

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO.3737 OF 2015.
ALONGWITH
CRIMINAL APPLICATION NO. 3869 OF 2015.

CRI.APPLN. NO.3737/2015.

CRI.APPLN. NO.3869/2015.

Reshma w/o Ashpaq Qureshi.

Asgari Begum Mohammad Ali.

Versus.

Versus.

The State of Maharashtra.

The State of Maharashtra & Ors.

DR. ANJALI W/O BHAGWAT KARAD : Applicant in Cri.Appln.Nos.
3838/2015 & 3963/2015.

Appearance =>

Mr. D.P. Palodkar, Advocate for Applicant in Cri.Appln. No.
3737/2015.

Mr. Rajendra Deshmukh, Advocate for Applicant in Cri.Appln.
No. 3869/15.

Mr. V.B. Mantri, Advocate for the Applicant in Cri.Appln.Nos.
3838/2015 & 3963/2015.

Mrs. S.G. Chincholkar, Additional Public Prosecutor for the State
of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 28th July, 2015.

Per Court :-

These two Criminal Applications can be disposed of by
common order, since both are arising out of CR No. I 179/2015
registered with Jinsi Police Station, Aurangabad, District –

Aurangabad for the offences punishable under Section/s 420, 468, 471 read with 34 of the Indian Penal Code.

[2] Heard Mr. D.P. Palodkar, learned counsel for Applicant in Criminal Application No. 3737/15 and Mr. Rajendra Deshmukh, learned counsel for Applicant in Criminal Application No. 3869/15.

Both the Applications are opposed by Mrs. S.G. Chincholkar, learned Additional Public Prosecutor and Mr. V.B. Mantri, learned counsel for the First Informant (Applicant in Cri.Appln.Nos. 3838/2015 & 3963/2015.)

[3] Election of Aurangabad Municipal Corporation took place in the month of April, 2015. Ward No.69 which is also known as “Samta Nagar” was reserved for Backward Class of Citizen, which includes O.B.C. women category.

Both, the Applicant in Criminal Application No.3737/15 and the First Informant were intending to contest the said election from Samta-Nagar Ward. Accordingly, they filed their respective nomination papers. Since the said Ward was reserved, it was obligatory on the part of the candidate, intending to contest the election from the said Ward to file the Caste Certificate as well as Caste Validity Certificate, duly issued by the competent authority alongwith the nomination paper.

It is not in dispute that, the Applicant in Criminal Application No.3737/15 filed her nomination paper alongwith the

Caste Certificate to show that she belongs to Khatik community and also validity duly issued by the Caste Certificate Scrutiny Committee, Aurangabad Division, Committee No.1, Aurangabad. Similarly, the First Informant also filed nomination paper alongwith Caste Certificate and Caste Validity Certificate.

After the election was over, the Applicant in Criminal Application No.3737/15 was declared as elected candidate from Ward No. 69 – Samta-Nagar.

Applicant in Criminal Application No.3737/15 has stated that her election is questioned before the court by filing Election Petition against her by the First Informant and the said Petition is pending.

[4] The Applicant in Criminal Application No.3869/15 is Head-Mistress of school known as Al-Asagari Urdu Secondary School, Aurangabad. In order to support the case that the Applicant is Khatik, the Applicant in Criminal Application No.3737/15 has filed the document given by the Al-Asagari Urdu Secondary School, Aurangabad for validation of the said certificate before the Caste Scrutiny Committee. It is not in dispute that, prior to lodging the First Information Report, the First Informant has filed Election Petition questioning the validity of the election of the Applicant in Criminal Application No.3737/15.

[5] First Information Report is lodged on 3rd July, 2015. According to the First Information Report, document submitted by the

Applicant in Criminal Application No.3737/15 before the Caste Scrutiny Committee are fabricated and bogus documents. According to the First Informant, on the basis of such fabricated, false and bogus documents, Applicant - Reshma w/o Ashpaq Qureshi has obtained the Validity Certificate from the Caste Certificate Scrutiny Committee, Aurangabad Division, Committee No.1, Aurangabad and has contested the election from Samta-Nagar Ward, which was reserved for backward class community.

[6] Mr. Mantri, learned counsel for the First Informant submitted that, Transfer Certificate from Al-Asagari Urdu Secondary School, Aurangabad shows that there is insertion in the said Certificate by inserting word "Khatik". He has also pointed out various documents to buttress his point to show that, documents before the Caste Certificate Scrutiny Committee, Aurangabad Division, Committee No.1, Aurangabad were fabricated and, therefore, he submitted that, prayer of the Investigating Officer for the custody of Applicant/s in Criminal Application No.3737/15 and Criminal Application No.3869/15 is absolutely essential.

[7] There is enactment known as "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". (In short, "the Act".) Preamble of "the Act" reads as under :-

“An act to provide for the regulation of the issuance and verification of the Caste Certificate to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category and for matters connected therewith or incidental thereto.”

Clause (k) of Section - 2 of “the Act” defined “Scrutiny Committee”, which reads as under :-

“Scrutiny Committee” means the Committee or committees constituted under sub section (1) of Section 6 of the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for verification of the Caste Certificate and perform the function of Scrutiny Committee under this Act.

