

Sudhir Vikas Kalel vs Bapu Rajaram Kalel on 7 February, 2024

Author: Vikram Nath

Bench: Vikram Nath

2024 INSC 90

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1776 OF 2024
(@ SPECIAL LEAVE PETITION (C) NO. 23017 OF 2023)

SUDHIR VILAS KALEL & ORS.

...Appellant (s)

Versus

BAPU RAJARAM KALEL & ORS.

...Respondent(s)

JUDGMENT

K.V. Viswanathan, J.

1. Leave Granted.

2. The ‘war’ in this case is over the validity of a No Confidence Motion against Appellant No. 2 – Sushila Sitaram Kalel, the Sarpanch (Village head) of Jambulani Gram Panchayat. However, there is a ‘battle’ within, which entirely determines the result of the war. It is on the validity in the Panchayat. A Motion of No Confidence is to be carried by not less than three-fourth of the total number of members who are entitled, to ‘sit’ and ‘vote’. If the Appellant No. 1 was entitled to ‘Sit’ as a member on 19.06.2023, then the No Confidence Motion against Appellant No.2 cannot ‘Stand’, to deploy a Denning- esque phrase. The High Court has found against the appellants. Aggrieved, they are before us in appeal.

3. Was the Appellant No.1, in law, a member of the Panchayat, entitling him to vote, is the question that arises for consideration in this case. Is the Appellant No. 1 covered by the protective umbrella under Sections 3 and 4 of the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Act, 2023 [hereinafter referred to as the “Temporary Extension Act, 2023”]? If the answer is in the affirmative, the election of the Appellant No. 1 as a reserved Member in the election of the Gram Panchayat of Village Jambulani would stand validated. Consequently, the No Confidence Motion expressing No Confidence in the Appellant No. 2 – Sushila Sitaram Kalel (the Sarpanch) would also stand nullified. If Appellant No. 1 is held not to be entitled to the benefit of Section 3 of the Temporary Extension Act, 2023, then he would be deemed to have vacated his seat and consequently, the No Confidence Motion would stand carried. For a fuller understanding, the background facts and the statutory regime need to be set out in some detail.

Brief facts and the Legislative Regime:

4. On 30.12.2020, the Appellant No. 1 filed his nomination papers for contesting elections as a Member of the Panchayat of Village Jambulani, District Satara on a seat reserved for the OBC category. As early as on 03.02.2013 itself, the Appellant No. 1 was issued a Caste Certificate by the Sub Divisional Officer, District Satara certifying that he belongs to 'Lonari' Caste which is an Other Backward Class. He had on the same day of filing his nomination papers i.e. on 30.12.2020 applied for a Validity Certificate.

This Validity Certificate is an essential requirement under 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 [hereinafter referred to as the "Caste Certificate Act, 2000"]. There are elaborate rules framed under this Act which will be discussed later in the judgment.

5. Under Section 3 of this Act, any person belonging to Other Backward Class for the purpose of contesting for any elective post in any local authority, should apply in such form and in such manner as may be prescribed, to the Competent Authority for the issuance of a Caste Certificate. Under Section 4 of this Act, the Competent Authority is entitled to issue a Caste Certificate. This is a Certificate which the Appellant No. 1 possessed on 03.02.2013. However, this alone is not conclusive. Under Section 4(2), the Caste Certificate issued by the Competent Authority would be valid subject to the verification and grant of Validity Certificate by the Scrutiny Committee. Under Section 6 of this Act, the Government is authorized to constitute a Scrutiny Committee and prescribe the area of its jurisdiction. Under Section 6(2) of this Act, after obtaining the Caste Certificate from the Competent Authority, any person, desirous of availing of the benefits or concessions provided to the said caste, is authorized to make an application, well in time, in such form and in such manner as may be prescribed to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a Validity Certificate. Under Section 6(4) of this Act, the Scrutiny Committee was to follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of Validity Certificate as prescribed.

6. The Rules called the Maharashtra Scheduled Castes, De-

notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 [hereinafter referred to as the "2012 Rules"] have been framed. Rule 11 prescribes the constitution of the Scrutiny Committee. Rule 14 sets out that any person desirous of availing of the benefits and concessions provided to the reserved category shall submit an application in the prescribed form with an affidavit to the concerned Scrutiny Committee for verification of his caste claim and issuance of Caste Validity Certificate well in time. Rule 15 mandates that the application for verification of Caste Certificate under Rule 14 shall be filed or submitted well in time in such form and in such manner as may be prescribed in Rule 17. Further Rule 16 provides for the information to be supplied by the applicant. It states that to enable the Scrutiny Committee to decide the application expeditiously, the documents/information set out therein, was to be produced. Apart

from setting out certain documents, sub-clause (f) provides for the furnishing of other relevant evidence, if any, subject to admissibility. Explanation 2 of Rule 16 speaks of the applicant undertaking the production of original documents as and when required by the Scrutiny Committee.

