

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9590 OF 2023

Sushmaraje Sharadchandra Ghorpade ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

WITH
WRIT PETITION NO. 8323 OF 2023

Sarika Mohan Chavan ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

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ASHWINI H
GAJAKOSH
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Mr Rushikesh C Barge, for the Petitioner.
Mr Pradeep Gole, for the Petitioner in WP/8323/2023 and for
Respondent No. 4 in WP/9590/2023.
Mr AA Alaspurkar, AGP, for the Respondent-State.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 13th October 2023

PC:-

- 1. Rule.** Returnable forthwith.

- 2. On 6th October 2023, we made the following order:**

“1. The Petitioner in Writ Petition No. 9590 of 2023, Sushmaraje Sharadchandra Ghorpade, claims that the 4th Respondent, Sarika Mohan Chavan, stands disqualified as a member of the Nandgaon Gram Panchayat in Satara District. Elections were held on 18th January 2021. Under the Provisions of Section 10-1A of the Maharashtra Village Panchayats Act, 1959, Sarika Chavan, having been elected to the Gram Panchayat was bound to produce her tribe validity certificate, she claiming to belong to the Thakkar Scheduled Tribe. According to Sushmaraje Ghorpade, Sarika Chavan has never produced or submitted her validity certificate at all. There was an earlier application of 2015 filed by Sarika Chavan that was rejected on 10th October 2020. Even the 2023 Act which extends the time for submission of the validity certificate (replacing an Ordinance of 10th July 2023) will not come to the assistance of Sarika Chavan simply because there is on record nothing to indicate that an application for a validity certificate is as yet pending.

2. On instructions, Mr Alaspurkar, learned AGP states that there is no record of Sarika Chavan having applied afresh for a tribe validity certificate after her 2015 application was rejected on 10th October 2020.

3. Sarika has filed her own Writ Petition No. 8323 of 2023. She has assailed an order dated 19th April 2023 passed by the Collector, Satara. She claims that she applied a second time for a validity certificate on 30th December 2020 and it is this application that is pending. A reference is made to this alleged application in paragraph 6 of her Petition. That paragraph references Exhibit “B” to Sarika Chavan’s Petition. But Exhibit “B” does not in any manner indicate that there was an application made to the Tribe Scrutiny Committee at all.

4. Mr Gole, learned Advocate for Sarika Chavan seeks

time to take instructions. We believe this is advisable. An affidavit is to be filed setting on record the application said to be dated 30th December 2020 as made to the Tribe Scrutiny Committee, Pune for the issuance of a validity certificate. Unless it is demonstrated to us that a proper application in the prescribed manner and form has been made it will not be possible to hold that there is a pending application.

5. The Affidavit is to be filed and served by Wednesday 11th October 2023. There is some urgency because there is a likelihood of elections being announced shortly.

6. List the matter first on board on 13th October 2023.”

3. Since then there is an Affidavit in Reply filed by Sarika Mohan Chavan, the answering Respondent to Sushma Raje’s Petition and the Petitioner in Writ Petition No. 8323 of 2023.

4. The learned AGP Mr Alaspurkar maintains that the Divisional Scrutiny Committee Pune has no record of any pending application for tribe verification or validation at the instance of Sarika Mohan Chavan. She had applied in 2015 and that application stood rejected on 10th October 2020.

5. On the last occasion, we were told that Sarika Chavan had applied to the Divisional Caste Scrutiny Committee Pune on 30th December 2023. Support is sought to be drawn for this from the Affidavit in Reply and particularly page 54. This is a communication dated 28th December 2020 from the Sub Divisional Officer and Sub Divisional Magistrate Satara to the Secretary Divisional Caste Scrutiny Committee Pune. The subject references Sarika Chavan

and notes that she has submitted an offline application. Some documents are noted in the table below.

