned to produce the validity certificate within time frame stipulated, his election “shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor”

9. *We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusion that the aforesaid provisions of the Statute engrafts a mandatory requirement in law. The High Court, in our considered view, very rightly came to the aforesaid conclusion along with further finding that equities in individual case(s) would not be a good ground to hold the provision to be directory. In fact, the High Court has supported its decision by weighty reasons to hold that reading the provisions to be directory would virtually amount to rendering the same to be negatory.”*

13. The position of law as regards the provision contained in a Statute providing for election to a reserved seat to submit caste certificate and validity certificate are found in the distinct Statutes, which include Section 5B of the Mumbai Municipal Corporation Act, 1888, Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 10-1A of the Maharashtra Village Panchayats Act, 1959.

14. In case of Kesharben Murji Patel VS. State of Maharashtra and others (Writ Petition No.181/2018) and in case of Tulip Brian Miranda Vs. State of Maharashtra and others (Writ Petition No.3673/2018 along with the connected writ petitions, the question again came for consideration in the wake of the amendment effected in the Mumbai Municipal Corporation Act, 1888 in Section 5B by the amending Act of 21 of 2018 and the Judgment came to be delivered on 02/04/2019, where the imperative nature of the time limit prescribed to produce the validity certificate upon being elected on a reserved seat, again arose for consideration and by referring to the scheme contained in 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 (“the Act of 2000”), and particularly, by referring to sub-section(4) of Section 10, a similar conclusion was arrived at. At this juncture, it is appropriate to take note of sub-section (4) of Section 10 of the Act of 2000, which reads thus :

“(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.”

15. Recording that in order to translate the provision contained in the Act of 2000, relevant provisions came to be introduced in the local enactments by the State Legislature relating to Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 and Maharashtra Village Panchayats Act, etc, by referring to the requirement contained in Section 5B of the Mumbai Municipal Corporation Act, 1888, by relying upon the Full Bench decision in

case of Anant H. Ulahalkar (supra), it was held that from the date of coming into effect of amendment Act and the substituted proviso, it is imperative for the candidate contesting election from 27/09/2018, to submit an undertaking that he will produce validity certificate within a period of 12 months and if he does not produce the same, he would be deemed to have disqualified retrospectively. It was held that the Legislature has not conveyed any relaxation in its intention for consequence to fall. The following observation is relevant :

“24. A Full Bench of this Court has in great detail dealt with the result why it is construed the stipulation of time limit contained in the two provisos to Section 9A, within which, the person elected is required to produce the validity certificate from Scrutiny Committee to be mandatory. Failure to comply with the stipulation resulted consequences. The consequences must fall “whatever may be the reason for non-production of the validity certificate. The State Legislature, being conscious of the difficulties being faced by the candidates, has stepped in and save the disqualification from the retrospective effect, but from a particular stipulated date and not from the time and further provided for a window of 15 days from the date of coming

into effect of the Act, namely, period of 15 days to produce the validity certificate in order to save such candidate from axe of disqualification falling on him, but for such a disqualification is incurred by deeming provision.” The legislature has not conveyed any relaxation in it’s intention for the consequence to hold in case of non-production of validity certificate within the period undertaken by the candidate. We have, therefore, not inclined to accept the submission of the learned Senior Counsel and be say so in the light of authoritative pronouncement of the Full Bench on the said point and since according to us, the amended legislation do not change intention of the Statute to make it mandatory.”

The aforesaid decision came to be upheld by the Hon’ble Apex Court and has now become a settled position of law.

16. In the light of the position of law which has been crystallized to the above effect, the petitioner who has contested the election for reserved seat and got himself declared, must adhere to the provisions contained in the Statute and must take the consequences on the failure to abide by the stipulation contained therein.

17. In **Jyoti Basu and other Vs. Debi Ghosal and others**, AIR 1982 SCC 983, the Hon'ble Apex Court has held as under :

“The right to elect, fundamental though, it is to democracy is, anomalously, enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. Outside of Statute, there is no right to elect, no right to be elected and no right to dispute the election. Statutory creations they are, and therefore, subject to statutory limitation.

18. The petitioner, therefore, cannot travel beyond the Statute, which govern his election and on failure to produce validity certificate within period stipulated, he must face the consequences provided by the Statute. The impugned order passed by the Collector, thereby terminating him from the post of Sarpanch of village panchayat Kanadgaon with retrospective effect, is just and proper and deserves to be upheld.

Resultantly, the writ petition is dismissed. Rule is discharged.

(SMT. BHARATI DANGRE, J.)

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