7. Rule 17, which prescribes the procedure of Scrutiny Committee, is significant for this case. Sub-Rules 1 to Sub- Rules 3 of Rule 17 are extracted herein below:

“17 (1) On receipt of application, the Scrutiny Committee shall ensure that the application and the information supplied therewith is complete in all respects and to carry out scrutiny of the application.

(2) Notwithstanding anything contained in these rules, the claimant or applicant or complainant shall be personally responsible for removal of objections raised by Scrutiny Committee, if any, within two weeks or within such extended period, which shall not be more than six weeks, failing which the claim or application or complaint shall be disposed of, by appreciating available records and such decision may be communicated to the applicant by the Scrutiny Committee.

(3) The incomplete application may be rejected by recording reasons.”

8. As is clear from the above, Rule 17 (2) states that applicant was personally responsible for removal of objections raised by the Scrutiny Committee within the time prescribed. Sub- Rule 3 of Rule 17 categorically states that incomplete application may be rejected by recording reasons.

9. For the purpose of adjudicating this case, alongside the above statutes, certain provisions of the Maharashtra Village Panchayats Act, 1959 [hereinafter referred to as the “Panchayats Act”] which come into play, need to be set out and analyzed. Section 10-1A, 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, alongwith 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:

Provided that, for the General or by-elections for which the last date of filing of nomination falls on or before the 31st December 2023¹, 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." A similar provision in the form of Section 30(1A) exists for persons contesting for the reserved office of Sarpanch.

1 (This date was originally 28.02.2021, at the time of the election in question)

10. In view of the above provision, every person desirous of contesting election to a membership in the reserved category, shall submit alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with Caste Certificate Act, 2000. The proviso sets out that for elections for which the last date of filing of nomination fell on or before the date prescribed in the proviso, 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 yet received the Validity Certificate shall submit, along with the nomination papers, an undertaking that he shall submit the same, within a period of twelve months from the date on which he is declared elected. The further proviso sets out 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 the person was to be disqualified for being a member.

11. In pari materia provision exists in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 in the form of Section 9A therein.

12. A raging legal debate arose in Maharashtra about the nature of these provisions – are they mandatory or are they directory? The issue was settled by a Full Bench of the Bombay High Court in the case of Anant H. Ulahalkar & Anr. Vs. Chief Election Commissioner & Ors. [2017 (1) Mh.L.J. 431]. This judgment of the Full Bench was affirmed by this Court in the case of Shankar S/o Raghunath Devre (Patil) Vs. State of Maharashtra & Others.[(2019) 3 SCC 220].

13. There were earlier divergent views in the High Court. The parties contending that the provisions were “directory”, primarily argued that the time taken for disposal by the Scrutiny Committee was not in their control. According to them, as long as the Validity Certificate was produced within a reasonable time, the strict time limit provided in the statute should be construed as directory and

that elections should not be invalidated for the said reason. On the other hand, the proponents of the theory that the provision was mandatory contended that the statute is couched in mandatory terms, with the use of the word ‘shall’ and that consequences had been provided for non-compliance. The Full Bench, after considering the statutory provision and the decided cases, in para 45 and 46 of the judgment first held the following:

“45. In case of Sujit Vasant Patil (supra), the Full Bench of this Court, in the context of inter play between similar Municipal Legislations and the Caste Act, 2000, has held that the legislature expects a person to claim benefit of contesting to a reserved post only after obtaining Validity Certificate from the Scrutiny Committee, though it also permits a person to claim such benefit on the basis of a tentative caste certificate issued by the Competent Authority, if such a person is willing to take the risk. Such reasoning is reflected in paragraphs 12A, 12B and 12C. Since paragraph 12B is most relevant, it is transcribed below for reference of convenience:— “12B. Thus the scheme is that a person who obtains a caste certificate has to himself apply to the Scrutiny Committee for scrutiny of his caste certificate, so that he can secure a valid certificate from the Scrutiny Committee, and it is only after the Scrutiny Committee issuing a valid certificate that the caste certificate issued in favour of the person by the Competent Authority becomes final. In our opinion, the scheme of subsection (2) of section 6 is that any candidate who desires to avail of any benefit available to backward class has to get a caste certificate as also the validity certificate before he makes a claim for the benefits. But if a candidate chooses to make claim to the benefits on the basis of a tentative certificate namely a certificate issued by the Competent Authority, he takes the risk of his losing the benefits that he has claimed and obtained and also being visited with penal consequences on the refusal of the Scrutiny Committee to validate his caste claim. The Act contemplates conscious decision being made by a person at the time of claiming benefits. The Legislature expects a person to claim the benefits only after obtaining the validity certificate, but the Legislature also permits a person to claim the benefits on the basis of a tentative certificate issued by the Competent Authority, if he is willing to take the risk mentioned above. In our opinion, therefore, the validity certificate is one of the essential ingredient of the candidate being qualified to contest for the reserved seat....” (emphasis supplied)

46. According to Sujit Vasant Patil (supra), therefore, a person who seeks to contest election to reserved posts without compliance with the general rule of producing Validity Certificate along with nomination papers, ‘takes a risk’. The first proviso to section 9-A, in such a case, makes this position quite clear by requiring such person to furnish a statutory undertaking to produce Validity Certificate within six months from the date of election.