Section 6 of “the Act” deals with verification of Caste Certificate by Scrutiny Committee, which reads as under :-

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the competent Authorities under sub Section (1) of Section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category for the purposes mentioned in Section 3 may 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.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-Operative societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed, by the Scrutiny committees for the verification of such Caste Certificate and issue of a validity certificate, in case a person is selected for an appointment with the government, local authority, public sector undertakings, educational institutions, Co-Operative societies or any other government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of such Caste Certificate and adhere to the time limit for the verification and grant of validity certificate, as prescribed.

Section 7 deals with confiscation and cancellation of false Caste Certificate. Section 7 reads as under :-

(1) When before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such castes, tribes or classes, the Scrutiny Committee may, *suo motu*, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) the order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.

Thus, from the sub section (2) of Section – 7, it is clear that, the order passed by the Caste Certificate Scrutiny Committee under “the Act” can be challenged only by filing Writ Petition under Article Article 226 of the Constitution of India before this Court.

Thus, authenticity of the Caste Validity Certificate given by the Caste Certificate Scrutiny Committee cannot be challenged except by filing the Writ Petition.

Section 11 of “the Act” deals with offences and penalties, which reads as under :-

Offences and penalties.

(1) Whoever, -

(a) obtain a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Back-ward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority or any other company or corporation owned or controlled by the Govern -ment or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes, Tribes or Classes by producing a false Caste Certificate; shall, on

conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years or with fine which shall not be less than two thousand rupees, but which may extend up to twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose."

[8] In the present case, Caste Certificate was issued in favour of the Applicant in Criminal Application No.3737/15 by the competent authority that she belongs to Khatik caste. Since she was intending to contest the election from Ward No.69, reserved for Backward Classes Candidate, she was required to obtain the validity certificate from the Caste Certificate Scrutiny Committee. Therefore, she applied before the Caste Scrutiny Committee, Aurangabad for getting the validation from the said Committee in respect of the Caste Certificate issued in her favour showing that she belongs to Khatik caste.

Alongwith the Caste Certificate she has submitted various documents including the documents issued by Al-Asagari Urdu Secondary School, Aurangabad, to substantiate her claim. All these documents were produced before the Caste Scrutiny Committee.

[9] The Caste Scrutiny Committee vide order dated 4th April, 2015 after due deliberation passed order (Committee Decision No. Hearing/Lot No.44/Sr.No.16) by which the validity to the Caste Certificate submitted by the Applicant in Criminal Application No. 3737/15 was granted to the effect that she belongs to Khatik caste.

Consequent upon the said order certificate of validity bearing No.A730662 dated 4th April, 2015 was issued by the said Committee.

[10] Till today the order passed by the Caste Certificate Scrutiny Committee or certificate of validity is not challenged by any person including the First Informant before this court by filing the proceedings under Article 226 of the Constitution of India. Thus, as on today, the Certificate of Validity and order passed by the Caste Scrutiny Committee holds the field. It was always open for the First Informant to question the said certificate and/or the order.

[11] In fact the Election Petition bearing No.8/15 filed by the present First Informant is pending before the learned Civil Judge, Senior Division, Aurangabad. In the said Election Petition also the issue is raised that the Caste Certificate of the present Applicant in Criminal Application No.3737/2015 is bogus one and she has prepared the false papers of Muslim – Khatik, so as to make herself eligible to contest the election from O.B.C., and same is the specific case before the competent court in the Election Petition filed by the First Informant.

[12] Presently there is pronouncement from the validly constituted Caste Certificate Scrutiny Committee, Aurangabad Division, Committee No.1, Aurangabad in respect of case of the Applicant in Criminal Application No.3737/2015. Not only that, there is pronouncement of such Committee that documents which were filed by the Applicant in Criminal Application No.3737/2015 in support of her claim that she belongs to Khatik caste are genuine one.

Till that order and validation certificate from the Caste Scrutiny Committee is either stayed or set aside, prima facie, the court is of the view order and Caste Validity Certificate holds the field.

[13] Prior to issuance of Caste Validity Certificate, the Caste Certificate Scrutiny Committee has obtained the report from the Deputy Superintendent of Police. (जा.क.द.प./जाप्रप/चौ.अहवाल/२०१५/२६ कार्यालय पोलीस उपअधिक्षक, दक्षता पथक जा.प्र.प कार्यालय, विभागीय समाज कल्याण अधिकारी, औरंगाबाद विभाग, औरंगाबाद, दिनांक १ एप्रिल, २०१५.), who has also verified the documents which according to the First Informant are false and bogus one and after verification, she has submitted the report to the Caste Scrutiny Committee on 1st April, 2015.

[14] In view of the aforesaid, it is clear that the custodial presence of the Applicant/s in Criminal Application Nos. 3737/2015 and 3869/2015 is not at all necessary, till the order and caste validity certificate holds the field. That requires me to pass the following order :-

ORDER

(i) Criminal Application No.3737/2015 and Criminal Application No.3869/2015 are allowed.

(ii) In the event of arrest, Reshma w/o Ashpaq Qureshi – Applicant in Criminal Application No.3737/2015 and Asgari Begum Mohammad Ali – Applicant in Criminal Application No.3869/2015 shall be released on anticipatory bail on they executing P.R. Bond of Rs. 5,000/- [Rs. Five Thousand.] each with one solvent surety in the like amount, in connection with CR No. I 179/2015 registered with Jinsi Police Station, Aurangabad, District – Aurangabad for the offences punishable under Section/s 420, 468, 471 read with 34 of the Indian Penal Code.

(iii) With this, both the Criminal Applications are allowed and same are disposed of, accordingly.

(V.M. DESHPANDE, J.)