

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

WRIT PETITION NO.9628 OF 2010

Popat s/o Vithal Pund & ors. ... PETITIONERS

VERSUS

The Divisional Commissioner,
Nasik Division, Nasik & ors. ... RESPONDENTS

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Shri R.R. Karpe, Advocate for petitioners
Shri A.B. Girase, Government Pleader for Respondents No.1 to 3
Shri S.T. Shelke, Advocate for respondent No.5
Shri N.C. Garud, Advocate for Respondents No.6 to 9

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**CORAM: PRADEEP NANDRAJOG, CJ,
RAVINDRA V. GHUGE, J. & R.G. AVACHAT, J.**

DATE: 26th September, 2019

PER COURT :

1. Section 10-1A of the Maharashtra Village Panchayats Act, 1958 reads as under :

“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, alongwith the nomination paper, Caste 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 (Mah. XXIII of 2001).

Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before 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 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.

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 Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 2018 (Mah. LXVI of 2018), the period of “six months” specified in such undertaking shall be deemed to have been substituted as “twelve months”.

2. Section 9-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 reads as under :-

“9A. Person contesting election for reserved seats 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, 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.

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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, 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 the 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 six 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 six 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 Councilor.”

3. The two provisions are pari materia. The main Section requires a person desirous of contesting election to a seat reserved

for a Member of a Scheduled Caste, Scheduled Tribe or a Backward Class to submit along with the nomination paper a caste certificate issued by the competent authority and a 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. The first proviso permits a candidate to file the nomination papers sans the Scrutiny Committee Certificate of the Caste Certificate provided the candidate has applied to the Scrutiny Committee before the date of filing the nomination and has not received the validity certificate on the date of filing the nomination. The second proviso mandates that if the said person fails to produce the validity certificate within the period stipulated in the proviso his election shall be deemed to have terminated retrospectively and such person shall be disqualified for being a Councilor.

4. The Full Bench decision of this Court reported as **2017(1) Mh.L.J. 431** (*Anant H. Ulahalkar Vs. Chief Election Commissioner & Ors.*) noted difference of opinion between different Benches of this Court concerning Section 9-A of the Act of 1965 and recognised that although the candidate would be prejudiced for no fault of his if the Caste Scrutiny Committee did

not issue the validity certificate within the time contemplated by the second proviso but held that the mandate of the legislature could not be diluted. The decision terminates by holding that the provision is mandatory and if within the time contemplated by the second proviso no validity certificate is obtained the consequences as per the proviso shall ensue.

5. The decision of the Full Bench has been accorded approval of by the Supreme Court vide decision reported as (2019) 3 SCC 220 (Shankar s/o Raghunath Devre (Patil) Vs. State of Maharashtra & Ors.)

6. Thus, we answer the reference by incorporating the reasons given by the Full Bench in Anant's case (supra) and declare that the second proviso to Section 10-1(A) is mandatory and consequences as contemplated by the proviso shall ensue.

(CHIEF JUSTICE)

(RAVINDRA V. GHUGE, J.)

(R.G. AVACHAT, J.)

fmp/-