The second proviso, in terms, provides for consequence in case of breach. Such person, having taken the risk, can- not, in the absence of any ambiguity in the provision, be permitted to wriggle out from the consequences of breach so clearly and statutorily provided in the provision itself. Otherwise,

such person, will avail of a conditional concession, without, fulfilling the condition subject to which such concession came to be granted in the first place by the provision.” The Legislature expects a person claiming the benefit of contesting in a reserved post to be in possession of both the Caste Certificate and the Validity Certificate at the time of filing the nomination. The allowance to contest by submitting the Caste Certificate alone was with the undertaking that he would produce the Validity Certificate within the stipulated time, and this was the risk that the candidate was taking. It was a ‘risk’ because a Validity Certificate which he ought to have ordinarily possessed on the date of nomination being unavailable, he or she is granted the concession of contesting, subject to the undertaking. In the event of non-production within the stipulated time, even an elected candidate would automatically stand disqualified.

14. Thereafter, the Full Bench went on to hold as follows in para 80 and 81, while construing the nature of the time limit for production of the Validity Certificate, as it then stood. “80. ...If the legislature, for a limited period of time, taking into consideration pendency of applications for issuance of Validity Certificate before the Scrutiny Committee grants some exemptions or concession to persons who have applied for issue of Validity Certificate before the date of filing nomination papers, but who have not received such Validity Certificate on the date of filing of nomination papers, subject to such persons producing the Validity Certificate “within period of six months from the date of election”, there is no reason to treat the stipulation as to time has (sic.) merely directory and thereby enlarge or extend the exemption or the concession granted by the legislature.

81. If, the intention of the legislature was to grant exemption from the requirement of producing Validity Certificate, until, the elected candidate's application is disposed of by the Scrutiny Committee, nothing prevented the legislature from saying so expressly or at least by necessary implication. Instead, in this case, and perhaps, for good reason, the legislature has consciously deemed it appropriate to insist that the person submits an undertaking that he shall produce the Validity Certificate within six months and further, the legislature, in clear, unambiguous and express terms has provided that upon the failure of such person to produce the Validity Certificate within six months from the date of election, his election shall be deemed to have been retrospectively terminated and he shall be disqualified for being a Councillor. If, the stipulation as to time is construed as directory, then, the legislative intent, so clearly expressed, will be defeated. The significant portions of the provision will be rendered a mere surplusage. In essence, this Court would be rewriting the statute on the basis of its own value judgments or notions of equity and inequity.” After holding that the provision is mandatory, the Full Bench held that failure to produce the Validity Certificate from the Scrutiny Committee within the stipulated time would mean that the election was deemed to have been terminated retrospectively and the person was to be disqualified. It also held that retrospective termination of the election and disqualification were automatic in the following words:-

“98. In the present case also the legislature in enacting section 9-A has provided for a statutory fiction, which is evident from the use of expression “his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councillor”. The statutory fiction must be allowed to have its full play. No other

provision or reason has been pointed out to take the view that consequences prescribed under second proviso to section 9-A are not automatic or would require any further adjudication once it is established that the person elected has failed to produce the Validity Certificate within a stipulated period of six months from the date of his election.

99. The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to section 9-A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor's election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby.

100. In the result, we hold that the time limit of six months prescribed in the two provisos to section 9-A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.” Further, in terms of second proviso to section 9-A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The questions raised, stand answered accordingly.”

15. This statutory background is essential to interpret the Temporary Extension Act, 2023. To consider whether the Appellant No. 1 is entitled to the protection of the Temporary Extension Act, 2023, it is necessary to recapitulate the facts of the present case. The Appellant No. 1 obtained his Caste Certificate on 03.02.2013. Only on 30.12.2020 (the date of his nomination) he submitted an application for the Validity Certificate to the Caste Scrutiny Committee. At the time of filing of his nomination, he also filed an undertaking that he will produce the Caste Validity Certificate within twelve months from the date of his election. On 18.01.2021, the elections were held and on 21.01.2021, the results were declared and the Appellant No. 1 was declared elected. The twelve months period expired on 20.01.2022.

16. On 30.12.2020, when he filed the application online to the Scrutiny Committee for obtaining the Validity Certificate, a receipt was issued to him. In the receipt, the following endorsement appears:-

“I have been informed that, within seven days will file declaration otherwise the matter should be closed.” Thereafter, it is undisputed that on 01-03/04/2021, the

District Caste Certificate Verification Committee, Satara made the following order. This order also covered the case of the Appellant No. 1 along with 3013 other applicants. The order reads as under:

“As per above read No 1 the intended contestants of the elections of Local Bodies. Municipal Councils, Municipal Corporations have submitted their application for their cast certificates with the office of the Committee. As per the read No 2 and 3 above the elected candidates in local bodies, municipal councils and corporations from reserved seats, have to submit their cast verification certificate within one year from the election.

