



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 1018 OF 2024**

Sabir Khan Sabbir Khan

Aged about 48 years, Occ. Service

R/o 1 Main Road, Hatrun Balapur, Akola

...Petitioner

// VERSUS //

1. The Additional Commissioner, Amravati

2. The Collector, Akola

3. Gram panchayat Hatrun, through the
Secretary Balapur, Akola

4. Rizwana parveen Zabiullah Shah,

Aged about 24 years, Occ. Nil

R/o Hatrun, Tah. Balapur, Dist. Akola

... Respondents

Shri Z.Z.Haq, Advocate for the petitioner.

Ms. Sonia Thakur, AGP for the respondent nos. 1 and 2.

Shri D.G.Gawande, Advocate for the respondent no.4.

CORAM : ANIL S. KILOR, J.

DATED : 12th FEBRUARY, 2024.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The order dated 15th January, 2024 passed by the Additional
Commissioner, Amravati allowing the appeal and setting aside the order
of the Collector, Akola dated 19th May, 2023 disqualifying the petitioner
for not submitting the caste validity certificate within stipulated period, is
under challenge in this writ petition.

3. The Additional Commissioner allowed the appeal filed by the respondent no.4 on the ground that, as per the ordinance issued by the State of Maharashtra dated 10th July, 2023, one year period is granted to submit the validity certificate and failure to do so, there would be automatic disqualification under Section 10-1A of the Maharashtra Village Panchayat Act, 1959 and since the period of 12 months from the date of submission of caste claim is not yet completed the disqualification by the Collector, Akola is illegal.

4. The brief facts of the present case is that the petitioner is a member of the Gram Panchayat of Hatrun, Balapur, Akola. Whereas, the Respondent No.4 is the member elected under the category reserved for the Other Backward Class and claims to belong to the “Fakir” caste. The respondent no.4 along with her nomination form had filed an undertaking in the year 2020 that she will file her caste validity certificate within the period of six months however failed to do so and as a result of which, the Collector, Akola was pleased to pass an order under Section 10-1A of the Maharashtra Village Panchayat Act, 1959 dated 19th May, 2023 thereby cancelling the membership of the respondent no.4 with retrospective effect.

5. Thereafter, the respondent being aggrieved by the order dated 19th May, 2023 preferred an appeal before the Additional Commissioner, Amravati. The Additional Commissioner, Amravati passed the impugned order dated 15th January, 2024 thereby allowing the appeal filed by the

respondent no.4 and setting aside the order passed by the Collector thereby disqualifying the respondent no.4. Hence, this petition.

6. I have heard learned counsel for the respective parties.

7. Shri Haq, learned counsel for the petitioner submits that the order passed by the Additional Commissioner is erroneous for the reasons that, the date of filing of nomination paper in the present matter was 28th December, 2020 whereas, the election was held on 18th January, 2021. It is submitted that the earlier caste claim submitted by the respondent no.4 on 28th December, 2020 cannot be ignored because of a fresh caste claim submitted on 3rd April, 2023.

8. It is submitted that the respondent no.4 has not taken necessary steps which were in her control to get the caste verified from the Caste Scrutiny Committee and since the respondent no.4 is not due diligent, the Collector, Akola has rightly disqualified her. He therefore, prays for quashing and setting aside the order of the Additional Commissioner impugned in the present writ petition. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of Sudhir Vikas Kalel and others Vs. Bapu Rajaram Kalel and others¹

9. On the other hand, Shri Gawande, learned counsel for the respondent no.4 points out that on inquiry about the caste claim submitted on 28th December, 2020, it was informed by the Caste Scrutiny

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Committee that the claim of the respondent no.4 submitted on 28th December, 2020 is not traceable and therefore, a fresh claim was made on 3rd April, 2023. He, therefore, submits that on the date of filing of nomination, the valid application of the respondent no.4 for issuance of validity certificate was pending with the Caste Scrutiny Committee and therefore ordinance will apply. He, therefore, submits that the Additional Commissioner, Amravati has rightly allowed the appeal and set aside the order of the Collector, Akola.

10. In the light of rival contentions of the parties, I have perused the record and the impugned order.

11. From the record it is evident that in last election held on 18th January, 2021, prior to submission of the nomination paper, the respondent no.4 submitted caste validity claim as 'Fakir', OBC on 28th December, 2020 which is pending and till date there is no decision on it. Subsequently, the election of the respondent no.4 was cancelled on the ground of failure to submit the caste validity vide order dated 19th May, 2023.

