



राज्य निवडणूक आयोग, महाराष्ट्र
आदेश क्र. रानिआ/-२०१३/प्र.क्र.२५/का.९
नवीन प्रशासकीय भवन, हुतात्मा राजगुरु चौक,
मादाम कामा रोड, मुंबई:- ४०० ०३२.
दिनांक : - १७/०७/२०१३.

- वाचा:- १) राज्य निवडणूक आयोगाचे क्र.रानिआ/भनपा२०१२/प्र.क्र.५१/का-०५,
दि.३१/०१/२०१३ चे पत्र.
२) कल्पना दिलीप बहिरट विरुद्ध पुणे महानगरपालिका सिव्हील अपिल क्र.४८०५/२०१३
(एस.एल.पी.क्र.१९२९६/२०१३) मध्ये तसेच सीमा दत्तात्रय फुगे विरुद्ध पिंपरी चिंचवड
महानगरपालिका (एस.एल.पी.क्र.१८९५१/२०१३) मध्ये मा. सर्वोच्च न्यायालयाने
दि.२७/०६/२०१३ रोजी दिलेले निर्णय (प्रती सोबत जोडल्या आहेत).

परिपत्रक

स्थानिक स्वराज्य संस्थांच्या अधिनियमांमध्ये मागासवर्गीयांसाठी आरक्षित असलेल्या पदावरून निवडणुका लढविणाऱ्या उमेदवारांनी नामनिर्देशनपत्रासोबत जात प्रमाणपत्र व जात प्रमाणपत्राचे वैधता प्रमाणपत्र जोडणे आवश्यक आहे अशी तरतूद करण्यात आलेली आहे. तथापि, काही प्रकरणात उमेदवारांनी नामनिर्देशनपत्रासोबत सादर केलेली जात प्रमाणपत्र तसेच जात वैधता प्रमाणपत्र अवैध / खोटी असल्याचे संबंधित विभागीय जात प्रमाणपत्र गडताळणी समितीकडून चौकशी केल्यानंतर निष्पन्न झाले आहे. अशा प्रकरणांमध्ये संबंधित उमेदवारांना अनर्ह ठरविण्यासंदर्भात कोणतो कार्यपध्दती अवलंबण्यात यावी याबाबत काही महानगरपालिकांनी राज्य निवडणूक आयोगाकडे मार्गदर्शन मागविले होते.

२. राज्य निवडणूक आयोगाने उपरोक्त दि.३१/०१/२०१३ च्या पत्रांमध्ये मुंबई उच्च न्यायालयाच्या पूर्णपीठाने रिट याचिका क्र.८३८९/२००५ मध्ये दि.२१/१०/२००६ रोजी दिलेल्या निर्णयामधील निष्कर्ष नमूद करून सर्व महानगरपालिका आयुक्त, सर्व विभागीय आयुक्त तसेच सर्व जिल्हाधिकार्यांना पुढीलप्रमाणे सूचना दिलेल्या होत्या.

“सादर निष्कर्षास अनुसरून जातीचे प्रमाणपत्र अवैध / खोटे ठरलेल्या प्रकरणांमध्ये अनर्हतेचे औपचारिक आदेश काढण्याची कार्यवाही महानगरपालिकांच्या बाबतीत संबंधित महानगरपालिका आयुक्त, जिल्हा परिषद व पंचायत समिती यांच्या बाबतीत संबंधित विभागीय आयुक्त तसेच नगर

परिषद / नगर पंचायती व ग्रामपंचायतींच्या बाबतीत संबंधित जिल्हाधिकारी यांनी त्यांच्या स्तरावरून विनाविलंब करावी. मात्र असे करताना जात पडताळणी समितीच्या निर्णयाला कोणत्याही न्यायालयाने स्थगिती दिलेली नाही अथवा समितीचा निर्णय फिरविलेला / रद्द केलेला नाही याची खातरजमा करून घेण्यात यावी”.

३. राज्य निवडणूक आयोगाकडून वरीलप्रमाणे सूचना देण्यात आल्यानंतर आयुक्त पुणे महानगरपालिका व आयुक्त पिंपरी चिंचवड महानगरपालिका यांनी अनुक्रमे कल्पना दिलीप बहिरट व सीमा दत्तात्रय फुगे या निवडून आलेल्या सदस्यांना, त्यांनी जातीचे खोटे प्रमाणपत्र तसेच खोटे जात वैधता प्रमाणपत्र सादर केले, या कारणास्तव अनर्ह ठरविले. या आदेशांना सुरवातीला मुंबई उच्च न्यायालयात रिट याचिकेद्वारे व त्यानंतर सर्वोच्च न्यायालयात विशेष अनुमती याचिका दाखल करून आवाहन देण्यात आले. सर्वोच्च न्यायालयाने उपरोक्त दोन्ही प्रकरणातील याचिका फेटाळल्या असून संबंधित महानगरपालिका आयुक्त यांचे आदेश कायम केले आहेत. सर्वोच्च न्यायालयाच्या निर्णयामधील निष्कर्ष थोडक्यात पुढीलप्रमाणे आहेत.