As per read No. 4 above notification regarding decision of the election dtd 23.03.2021 of Collector (Election Branch) and as per the notification submitted by the elected candidates the committee scrutinized that, whether these applicants are elected in such elections or not? After scrutiny it found that, these applicant candidates have not been elected in the elections from the reserve seats. As such elected candidates have not filed the notification of elected candidates in time, this office cannot take decision in this regard. Hence this proposal has been filed as per the provisions of Rules 17(2)(3) of Maharashtra Rules of verification of caste certificate SC, ST, OBC, Spl BC 2012.” It is clear from the operative portion of the order that since the elected candidates have not submitted the notification of being elected, in time, the office was not able to take any decision in that regard. In view of that, the proposal was ‘filed’ as per the provisions of Rule 17 (2)(3) of the 2012 Rules.

17. Before we take up for consideration the interpretation of Sections 3 and 4 of the Temporary Extension Act, 2023, one judgment of the High Court of Judicature at Bombay in the case of Mandakani Kachru Kokane alias Mandakani Vishnu Godse Vs State of Maharashtra & Ors. [2021 (3) Mh.L.J. 221] needs to be referred to. In the said judgment, in para 48, 49, 50(ii) and 50(iii), the following significant directions were issued:

“48. Shri Satyajit Dighe, learned counsel for the Petitioner rightly submitted that impugned order of the Caste Scrutiny Committee was passed almost on the last day of twelve months mandatory period and therefore, no time was left for approaching this Court which is the only remedy available i.e. the constitutional remedy. Thus Petitioner's right to approach this Court under Article 226 of the Constitution of India is violated....

49. However, in view of the law laid down by the Full Bench of this Court in the case of Anant H. Ulharkar (supra) Section 30(1A) of the Maharashtra Village Panchayat Act, 1958 is mandatory and therefore time limit provided therein cannot be extended. However, we are constrained to issue directions to all the Caste Scrutiny Committees to decide the matters much before the mandatory period of twelve months if the aforesaid provisions are applicable. However, this will be subject to the condition that the applicant completely co-operates in disposal of the proceedings in time bound

manner and do not seek unnecessary adjournments.

50. (ii) All the District Caste Scrutiny Committees are directed to dispose of the matters which are covered by the mandatory period of twelve months as provided in Section 10-1A and Section 30(1A) of the Maharashtra Village Panchayat Act, 1959, Section 9A of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965, in Section 5-B of the Mumbai Municipal Corporation Act, 1888 and Section 5-

B of the Maharashtra Municipal Corporation Act, 1949 as expeditiously as possible and in any case within a period of eight months subject to following conditions:

(a) The concerned successful candidate who has applied for getting caste certificate validated to convey his election result and this order to the relevant District Caste Scrutiny Committee personally or through his Advocate within a period of two weeks from the date of declaration of the result of his election and pointing out to the Committee the aforesaid time period of twelve months as provided in the aforesaid provisions with a request to expedite the hearing and to complete the proceedings within the time prescribed in this judgment.

(b) The relevant District Caste Scrutiny Committee to fix tentative time table for disposal of the said case in maximum period of eight months from the above referred communication of the successful candidate to the Committee. However while fixing the time table the Committee shall also have regard to the provisions of said Act and said Rules.

(c) The concerned successful candidate to completely cooperate in expeditious disposal of the respective proceedings before the committee and shall not take any adjournment without valid reason.

(d) It is specifically directed that in case such successful candidate fails to comply with the above directions then the time limit as fixed herein will not apply to such proceedings.

(iii) The Chief Secretary of the State of Maharashtra is directed to circulate to all the District Caste Scrutiny Committees copy of this judgment within a period of 30 days from today." It is obvious from the above directions issued on 27th October, 2020 (well before the Appellant No. 1 filed the application for the Validity Certificate on 30.12.2020) that within two weeks from the declaration of the result the successful candidate from the reserved seats was obligated to convey his election result and the order and the judgment of the High Court to the relevant Caste Scrutiny Committee.

The candidate was also to point out the aforesaid time limit and request for an expeditious hearing and completion of proceeding within the said period. It is further clear that the Scrutiny Committee

was to fix a tentative time table and dispose of the said application within a maximum period of eight months from the date of the aforesaid communication. The successful candidate was to co-operate in the expeditious disposal of the respective proceedings. Most importantly, it was specifically directed that in case the successful candidate failed to comply with the directions, then the time limit fixed therein will not apply to such proceedings.

