

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 862 OF 2015

Mrs. Rekha Anil Awale	...	Petitioner
V/s.		
State of Maharashtra & ors.	...	Respondents

Mr. Rahul P. Walvekar for the petitioner.

Mr. Vikas Mali, AGP for respondents 1 and 2.
Mr. Sachin B. Shetye for respondent no.5.

**CORAM : NARESH H. PATIL AND
V.L. ACHLIYA, JJ.**

18th April, 2015.

P.C.

Rule. Rule, made returnable forthwith. Heard finally, by consent of the parties.

2. The petitioner contested election of Councilor of Kolhapur Municipal Corporation from ward reserved for OBC. The petitioner was elected as Corporator from the said ward in the year 2010. The caste certificate of the petitioner was forwarded for verification of the respondent no.2- scrutiny committee. It is submitted that petitioner's

caste claim was validated. Said order was challenged in Writ Petition No. 870/2011. By an order dated 24th February, 2011 the matter was remanded back to the Committee by the High Court on the ground that Vigilance Cell Report was not called for by the Committee. Thereafter, the Committee decided the matter and by an order dated 11th September, 2014 invalidated the caste claim of the petitioner.

3. The petitioner claims to be belonging to other backward class (sr. no. 196) converted from schedule caste category to Christian religion. The petitioner placed reliance on certain documents, statement made on the affidavit and Baptism certificate.

4. The learned Counsel for the petitioner submits that the hearing of the matter was posted on 14th August, 2014. The matter was not listed on that day before the Committee. On the earlier dates on certain occasions two members committee were present. The matter was thereafter listed on 11th September, 2014 on which date, committee passed ex-parte order without getting reply to the Vigilance report and without giving opportunity of hearing to the petitioner. Learned Counsel for the petitioner submits that petitioner has a good case on merits.

5. We had called for the original record. We have perused the same. We have perused the Photostat copy of the stamp paper on which the petitioner had requested for allowing her to adopt Christian religion (by way of Baptism). The Committee had observed that no such stamp paper was sold to the petitioner in the year 2007. Statement of the father of the Church was also recorded during enquiry.

6. The learned AGP submits that petitioner has deliberately delayed the hearing of the matter for obvious purposes as she was a elected person. The Committee had communicated the next date of hearing on the cell phone of the petitioner, according to learned AGP.

7. We have perused the Roznama. It does not show that matter was listed on 14th August, 2014 for hearing. Roznama dated 11th September, 2014 refers to absence of the petitioner and thereafter the Three Member Committee proceeded to close the matter, for orders.

8. It is a curious case where on the earlier occasion the Committee validated the claim of the petitioner without calling for vigilance cell report. The matter was remanded by the High Court. On the second occasion the Committee closed the matter on a date which was not intimated to

the petitioner. There is no evidence to show that the date of hearing i.e. 11th September, 2014 was intimated to the petitioner. Though the learned AGP submitted that the petitioner tried to take number of adjournments and delay the hearing of the matter, the Committee could have dealt with such approach firmly in an appropriate way. We find that the committee has failed to diligently decide the matter after the matter was remanded by the High Court by an order dated 24th February, 2011. Right from the year 2011 till the passing of the order on 11th September, 2014 the issue was kept lingering. This speaks about the manner in which the committee functions. The petitioner's term is to expire in the month of October, 2015. The ultimate benefit of this delay in disposal of the matter goes to the petitioner. The purpose of timely verification of caste claims particularly of the persons like the petitioner is lost in the process.

9. Still we would like to intervene in the matter with an object that the petitioner must get an appropriate opportunity of hearing.

10. For the reasons stated above, impugned order dated 11th September, 2014 is quashed and set aside and matter is remanded back to the Committee. The petitioner, if desires would file reply to the Vigilance Cell Report within 15 days from today before the Committee.

The Committee shall thereafter list the matter for final hearing and dispose of the same as expeditiously as possible within one month from the date of filing of the reply by the petitioner.

11. The Registry is directed to forward copy of this order to Principal Secretary/Secretary, Social Welfare Department, Government of Maharashtra. The Secretary may call for report from the Committee in respect of matter. The next date before the Committee is fixed after 15 days i.e. 5th May, 2015 before which date the petitioner may file his reply.

12. The Committee is directed to decide the matter on the available evidence placed on record and the reply of the Vigilance Cell report, if filed by the petitioner.

13. The Rule is made absolute in the above terms. No costs.

(V.L. ACHLIYA, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)