

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

915 REVIEW APPLICATION (CIVIL) NO. 106 OF 2015
IN WP/2936/2015

MUKUND MANIKRAO GHATE
VERSUS
KONDABAI VIKRAM JAMADAR AND OTHERS

...
Advocate for Applicant : Mr. Salunke V.D.
AGP for Respondents: Mrs.A.V. Gondhalekar
Advocate for Respondents : Mr. M.S. Deshmukh

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CORAM : R. M. BORDE & P.R. BORA, JJ.
Date: September 10, 2015

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PER COURT :-

1 The petitioner is assailing the order passed by this Court in writ petition 2936 of 2015 contending firstly that, the petitioner therein i.e. Respondent No.1 in the instant review application, does not have any locus to challenge the resident-certificate issued in favour of the review applicant i.e. respondent No.5 in the writ petition. It is further contended that, the writ petitioner was herself found to be ineligible to participate in the election process and her application was rejected and further challenge raised to the said decision in Writ Petition No.7309 of 2013 was not entertained.

2 The other ground of challenge is that, the order has been issued without ensuring presence of review applicant i.e. respondent No.5 before the Court. It is a matter of fact that respondent No.5 has been served with the notice. However, no appearance was caused by the said respondent. The review applicant attributes intention in recording different addresses of the concerned review applicant in different proceedings.

3 However, without going into the allegations made in the review application, since the respondent No.5 in the writ petition was not present before the Court, we deem it appropriate to issue certain directions.

4 The order passed by this Court directing the Sub Divisional Officer to conduct an enquiry in respect of resident/domicile certificate issued by respondent No.5 in the writ petition, does not deserve to be quashed and set aside. The writ petitioner may not have an entitlement to claim the allotment of retail outlet. However, he may have entitlement to question the credentials and eligibility of the selected candidate. The objection raised by the writ petitioner, therefore, deserves to be considered.

5 It is alleged that, the husband of writ petitioner in the writ petition is an employee, serving in the office of the Sub Divisional Officer, Kalamb and as such, the review applicant/respondent No.5 in the writ petition, has an apprehension that, he would not get justice and the decision by the Sub Divisional officer Kalamb may not be fair. It is also pointed out that, during pendency of the review application, the Sub Divisional Officer has hurriedly decided the matter and rejected the resident/domicile certificate issued in favour of the review petitioner/respondent No.5 in the petition. The review applicant makes a grievance that, an opportunity of hearing has not been extended by the Sub Divisional Officer, Kalamb while taking decision.

6 It was suggested to both the parties that, the matter be scrutinized by the Sub divisional Officer at Osmanabad *denovo* and a decision be recorded afresh after observing the principles of natural justice. Both the parties do not have any serious objection for this suggestion.

7 In the facts of the case, without going into the merits of the matter, since the review applicant/respondent No.5 in the writ petition, has made a grievance that, he has not been extended an opportunity of hearing by the Sub Divisional Officer before rendering decision, in order to have a fair enquiry, we deem it proper to quash the order passed by the Sub divisional Officer, Kalamb and direct transfer of the proceeding to the Sub divisional Officer, Osmanabad. The Sub Divisional Officer, Osmanabad shall deal with the matter *denovo* and render a final decision, after extending an opportunity of hearing to both the sides. The matter in respect of resident/domicile certificate issued in favour of respondent No.5 in the writ petition/review applicant shall stand transferred for consideration and decision to the Sub divisional Officer, Osmanabad. The Sub Divisional Officer, Osmanabad shall take decision in the matter by extending an opportunity of hearing to the writ petitioner and respondent No.5 i.e. review applicant and respondent No. 1 in the review application. The parties shall appear before the Sub divisional Officer, Osmanabad on 21.9.2015 and no separate notice is required, requiring their presence before the said authority. The Sub divisional Officer, Osmanabad shall decide the matter as expeditiously as possible and preferably within a period of two months from the date of appearance of the parties before him.

8 With the directions above, review application is disposed of.

(P.R. BORA, J)

(R.M.BORDE, J)