6. Then our attention is drawn to page 56 which is Form 20. This is said to mention the proposed election date of 15th January 2021. It is an application by Sarika Mohan Chavan. The Divisional Caste Scrutiny Committee number is kept blank. The documents annexed to this are the original caste certificate, a school leaving certificate and two Affidavits on non-judicial stamp paper. There is no caste or tribe certificate of any relative on the paternal side.

7. We are asked to believe that on the basis of these communications, the application by Sarika Mohan Chavan must be deemed to be pending as of 30th December 2020. Now the case that Sarika Mohan Chavan tells us is that on 30th December 2020 which was in the middle of the lockdown and pandemic period, the online facilities were unavailable. We must confess this is the first time we are hearing of this inversion of systems that were operated during the lockdown. During that time, it was the physical or offline systems that were not in place. The physical systems were the ones that were offline. Such functioning as was permitted was only online. There is absolutely nothing to bear out this bald assertion. It also does not stand to reason that since December 2020, Sarika showed no follow up on her so-called fresh application to the Divisional Caste Scrutiny Committee, but merely stood by and let it remain pending. The fact that she was never called to any hearing or received any notice ought to have alerted her that her application was not under process. Therefore, we see no reason to disbelieve

learned AGP who has taken instructions and on the basis of instructions says that there is no record with the Registry of the Divisional Caste Scrutiny Committee showing any application pending on behalf of Sarika Mohan Chavan.

8. The state of the law is clear and we had recently had occasion to revisit it in our judgment in *Bapu Rajaram Kalel & Ors v The State of Maharashtra & Ors*.¹

9. In *Kalel*, we noted inter alia the provisions of Section 10(1-A) of the Maharashtra Village Panchayats Act, 1959. This Section was added by Maharashtra Act XXXVII of 2006. It carried a proviso that was substituted by a further amending Maharashtra Act IV of 2022 with effect from 6th December 2021. The amended Section 10-1A with its amended proviso now reads as follows:

“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, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Mah. XXIII of 2001).

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Civil Writ Petition No. 7924 of 2023, decided on 20th September 2023.

Provided that, for the General or bye-elections for which the last date of filing of nomination falls on or before the 31st December 2023, 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, —

- (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.”

(Emphasis added)

10. There is this self-operative or automatic disqualification under Section 10-1A. This is because the substituted proviso itself has a proviso, emphasized above, which provides for the disqualification and says that such a person’s election shall be “deemed to have been terminated retrospectively” and that he shall be disqualified from being a member. The concept of *termination*

retrospectively tells us that the election cannot be held to be good any longer, and that the disqualification relates back to the election itself.

11. The Village Panchayats Act was further amended by the Maharashtra Village Panchayats (Amendment) Act 2022, with effect from 27th July 2022. Sub-section (3) was renumbered as clause (a), and sub-clause (b) was added, as quoted above.

12. we had noted the 2022 amendment to the Maharashtra Village Panchayats Act, 1959. We also noted the Full Bench decision of this Court in *Anant H Ulahalkar and Anr v Chief Election Commissioner and Anr*² (AS Oka, J, as he then was, MS Sonak, J and AS Gadkari, J; per MS Sonak, J). The matter fell within the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It has a similar provision though with a different time period. The question was whether this time limit was or was not mandatory. The Full Bench held that the failure on the part of an elected councillor to produce a validity certificate within the statutorily stipulated period would *automatically* result in a termination of his or her election *with retrospective effect*. The phrase “*with retrospective effect*” is, therefore, common to both Acts. The Full Bench held that even if the caste claim was validated by the scrutiny committee after the statutorily prescribed period, it would have *no effect* on the statutory consequences prescribed under the section in question. Indeed, the Full Bench went to the extent of holding that a subsequent or later validation or issue of a validity certificate would be irrelevant for the purposes of restoration of that

² 2016 SCC OnLine Bom 9862 : 2017 (1) Mah LJ 431.