18. It is also the understanding of the Appellant No. 1, as evident from the undertaking furnished along with his second application on 14.06.2023, which is in the following terms:

“I, Applicant – Sudhir Vilas Kalel respectfully submitting this I applicant Sudhir Vilas Kalel submitting my request application that, I contested the election of Grampanchayat Jambhulni, Tal Man in the year 2020 and I am elected in the said election. In that respect Ld. Election Officer, Tal Man has given me declaration/letter to me. Due to some reasons, I could not submit the same within time and therefore my proposal has been rejected by the Committee.

That today on 14.07.2023, I am again submitting my fresh proposal and accepting the responsibilities for delay. I am solely responsible for the delay caused. You are kindly requested to accept my proposal and please issue me the Caste Validity Certificate at your earliest.” (Emphasis Supplied)

19. No doubt, on this application which is filed on 14.06.2023 (filed long after the submission of his nomination on 30.12.2020), he obtained the Validity Certificate on 12.07.2023.

20. In this background we need to examine whether the validation under Section 3 of the Temporary Extension Act, 2023 applies to the case of the Appellant No. 1. The provisions of Sections 3 and 4 of the Temporary Extension Act, 2023, along with its Statement of Objects and Reasons, are set out and analyzed in the later part of the judgment.

21. A factual aspect that needs to be noticed is that on 26.05.2023, the Tehsildar forwarded a report to the Respondent No.11 - District Collector, Satara informing that the Appellant No. 1 Sudhir Vilas Kalel has failed to produce his Caste Validity Certificate within the prescribed time as per Section 10(1A) of the Panchayats Act.

Proceedings arising from the No Confidence Motion

22. On 13.06.2023, eight Members moved a No Confidence Motion against Appellant No. 2-Sushila Sitaram Kalel, expressing No Confidence in her being the Sarpanch. The eight Respondents herein voted in favour of the No Confidence Motion. If Appellant No.1 was entitled to sit, the total number of members would be eleven and eight members voting would only constitute 72.73%. If the Appellant No.1 was not entitled to sit, then the total number of members would be ten and eight members voting would constitute 80%. On 19.06.2023, on the ground that there was absence of minimum three-fourth of the Members voting in favour of the motion, the No Confidence Motion was ordered as rejected. The relevant part of Section 35 of the Panchayats Act which deals with the

process of No Confidence Motion is extracted below:

“35. Motion of no confidence. – (1) A motion of no confidence may be moved by not less than two third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar, shall convene a special meeting of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa- Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(3) If the motion is carried by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided: ...”

23. On 23.06.2023, respondents no. 1 to 8 filed a Writ Petition before the High Court praying that the No Confidence Motion against Appellant No. 2 be declared to be duly and validly carried, and for consequential directions directing the Appellant No. 2 to forthwith stop exercising all the powers, functions and duties as the Sarpanch. Further directions for declaring election to the post of Sarpanch were also prayed.

24. On 12.07.2023, the District Caste Certificate Scrutiny Committee, Satara granted the Caste Validity Certificate to the Appellant No. 1.

25. By its judgment of 20.09.2023, which is impugned herein, the Division Bench of the High Court made rule absolute in terms of prayer (a) and (b) of the Writ. Prayer (a) and (b) of the Writ is as under:

(a) By suitable writ, order or direction this Hon'ble Court may be pleased to hold and declare that the no confidence motion against the present Respondent No. 3 moved by the Petitioners on 13/06/2023 has been duly and validly carried with the requisite majority in the special meeting conveyed by the Respondent No. 2 and held on 19/06/2023 and consequently the direction be issued to the Respondents that the Respondent No. 3 shall forthwith stop exercising all the powers, functions and duties

as the Sarpanch in the village Panchayat Jambulani Taluka Man, District Satara and thereafter, further direction be issued to the Respondent No. 2 and Respondent No. 6 – the Collector to declare the election for the post of the village Sarpanch for electing the new Sarpanch in the said Village Panchayat.

(b) By suitable writ, order or direction the declaration made by the Respondent No. 2 in the special meeting held on 19/06/2023 and as recorded in the minutes of the said meeting declaring that the no confidence motion against the Respondent No. 3 has failed be quashed and set aside.

Questions for Consideration:

26. In this scenario, the questions that arise for consideration are as follows:

- a. Whether Appellant No. 1 is entitled to the protection of Sections 3 and 4 of the Temporary Extension Act, 2023?
- b. Whether the proceedings of 19.06.2023 holding the No Confidence Motion against Appellant No. 2 as not carried for want of the requisite votes is tenable?

Contentions

27. We have heard Mr. Gaurav Agrawal, learned advocate (since designated as a senior counsel) for the appellants and Mr. Vinay Navare, learned senior counsel for the Respondent nos. 1 to 8 as well as Mr. Aniruddha Joshi, learned counsel for the official respondents. Mr. Gaurav Agrawal, learned advocate vehemently contends that the application filed before the Scrutiny Committee on 30.12.2020 has not been rejected. According to the learned counsel, the order dated 01-03/04.2021 cannot be construed as a rejection; that his application was pending and the filing done on 14.06.2023 was only a re-filing after curing the defects. In view of the same, according to the learned counsel, the Appellant No.1 is entitled to the benefit of the validation provision under Section 3 of the Temporary Extension Act, 2023. Learned counsel contends that under Section 35(3) of the Maharashtra Village Panchayats Act, a No Confidence Motion has to be carried by a majority of not less than three-fourth of total number of Members who are for the time being entitled to sit and vote. Hence, submits the learned counsel, that the requisite majority of nine votes was not obtained.