१) नामनिर्देशनपत्रासोबत जोडण्यात आलेले प्रमाणपत्र खोटे असल्याचे निष्पन्न झाले असल्यामुळे सदर प्रमाणपत्र जात पडताळणी समितीने रद्द करण्याची आवश्यकता नाही.

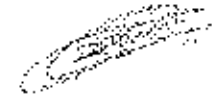
२) महाराष्ट्र अनुसूचित जाती, विमुक्त जाती, भटक्या जमाती, इतर मागासवर्ग व विशेष मागास प्रवर्ग व्यक्तींना (जातीचे प्रमाणपत्र देणे व त्याच्या पडताळणीचे विनियमन) अधिनियम, २००० मधील कलम १० (४) मध्ये कोणत्याही व्यक्तीने अधिनियमात नमूद करण्यात आलेल्या प्रवर्गासाठी राखीव असलेल्या जागेवरून जातीचे खोटे प्रमाणपत्र सादर करून निवडणूक लढविली असेल तर अशा व्यक्तीची निवडणूक ही भूतलक्षी प्रभावाने समाप्त झाली असल्याचे मानण्यात येईल अशी तरतूद आहे. सदर तरतूद लक्षात घेता महानगरपालिका आयुक्तांची खोटे जात प्रमाणपत्र सादर करणाऱ्या सदस्यांना अनर्ह ठरविण्याची कृती कायदेशीर तरतुदीला धरून आहे.

३) उक्त अधिनियमांच्या कलम १० (४) च्या सुरवातीला “त्या त्यावेळी अंमलात असलेल्या कोणत्याही कायद्यात काहीही अंतर्भूत असले तरी” अशी शब्दरचना करण्यात आलेली आहे. त्यामुळे यामध्ये महाराष्ट्र महानगरपालिका अधिनियम, १९४९ मधील कलम १६ मधील निवडणूक अर्ज करण्यासंदर्भातील तरतुदीचाही समावेश होतो. त्यामुळे जातीचे अवैध/ खोटे प्रमाणपत्र सादर केल्याचे निष्पन्न झालेल्या प्रकरणात प्रलंबित निवडणूक अर्जावरील सक्षम न्यायालयाचा निर्णय येईपर्यंत प्रतीक्षा करण्याची आवश्यकता नाही.

४. मा.सर्वोच्च न्यायालयाने उपरोक्त प्रकरणात दिलेला निर्णय विचारात घेऊन नामनिर्देशनपत्रासोबत जातोचे खोटे प्रमाणपत्र अथवा खोटे / अवैध जातवैधता प्रमाणपत्र सादर करून निवडून आलेल्या सदस्यांना अनर्ह ठरविण्यासंदर्भात पुढीलप्रमाणे कार्यपध्दती अवलंबिण्यात यावी असे याद्वारे सूचित करण्यात येत आहे.

"स्थानिक स्वराज्य संस्थांची सदस्य पदाची निवडणूक मागासवर्ग प्रवर्गासाठी आरक्षित असलेल्या जागेवरून लढवून निवडून आलेल्या सदस्याने नामनिर्देशनपत्रासोबत जातोचे खोटे प्रमाणपत्र जोडले असल्याचे निष्पन्न झाल्यास अथवा नामनिर्देशनपत्रासोबत जोडलेले जात वैधता प्रमाणपत्र अवैध अथवा खोटे असल्याचे संबंधित जात प्रमाणपत्र पडताळणी समितीने कळविल्यास अशा सदस्यांना अनर्ह ठरविण्यासंदर्भातील औपचारीक आदेश काढण्याची कार्यवाही महानगरपालिकांच्या बाबतीत संबंधित महानगरपालिका आयुक्त यांनी, जिल्हा परिषद व पंचायत समिती यांच्या बाबतीत संबंधित विभागीय आयुक्त यांनी तसेच नगर परिषद / नगर पंचायती व ग्रामपंचायतींच्या बाबतीत संबंधित जिल्हाधिकारी यांनी त्यांच्या स्तरावरून विनाविलंब करावी. मात्र असे करताना जात पडताळणी समितीच्या निर्णयाला कोणत्याही न्यायालयाने स्थगिती दिलेली नाही अथवा समितीचा निर्णय फिरविलेला / रद्द केलेला नाही याची खातरजमा करून घेण्यात यावी. मात्र अशा प्रकरणांमध्ये सक्षम न्यायालयात निवडणूक अर्ज प्रलंबित असला तरी संबंधित सदस्यास अनर्ह घोषित करण्यासंदर्भातील औपचारीक आदेश काढण्यास कोणताही प्रत्यवाय असणार नाही".