councillor's election. All that would happen was that such a subsequent validation would entitle the candidate to contest any election to be held on account of the vacancy created by the termination of his election. The Full Bench decision was affirmed by the Supreme Court in *Shankar Raghunath Devre (Patil) v State of Maharashtra*.³ It was once again reaffirmed by a 3-Judge Bench of the Supreme Court in *Ganesh Sukhdeo Gurule v Tashildar, Sinnar & Ors.*⁴

13. Within the prescribed period the validity certificate must be produced. If it is not produced, the consequences are certain. There is no question here of retrospective *validation*, but only of retrospective *invalidation* of an election. The wording of the statute is not only plain, clear and unambiguous but it is exactly parallel to that in the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965 which was before the Full Bench. The only difference is that in a Gram Panchayat covered by the Maharashtra Village Panchayats Act, a candidate has six months more to produce a Caste Validity Certificate. The consequences under the two statutes are identical. Once a Full Bench has settled this aspect of the law, it cannot be said is any longer to be *res integra*, especially when the law as stated in affirmed by the Supreme Court.

³ (2019) 3 SCC 220 : (2018) Mh LJ Online (SC) 112. Also affirming the Bombay High Court decision in *Shankar Raghunath Devre v State of Maharashtra*, 2016 SCC Online 10869 : (2017) 6 Bom CR 704 : (2017) 2 Mh LJ 368. A review petition was also dismissed by the Bombay High Court (*Shankar Raghunath Devre v State of Maharashtra*, 2016 SCC OnLine Bom 15934), and this decision in review was also affirmed by the Supreme Court.

⁴ (2019) 3 SCC 211.

14. Even on the question of interpretation of statutes and interpretation of provisos, as also the function of provisos, the Full Bench dealt with this jurisprudence extensively in paragraphs 38, 47, 48, 53 to 55 and 63. The Full Bench reiterated and reaffirmed the well-established principle that words in a statute must receive their ordinary meaning unless this construction yields an absurdity, or there is something in the context or in the object of the statute to the contrary. Words in a statute declare legislative intent. This is especially so where the language of the statute is clear, plain, and unambiguous. A Court must strive to give appropriate meaning to every word in the legislature. None can simply be swept aside as being redundant or surplus. Any interpretation that results in a statutory provision being rendered otiose, redundant, or surplus cannot be preferred to an interpretation that gives effect and meaning to every portion and every word. A Court shall presume that a legislature knew what it was about when it framed the legislation, and that it knew the effect, impact and import of every word of the statute that it framed. Legislatures are not to be accused of linguistic redundancy on the mere say-so of a disgruntled party. Where a proviso carves out an exception or makes an exemption or a concession subject to certain conditions being fulfilled, then those conditions must be met. Normally, provisos provide an exception. In another manner of speaking, that which the proviso considers would fall within the main section. The proviso thus carves out an exception or makes an exclusion. The section is the rule, and the proviso is usually the exception to the rule. No proviso can thus be interpreted in a manner to invert this, where the proviso becomes the rule, and the section becomes the exemption.

15. In the present case, as we have seen, there is the insertion of a section. It had a proviso. The proviso was substituted. The amended proviso itself has a proviso. This gives us an interesting structure. The proviso within the proviso is, therefore, an exception to an exception. Therefore: under the main Section, anyone who wishes to contest an election from a reserved seat must submit along with the nomination papers, a caste certificate, and a Validity Certificate by the Scrutiny Committee. This is the rule. Now comes the first exception. The exception is that for general or bye-elections for which the last date of filing nominations is on or before 31st December 2023, where a person has applied for a verification of the caste claim before filing the nomination papers, but has not received it on the date of filing of the nomination papers, such a person must submit (i) a true copy of the application for a Validity Certificate and (ii) an undertaking to submit within 12 months the Validity Certificate. Now the proviso within the proviso tells us of what is to happen if that person does *not* furnish the Validity Certificate within that 12-month period. It is then that the candidate's election is "deemed", i.e., by a statutory fiction, to have been 'terminated retrospectively' and that person is disqualified from being a member from the date of the election. This is logical, because otherwise it would mean that a person whose caste or tribe claim is invalidated still functions as a gram panchayat member from the date of the election to the date of invalidation. That can never be, for the election is from a reserved seat. Thus, the rule is a submission of both the caste claim and the Validity Certificate with nomination papers. The exception is for a certain class of elections where a copy of the application and an undertaking is permitted, but subject to the Validity Certificate coming within 12 months, and then the