28. In response, Mr. Vinay Navare, learned senior counsel and Mr. Aniruddha Joshi, learned counsel for the Respondent authorities, have contended that the Appellant No. 1 is not entitled to the benefit of Section 3 of the Temporary Extension Act, 2023 as that Section will apply only to a person who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing the nomination papers and who is elected on the reserved seat but whose application is pending before the Scrutiny Committee on 10.07.2023, the date of commencement of the Temporary Extension Act, 2023. It is only to those persons the benefit of submission of the Validity Certificate within twelve months from 10.07.2023 is made available. According to them, it is only that person's election which may have been terminated or deemed to have been terminated for not

submitting the Validity Certificate would be protected by the deeming provisions which enabled the individual to continue to be a Member or Sarpanch. They further contended that the impugned order warrants no interference as it has been rightly held that on account of the conduct of the Appellant No. 1 in not furnishing the declaration as undertaken and as required, he is deemed to be automatically disqualified with retrospective effect from the date of his election. Since the No Confidence Motion was carried with eight Members out of ten, who were entitled to sit and vote, the rejection of No Confidence Motion was illegal.

Discussion and findings:

29. Sections 3 and 4 of the Temporary Extension Act, 2023 read as under:-

“3. (1) Notwithstanding anything contained in sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act and sections 12A, 42 and 67 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, for contesting General or bye-elections to the Village Panchayats, Zilla Parishads and Panchayat Samitis which were held on or after 1st January 2021 and till the date of commencement of this Act,—

(a) a person, who has applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers and who is elected on the reserved seat of a member or Sarpanch of Village Panchayat, Councillor or President of Zilla Parishad or member or Chairman of Panchayat Samiti, but whose application is pending before the Scrutiny Committee on the date of commencement of this Act, shall submit his Validity Certificate within a period of twelve months from the date of commencement of this Act ;

And

(b) a person, whose election has been terminated or deemed to have been terminated or a person who is disqualified for being a member or Sarpanch of Village Panchayat, Councillor or President of Zilla Parishad or member or Chairman of Panchayat Samiti for not submitting the Validity Certificate within the period specified in sections mentioned above, shall be deemed to be and shall continue to be a member or Sarpanch of Village Panchayat, Councillor or President of Zilla Parishad or member or Chairman of Panchayat Samiti, as the case may be, and shall not be disqualified till the period of twelve months from the date of commencement of this Act for not submitting the Validity Certificate:

Provided that, if such person fails to produce the Validity Certificate within a period of twelve months from the date of commencement of this Act, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a member or Sarpanch of Village Panchayat, Councillor or President of Zilla Parishad or member or Chairman of Panchayat Samiti.

(2) The provisions of sub-section (1) shall not be applicable,—

(a) where bye-elections have been held on the seats specified in sub-section (1) before the date of commencement of this Act ; or

(b) where a member whose application of Validity Certificate has been rejected by the Scrutiny Committee.

4. All legal proceedings pending immediately before the date of commencement of this Act, before any court or authority relating to disqualification of a member or Sarpanch of Village Panchayat, Councillor or President of Zilla Parishad or member or Chairman of Panchayat Samiti, for not submitting the Validity Certificate by them in cases where extension of period for submission of Validity Certificate is granted under this Act, shall abate.”

30. The statement of objects and reasons leading to the passing of the Temporary Extension Act, 2023 w.e.f. 10.07.2023 are important. They are extracted hereinbelow:-

“Sections 10-1A and 30-1A of the Maharashtra Village Panchayats Act (III of 1959) and sections 12A, 42 and 67 of the Maharashtra Zilla Parishads and Panchayats Samitis Act, 1961 (Mah. V of 1962) provides that, every person desirous of contesting elections to a seat of a member or Sarpanch of the Village Panchayat, Councillor or President of the Zilla Parishad or member or Chairman of Panchayat Samiti reserved for persons belonging to Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Classes of Citizens, shall submit alongwith the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee.

2. The abovementioned sections of the said Acts are amended with a view to allow the persons, desirous of contesting for such reserved seats in certain general or bye-elections and have applied to the Scrutiny Committee for obtaining Validity Certificate, to submit the Validity Certificate within twelve months from the date on which they were declared elected.

3. As the Scrutiny Committees are overburdened with the work of verification of Caste Certificates, the elected members were facing difficulties in obtaining the Validity Certificates from the Scrutiny Committees within the period specified in the said Acts. The applications of such elected members are still pending before the Scrutiny Committees.