राज्य निवडणूक आयोग यांच्या आदेशानुसार,



(अ.तु.सणस)

प्रभारो उपायुक्त

राज्य निवडणूक आयोग, महाराष्ट्र

प्रति,

सर्व विभागीय आयुक्त

सर्व महानगरपालिका आयुक्त,

सर्व जिल्हाधिकारी (मुंबई शहर व मुंबई उपनगर जिल्हा वगळून)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4805 OF 2013
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NO. 19296 of 2013

KALPANA DILIP BAHIRAT

Petitioner(s)

VERSUS

PUNE MUNICIPAL CORP. & ORS.

Respondent(s)

JUDGMENT

Leave granted.

2. This is an appeal against the judgment dated 9th April, 2013 of the Bombay High Court in Writ Petition No. 3315 of 2013 by way of special leave petition under Article 136 of the Constitution.

3. The facts very briefly are that the appellant contested election to the Pune Municipal Corporation held in December, 2011 to a seat reserved for Other Backward Classes and filed as proof of his caste a caste certificate dated 3-7-2008 issued by the competent authority and caste validity certificate dated 26-8-2010 purportedly issued by the Caste Scrutiny Committee under the Maharashtra Schedule

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 (for short 'the 2000 Act'). She was declared elected as a Corporator for Ward No. 40-A on 17-02-2012. Mrs. Laxmi Balasahab Ghodake, who also contested the election as a member of Other Backward Class filed Election Petition No. 26 of 2012 before the Court of the Principal Judge of Small Causes, Pune challenging the election of the appellant. Though the election petition is pending and has not been decided, the Commissioner of Municipal Corporation on receiving information that the Caste Certificate, on the basis of which the appellant contested the election, was never actually issued by the concerned Caste Scrutiny Committee, passed an order dated 26th March, 2013 holding that the appellant has not submitted genuine caste certificate and because of that her election is ab-initio null and void and declaring that the seat of Pune Municipal Corporator from Ward No. 40-A has become vacant retrospectively from the date of election of the appellant. Aggrieved, the appellant filed Writ Petition No. 3315 of 2013, but by the impugned judgment and order, the High Court has

refused to entertain the writ petition on the ground that the appellant did not approach the High Court under Article 226 with clean hands. Hence, the appellant has preferred the present appeal before this Court.

4. Mr. V.A. Mohta, learned senior counsel appearing for the appellant submitted that the main contention urged before the High Court by the appellant was that Article 243ZG of the Constitution provides that no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State notwithstanding anything in the Constitution. He submitted that since the appellant had been elected to the Municipality, her election could be called in question only by an Election Petition filed under Section 16 of the Bombay Provincial Municipal Corporations Act, 1949 (for short 'the 1949 Act'). He submitted that the High Court has not gone into this question and has dismissed the writ petition of the appellant on irrelevant grounds.

5. Mr. Shekhar Naphade, learned senior counsel appearing for the Municipal Corporation, on the other hand, referred to the provisions of Section 5B of the

1949 Act to submit that a person desirous of contesting election to a seat reserved for Scheduled Castes, Scheduled Tribes or Backward Class as the case may be, has 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 provision of the 2000 Act. He further submitted that sub-section (4) of Section 10 of the 2000 Act clearly provided that 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 the election of such person shall be deemed to have been terminated retrospectively from the date of his election.

6. In rejoinder, Mr. Mohta submitted that the appellant belongs to the Other Backward Class and her

claim that she belongs to the other Backward Class has not been decided by the Caste Scrutiny Committee and, therefore, the provisions of Section 10 of the 2000 Act will not apply would be clear from sub-section (1) of Section 10 of the 2000 Act.

7. We have considered the submissions of the learned senior counsel for the parties and we find that Section 5B of the 1949 Act provides 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, along with the nomination papers, 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.

The language of the aforesaid provision makes it clear that the nomination paper of a candidate contesting from a seat reserved for Scheduled Castes, Scheduled Tribes or Backward Class citizens has to be accompanied by a Caste Certificate issued by a competent authority and the Validity Certificate issued by the Scrutiny Committee in accordance with

the provisions of the 2000 Act. In this case, the nomination of the appellant was accompanied by a caste validity certificate purported to have been issued by the Scrutiny Committee constituted under the 2000 Act and admittedly Scrutiny Committee has not issued the caste validity certificate which accompanied the nomination paper. In other words, admittedly, the certificate which accompanied the nomination of the appellant was a false certificate and was not required to be cancelled by the Caste Scrutiny Committee.