12. It is pertinent to note here that, the respondent no.4 has not placed on record any communication or any document issued by the Caste Scrutiny Committee informing the respondent no.4 that, her caste claim is misplaced or not traceable and therefore asking the respondent no.4 to submit the caste claim afresh on 3rd April, 2023 to say that the

caste claim was filed by the respondent no.4 before submission of her nomination paper.

13. In this backdrop, if the earlier date of submission of the claim is considered i.e. 20th December, 2020, the benefit of ordinance cannot be granted to the respondent no.4 as no steps have been taken by the respondent no.4 in the meantime to get the decision on caste claim validation from Caste Scrutiny Committee. For this purpose, it would be beneficial to refer the observations made by the Hon'ble Supreme Court of India in the case of *Sudhir Vikas Kalel and others Vs. Bapu Rajaram Kalel and others* (supra) which read thus:

43. To hold that – in spite of the Appellant No.1 not doing everything required to be done, and which were under his control to do – his application before the Caste Certificate Scrutiny Committee was still pending on 10.07.2023 for the purposes of Section 3 of the Temporary Extension Act, 2023, would be letting the Appellant No.1 take advantage of his own wrong. It will also go against the object and purpose of extending the time for production of the Validity Certificate by further period of twelve months from 10.07.2023.

44. As is clear from Section 3(1), the further period of twelve months from 10.07.2023 was for those whose applications were validly filed and pending and where their applications have been submitted before the date of nomination. Subsection (1)(b) of Section 3 of the Temporary Extension Act, 2023 only revives the membership of those, whose applications are pending by enacting a deeming provision, since they are now given a further period of twelve months from 10.07.2023 to furnish the Validity Certificate. Subsection (2) (b) clearly states that Section 3(1) was not to apply to members whose applications for Validity Certificate has been rejected by the Scrutiny Committee.

45. The contention of learned counsel for the Appellant No.1 that there was no rejection and that it was only a “filing” or “lodgment” of the application on 01-03/04/2021 by the Scrutiny Committee, does not commend itself to us for acceptance. The rejection in Section 3(2)(b) will also include those cases where applications came to be rejected on account of defaults committed at the end of the applicants themselves. An applicant who has certain things under his control ought to have done everything that is under his control for the purpose of Section 3 of the Temporary Extension Act, 2023. This would also mean that Section 3(1) of the Temporary Extension Act, 2023 would not apply since there was no valid application filed before the nomination to the Scrutiny Committee and which was pending. That his application was not pending, was also the undertaking of the Appellant No.1, as explained hereinabove. Accepting the contention of the Appellant No.1 would also amount to putting a premium on the concession given to a party who was taking the ‘risk’ of contesting the election by not having a Validity Certificate on the date of the nomination.

46. For the above reasons, we hold that the Appellant No.1 stood automatically disqualified as a Member since he failed to produce the Validity Certificate within 12 months from the date of his election. The protective umbrella of Section 3 of the Temporary Extension Act, 2023 will not be available to Appellant No.1 since he is hit by Section 3(2)(b), for the reason that there was no valid application pending on the date of the commencement of the said Act.

14. From the above referred observations, it is evident that it is mandatory on the part of the candidate to take every steps which is within his or her control for the purpose of Section 3 of the Temporary Extension Act, 2023.

15. In the present matter, the respondent no.4 has not pointed out a single communication issued by the respondent no.4 from the year 2020 till date the requesting to the Caste Scrutiny Committee to expedite

her claim and to take a decision on her claim. There were remedies available to the respondent no.4 to get her claim to decide at the earliest and one of such remedy was to file a writ petition for direction to the Caste Scrutiny Committee to decide the caste claim at the earliest as it required for the election purpose.

16. Surprisingly, no such steps were taken by the respondent no.4 despite the fact that, her earlier election was cancelled for the same reason that she failed to submit the caste validity within stipulated time.

17. In the circumstances, benefit of the ordinance cannot be granted to the person who is not diligent and who has not taken necessary steps which ought to have taken and which were in the control of the respondent no.4. In that view of the matter, I am of the opinion that the Additional Commissioner, Amravati has committed error in not considering the above referred facts while setting aside the order of the Collector, Akola. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order dated 15th January, 2024 passed by the Additional Commissioner, Amravati is hereby quashed and set aside and thereby the order dated 19th May, 2023 passed by the Collector, Akola is upheld.

[ANIL S. KILOR, J.]

18. At this stage, Shri Haq, learned counsel for the petitioner informed that there are election at 2.30 p.m for the post of Sarpanch.

19. Learned Assistant Government Pleader undertakes to inform this order to the concerned officers namely the Collector, Akola and the Additional Commissioner, Amravati.

[ANIL S. KILOR, J.]