However, due to pending applications of such members before Scrutiny Committees more than seven thousand duly elected members were disqualified or might be disqualified for not submitting Validity Certificates for no fault of their own. Also it had caused hindrance in the local self-governing process. It was, therefore, necessary to ensure that such elected candidates shall not be deprived to hold such offices merely because of non-issuance of validity certificates in time by the

Scrutiny Committees when their applications are still pending with the Scrutiny Committees.

4. It was, therefore, considered expedient to make a law to provide for extension of a period of twelve months for submitting Validity Certificates by persons elected on reserved seats of member, Sarpanch, Councillor, President and member and Chairman in certain general or bye-elections to Village Panchayats, Zilla Parishads and Panchayat Samitis and for the matters connected therewith or incidental thereto.

5. As both Houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law, for the purposes aforesaid, the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Ordinance, 2023 (Mah. Ord. VI of 2023), was promulgated by the Governor of Maharashtra on the 10th July 2023.

6. The Bill is intended to replace the said Ordinance by an Act of the State Legislature.” (emphasis supplied)

31. As would be evident, this Temporary Extension Act was enacted since the Scrutiny Committees were overburdened with the work of verification of Caste Certificates and the elected members were facing difficulties in obtaining the Validity Certificates within the prescribed time. It is aimed to protect the applicants whose applications are still pending before the Scrutiny Committee. The idea was that such elected candidates ought not to be deprived merely because of non-issuance of Validity Certificates when the applications are still pending. Section 3 begins with a non obstante clause. It applies to elections held on or after the 1st January, 2021 and till 10.07.2023, the date of commencement of the Temporary Extension Act, 2023. It clearly provides that it covers the cases of persons who have applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers and who are elected on the reserved seat; and whose applications are pending before the Scrutiny Committee on the date of commencement of the Act. It is mandated that they can produce the certificate within twelve months from the date of commencement of the Temporary Extension Act, 2023 i.e. till 09.07.2024. Sub-clause (b) states that a person whose election has been terminated or deemed to have been terminated or a person who is disqualified for being a Member or Sarpanch for not submitting the Validity Certificate within the period specified in the sections mentioned above (10-1A and 30-1A), shall be deemed to be and shall be continued to be a member or Sarpanch and shall not be disqualified till the period of twelve months. Sub-section (2) further clearly states that the provisions of sub-section (1) shall not apply where the member whose application of Validity Certificate had been rejected by the Scrutiny Committee. Section 4 states that all legal proceedings pending immediately before the date of commencement of the Act, before any court or authority relating to disqualification of a member, for not submitting the Validity Certificate where extension of period for submission is granted under the present Act was to abate.

32. The High Court, in the impugned order, has recorded the following findings in its operative portion:

“32. In this particular case, Sudhir's application for a Validity Certificate was rejected on 1st April 2021. The argument that this rejection is technical is totally irrelevant. In fact, the order seems to us to expose precisely the mischief that is sought to be cured and addressed by Section 10-1A and the amended proviso. It is not permissible for a candidate to simply file an application and do nothing further. That application for a Validity Certificate must be properly filed and followed through. The mere filing of the application is not in sufficient compliance with the statute. The Validity Certificate has to be obtained within the time provided, whether by the original statute or by the Temporary Extension Act. Simply filing some sort of defective application with incomplete documents does not meet the statutory purpose.

33. Thus, if even the mischief rule of interpretation, the oldest interpretation doctrine by far, [Heydon's case, 1584, 76 ER 637] is adopted for the purposes of the Maharashtra Village Panchayats Act, 1959 and the Temporary Extension Act, it is clear that defective or incomplete applications that result in a rejection are no different from a rejection on merits. Yet, Section 3(2)(b) of the Temporary Extension Act is thus an essential safeguard.

34. Viewed from either perspective, the Temporary Extension Act cannot come to Sudhir's rescue. We note from the Ordinance, a copy of which is at pages 93 and 96, that it was necessitated because of the huge backlog of applications pending before the scrutiny committee.”

33. As was set out earlier, after obtaining his caste certificate on 03.02.2013, it was only on 30.12.2020 that is on the same day of the nomination that the Appellant No. 1 moved the Scrutiny Committee for obtaining the Validity Certificate.

The elections were held on 18.01.2021 and the results were declared on 21.01.2021. He ought to have furnished the Validity Certificate by 20.01.2022.

34. After filing his application for the Validity Certificate on 30.12.2020, he undertook that he would file the declaration of the results within a week. Besides, this undertaking is legally backed by the judgment in Mandakani Kachru Kokane (supra), which no doubt gave two weeks from the date of declaration of the result for communication of the declaration to the Scrutiny Committee. Admittedly, the appellant No. 1 did not submit the declaration either within one week as undertaken or within two weeks as provided in Mandakani Kachru Kokane (supra). In cases where there is due communication from the applicants, the Division Bench in Mandakani Kachru Kokane (supra) had obligated the Scrutiny Committee to decide the case within a maximum period of eight months from the date of communication. The Scrutiny Committee which is faced with a large number of applications can legitimately expect that the applicants who require disposal on priority basis should comply with the formalities required to enable the applicant to get priority in decision making. The Committee under Rule 17(3) is also entitled to reject incomplete applications by recording reasons. Under Section 17(2) it is also the obligation of the applicant to comply with removal of objections raised.