8. We have perused sub-section (1) of Section 10 of the 2000 Act and we find that it applies to admission to reserved seat in an educational institution and to appointment to a reserved post in the Government, local authorities, Government Corporations, Government aided institutions or co-operative societies and will not be attracted to the facts of the case. Instead, the consequences as provided in sub-section (4) of Section 10 of the 2000 Act will follow. Sub-Section (4) of Section 10 reads :

"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."

The consequence is that the election of a person who has contested on a seat reserved for the aforementioned categories on false caste certificate as belonging to such caste, tribe or class "shall be deemed to have been terminated retrospectively". The deeming provision in sub-section (4) of Section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of the Municipal Corporation has given effect to the deeming provision and has thus acted in accordance with law.

9. Mr. Mohta is right that in view of the provisions of Article 243ZG of the Constitution, the election of a person elected to the Municipality can only be called in question by an Election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of the State and Section 16 of the 1949 Act provides for the manner in which election to any municipality can be called in question, but the opening words of sub-section (4) of Section 10 of the 2000 Act, provide that "notwithstanding anything contained in any law

for the time being in force", which obviously will also include Section 16 of the 1949 Act, the deeming provision in sub-section (4) of Section 10 of the 2000 Act will have to be given effect to and will not await the outcome of an election petition. We, therefore, maintain the order passed by the High Court for the reasons indicated in this judgment.

10. We however make it clear that it will be open for the appellant to pursue her claim before the Caste Scrutiny Committee that she is entitled to a caste certificate as a person belonging to Backward Class and the Caste Scrutiny Committee will consider the same on its own merits in accordance with the decisions of this Court including the decision in Anand Vs. Committee for Scrutiny and Verification of Tribe Claims (2012) 1 SCC 113. We also make it clear that in case the appellant is furnished with a caste certificate by the Caste Scrutiny Committee, she will be entitled to contest the election on the basis of such Caste Certificate irrespective of what we have said in this order.

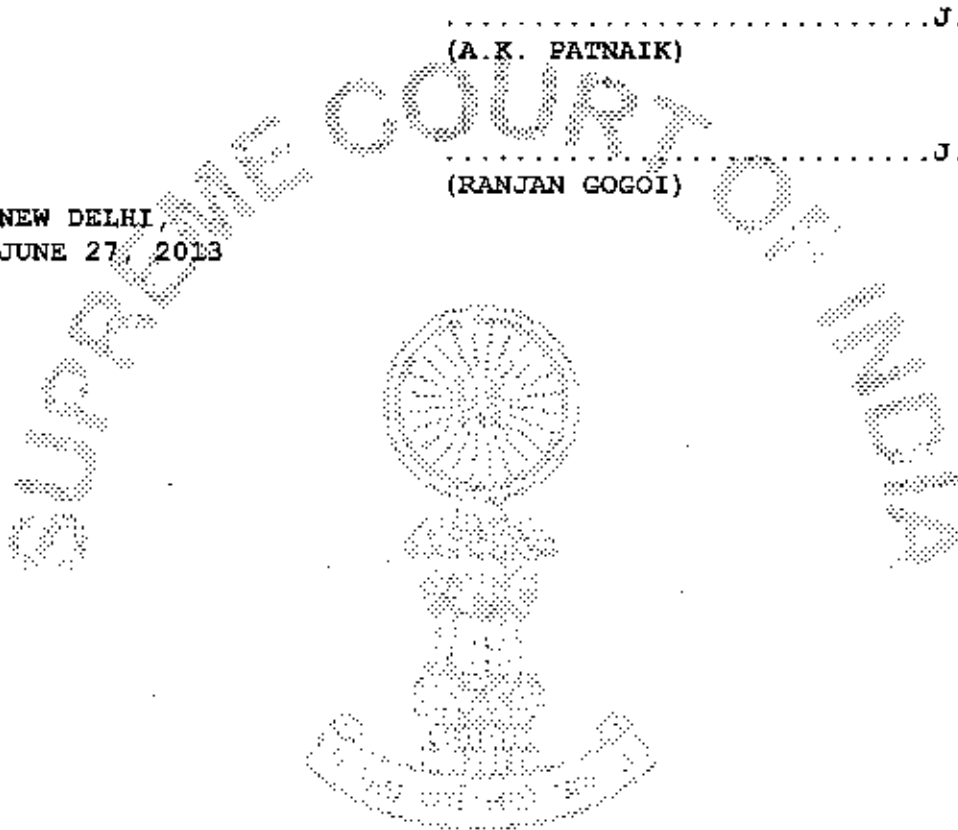
11. Considering the facts and circumstances of the case, the costs awarded by the High Court are deleted. The interim order dated 17th June, 2013 passed by this Court stands vacated and the appeal and the

interlocutory application No. 4 stand disposed of accordingly.

.....J.
(A.K. PATNAIK)

.....J.
(RANJAN GOGOI)

NEW DELHI,
JUNE 27, 2013



JUDGMENT