exception is that if despite giving this true copy of the application and the nomination, the Validity Certificate is not produced, consequences follow.

16. Read like this, the second proviso, i.e., the proviso within the proviso, might fairly be said to be clarificatory because it provides for the consequence of a failure to fulfil the condition set out in the proviso. The second proviso is the consequence. Let us consider what would happen if we did not have the second proviso. In that scenario, the mere filing of an undertaking and a true copy of the application would be good for all time until the next Gram Panchayat election. That would defeat the statutory intent. It is, therefore, not possible to ignore the second proviso. It is the second proviso that defines the boundaries of the first proviso and ring fences it, so to speak. Even for that limited class of elections, it is not sufficient for a candidate to merely file a true copy of the application for a Validity Certificate and an undertaking without any fear of consequence. The 12-month period for furnishing the Validity Certificate is required, and it is the second proviso that has to be read with the main section which tells us why this is important.

17. Another perspective or way of looking at it, is that if we ignore or overlook the second proviso, then the impact of the main section itself is lost. The entire section would be rendered otiose and utterly meaningless.

18. In Kalel, we also considered the provisions of the Maharashtra Temporary Extension of Period for Submitting Validity

Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Act, 2023 (“**Temporary Extension Act**”) Act, 2023. That Extension Act came into force on 10th July 2023. Section 3(1) clearly protects those applications *that were pending* at the time when the Extension Act came into force. This is inter alia clear from the provisions of Sub-Section (2) which says that the relief granted by Sub-Section (1) does not apply inter alia to a member whose application for a validity certificate has been rejected by the scrutiny committee. Thus, Sarika would be protected *only* if she was able to show unequivocally that her application was in fact pending before the scrutiny committee. If she cannot show this, there is no presumption that it ‘must’ be pending, especially since Mr Alaspurkar states that there is absolutely no record of any pending application by Sarika after October 2020.

19. On the record before us, the following picture emerges:

- I. There is in fact a *rejection* of the 2015 application by Sarika Mohan Chavan on 10th October 2020.
- II. There is *no record of a later application* by Sarika Mohan Chavan being on the file of the Divisional Caste Scrutiny Committee Pune whether in December 2020 or at any time after 10th October 2020.

20. There is, therefore, no question that Sarika Mohan Chavan had failed to produce a caste validity certificate within the time stipulated by the Act.

21. Accordingly, the Petition filed by Sushmaraje, Writ Petition No. 9590 of 2023, must succeed. It challenges an order of the District Collector of Satara passed on 19th July 2023 which set aside the disqualification of Sarika Mohan Chavan. That order of the District Collector cannot be sustained for the reasons we have also said, apart from the fact that we find that it is an insufficiently reasoned order in itself.

22. Rule is accordingly made absolute in terms of prayer clause (A).

23. We are not inclined to stay the Extension Act which is the relief sought in prayer clause (D).

24. Prayer clauses (B) and (C) are unnecessary.

25. Mr Alaspurkar tells us, strangely, that while the impugned order passed by the Collector it was never 'acted upon' and 'never issued' to anyone. We confess that we fail to understand what this is supposed to mean. That order sets aside a disqualification order. For this reason alone, Rule must be made absolute, and it is.

26. Consequently, Writ Petition No. 8323 of 2023 filed by Sarika Mohan Chavan is dismissed.

27. There will be no order as to costs.

Kamal Khata, J

G.S. Patel, J