35. It is in this background that the order of 01-03/04/2021 came to be passed whereby the applications (including those of the Appellant No.1), were 'filed'. On the facts of the case, the question is, would the order of 01-03.04.2021 tantamount to a rejection under Section 3(2)(b) of the Temporary Extension Act, 2023 so as to dis-entitle Appellant No.1 from the benefit of Section 3.

36. To answer this question, the object of Section 10-1A and 30- 1A of the Panchayats Act along with Sections 3 and 4 of the Temporary Extension Act, 2023 ought to be borne in mind. As has been correctly held in Anant H. Ulahalkar (supra) while reiterating the holding in Sujit Vasant Patil (supra), ordinarily, the rule is for an aspiring candidate in an election to submit the Caste Certificate and the Validity Certificate along with the nomination. However, a window of twelve months was given for those who have not obtained the Validity Certificate to furnish the same and this was held to be a "risk" that the applicants were taking. Under the Caste Certificate Act, 2000, the certificate attains finality only if it is authenticated with a Validity Certificate. That statute and scheme have been discussed herein above. From those who aspire to contest for a reserved seat and who take a risk of applying for the validity certificate by filing an application before the date of nomination, it is prudent to expect that they will show utmost due diligence in the prosecution of their application. This would mean that they are expected to do all that is within their control to do and submit with the Scrutiny Committee a valid application for their consideration. In fact, it was on the basis that applicants aspiring to contest election who do not possess a Validity Certificate, were taking a risk, that the provisions were held to be mandatory. Further and independent of the above, Mandakani Kachru Kokane (supra) which came on 27.10.2020 well before the Appellant No.1 filed his nomination clearly mandated that there was an obligation on the applicants before the Scrutiny Committee to furnish the declaration of the results within two weeks of the declaration of the results for expeditious disposal. In this case, results were announced on 21.01.2021. Under the law, as it obtained in Maharashtra, as laid down in the statute and in the judgments of the Court, there was an obligation to furnish the validity certificate on or before 20.01.2022. The Appellant No. 1 admitted in the second application filed on 14.06.2023 that inspite of possessing the declaration of the result, for some reason, he could not file the same with the Scrutiny Committee. The consequence was that on 20.01.2022, the Appellant No.1 stood automatically disqualified as a Member with retrospective effect from the date of his election, under Section 10-1A of the Panchayats Act. On 01-03/4/2021, under Rule 17(2) and 17(3) of the Caste Certificate Rules, the applications were 'filed' for not submitting of the notification of his election. It is pertinent to note that the said order was never challenged by the Appellant No.1 and so it has attained finality.

37. 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.

38. 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. Sub- section (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. Sub- section (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.

39. 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.

40. 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.

41. Additionally, the application was rejected under Rule 17. No doubt this cannot be a rejection which will result in the cancellation of his caste certificate. This is also reinforced by the fact that the District Caste Certificate Scrutiny Committee, by its letter dated 14.09.2023, stated that the Appellant No.1’s application dated 30.12.2020 was “disposed for non-compliance” and clarifies that his Caste Certificate dated 03.02.2013 is not invalidated. The Appellant No.1 may take the benefit of the validity certificate issued to him on 12.07.2023, pursuant to his second application of 14.06.2023, for sustaining his Caste Certificate issued by the Competent Authority on 03.02.2013, for contesting in future elections and for claiming other concessions as may be available in law.

42. Appellant No.1 has ceased to be a member because of the automatic disqualification. In view of this, the proceedings of the Tahsildar dated 19.06.2023 rejecting the No Confidence Motion on the ground that the voting requirement of three-fourth of the members “entitled to sit and vote”, was not fulfilled, cannot be sustained and has rightly been set aside by the High Court.

43. The net result is that the High Court was right in setting aside the rejection of the No Confidence Motion and in holding that the No Confidence Motion against Appellant No. 2- Sarpanch, was duly carried. The High Court was also justified in directing that the Appellant No.2 should stop exercising the powers as a sarpanch and in further directing that the election for the post of village Sarpanch be notified afresh. The High Court was justified in quashing the declaration dated 19.06.2023 declaring that the No Confidence Motion had failed.

44. We affirm the judgement and order of the High Court dated 20.09.2023 in Writ Petition No. 7924 of 2023. In view of the above discussion, the Appeal is dismissed. Interim orders will stand vacated. No order as to costs.

.....J. (Vikram Nath)J. (K.V. Viswanathan) New Delhi;

February 07, 2024.