

ITEM NO.4

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C)NO(S). 29874-29875/2016 (ARISING OUT OF IMPUGNED FINAL JUDGMENTS AND ORDERS DATED 02.09.2016 IN WP NO. 5686/2016 AND 01.10.2016 IN RP NO. 201/2016 IN WP NO. 5686/2016 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY AT AURANGABAD)

SHANKAR S/O RAGHUNATH DEVRE (PATIL)

PETITIONER(S)

VERSUS

STATE OF MAHARASHTRA & ORS.

RESPONDENT(S)

WITH

SLP(C) NO. 29967/2016 (IX) [ITEM NO.4.1]
(FOR [PERMISSION TO FILE ANNEXURES] ON IA 3/2016)

SLP(C) NO. 31479/2016 (IX)[ITEM NO.4.2]

SLP(C) NO. 6037/2017 (IX)[ITEM NO.4.3]

SLP(C) NO. 6034/2017 (IX)[ITEM NO.4.4]

SLP(C) NO. 1326-1327/2017 (IX)[ITEM NO.4.5]

SLP(C) NO. 6036/2017 (IX)[ITEM NO.4.6]

SLP(C) NO. 6035/2017 (IX)[ITEM NO.4.7]

SLP(C) NO. 6027/2017 (IX)[ITEM NO.4.8]

SLP(C) NO. 6040/2017 (IX)[ITEM NO.4.9]

SLP(C) NO. 6041/2017 (IX)[ITEM NO.4.10]

SLP(C) NO. 6436/2017 (IX)[ITEM NO.4.11]

SLP(C) NO. 6222/2017 (IX)[ITEM NO.4.12]

SLP(C) NO. 6452/2017 (IX)[ITEM NO.4.13]

SLP(C) NO. 6984/2017 (IX)[ITEM NO.4.14]

SLP(C) NO. 15490/2017 (IX)[ITEM NO.4.15]

SLP(C) NO. 13632/2017 (IX)[ITEM NO.4.16]
(FOR [PERMISSION TO FILE ANNEXURES] ON IA 2/2017 FOR ON IA 3/2017)

SLP(C) NO. 8896-8897/2017 (IX)[ITEM NO.4.17]

SLP(C) NO. 9479/2017 (IX)[ITEM NO.4.18]

SLP(C) NO. 9484/2017 (IX)[ITEM NO.4.19]

SLP(C) NO. 9486/2017 (IX)[ITEM NO.4.20]

SLP(C) NO. 10146/2017 (IX) [ITEM NO.4.21]

SLP(C) NO. 13091/2017 (IX) [ITEM NO.4.22]
(FOR ON IA 79/2017 FOR EXEMPTION FROM FILING O.T. ON IA 80/2017
FOR CONDONATION OF DELAY IN FILING ON IA 81/2017 FOR [PERMISSION
TO FILE ANNEXURES] ON IA 82/2017)

SLP(C) NO. 25849/2017 (IX)[ITEM NO.4.23]
(FOR PERMISSION TO FILE SLP/TP ON IA 90047/2017 FOR CONDONATION OF
DELAY IN FILING ON IA 90049/2017 FOR EXEMPTION FROM FILING C/C OF
THE IMPUGNED JUDGMENT ON IA 90051/2017 FOR EXEMPTION FROM FILING
O.T. ON IA 90052/2017 AND IA NO.107921/2017-IMPLEADING PARTY)

SLP(C) NO. 29453/2017 (IX) [ITEM NO.4.24]
(FOR ADMISSION AND I.R. AND IA NO.112715/2017-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT AND IA NO.112717/2017-EXEMPTION FROM
FILING O.T. AND IA NO.112719/2017-PERMISSION TO FILE ADDITIONAL
DOCUMENTS)

SLP(C) NO. 36551/2017 (IX)[ITEM NO.4.25]
(IA NO.131117/2017-CONDONATION OF DELAY IN FILING AND IA
NO.131118/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
AND IA NO.131121/2017-EXEMPTION FROM FILING O.T. AND IA
NO.131116/2017-PERMISSION TO FILE SLP/TP AND IA NO.131120/2017-
PERMISSION TO FILE ADDITIONAL DOCUMENTS)

SLP(C) NO. 10472/2018 (IX)[ITEM NO.4.26]

SLP(C) NO. 9754/2018 (IX)[ITEM NO.4.27]
(FOR ADMISSION AND I.R. AND IA NO.55073/2018-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT AND IA NO.55074/2018-EXEMPTION FROM
FILING O.T.)

SLP(C) NO. 12668/2018 (IX)[ITEM NO.4.28]

SLP(C) NO. 19084/2018 (IX)[ITEM NO.4.29]
(FOR ADMISSION AND I.R. AND IA NO.99929/2018-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT

Date : 23-08-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For parties(s)

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Mrs. K.N. Sinha, Adv.
Dr. S.K. Verma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Permission to file special leave petition(s)
is granted.

Heard the learned counsels for the parties
and perused the relevant material.

Delay condoned.

The following questions were referred for the opinion of a full Bench of the High Court of Bombay :

- (i) Whether the time limit prescribed u/s 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, for submission of caste validity certificate by elected councilor is mandatory in nature ?
- (ii) Whether the failure on the part of person elected as Councilor to produce the caste validity certificate within the period of six months from the date on which he was declared elected, irrespective of facts and circumstances and eventuality beyond the control of such person to produce validity certificate would automatically result into termination of his election with retrospective effect?
- (iii) Whether the validation of caste claim of elected Councilor by the Scrutiny Committee beyond the prescribed period would automatically result into termination of such Councilor with retrospective operation ?

The same were answered against the petitioner(s) by holding the provisions of Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 to be mandatory.

Aggrieved, the present special leave petitions have been filed for leave to appeal against the aforesaid order of the full Bench.

Several other connected matters which challenge a similar view taken by numerically similar Benches of the High Court have also been tagged and have been heard together.

In view of the elaborate arguments that have been advanced, we have thought it proper to briefly indicate the reasons for our conclusion.

Section 9A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Section 5B of the Maharashtra Municipal Corporations Act (Act No.59 of 1949) require a member of the Scheduled Castes, Scheduled Tribes or other Backward Classes to enclose with the nomination for election his/her Caste Certificate issued by the Competent Authority and also the Validity Certificate issued by the Caste Scrutiny Committee.

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 the absence of the validity certificate provided he/she encloses 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 a period of six months from the date of his/her election, the validity certificate issued by the Scrutiny Committee.

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

We have read and considered the very elaborate reasoning adopted by the Full Bench of the High Court in coming to its conclusions 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 the 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.

Compounded is the fact that the proviso was deleted in the year 2008 and reintroduced in the

year 2012. The same would go to show that sans the proviso the main provision would debar a candidate who does not possess a validity certificate from contesting the election as a reserved category candidate. If that is so the proviso has to be strictly construed and the deeming provision contained in the second proviso together with the plain language used can lead to only one conclusion, namely, that the legislative intent was to make the provision of the statute mandatory irrespective of individual hardships.

We, therefore, are of the view that the High Court of Bombay was perfectly justified in coming to the impugned conclusion on the basis of the reasoning that was adopted, which we hereby affirm. Consequently, we dismiss all the special leave petitions and pending applications.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER