

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.475 OF 2015

Lawrence Salvador D'Souza
Age: 47 years,
r/o Augustin Villa, Majiwada Village,
Thane- 400 601 (Maharashtra)
Versus

....Petitioner.

1 The State of Maharashtra,
through its secretary Social
Justice Department Mantralaya
Mumbai 400 032

2 Divisional Caste Certificate
Scrutiny Committee No.1, Mumbai
Division, Through its Member
Secretary, having its office at
5th floor, Konkan Bhavan, CBD,
Belapur, Navi Mumbai-400614

3 Sub Division Officer, Thane,
Sub Divisional, District Thane
(Maharashtra)

4 Thane Municipal Corporation,
through its Commissioner, having
its office at Pachpakhadi, Thane
(Maharashtra)

5 Devram Laxman Bhoir
r/o Janaki Niwas near Jai Jalaram
Bappa temple, Balkum Pada No.3,
Thane-400 608 (Maharashtra)

6 The Chief Election Commissioner,
Maharashtra State Election Commission,
1st floor, Administrative Building,

Hutatma Rajguru Chowk,
Madam Cama Road,
Mumbai 400032

...Respondents.

Mr. Anil Sakhare, Senior Counsel and Mr. Nikhil Sakhardande and Mr. Joel Carlos i/by Sandesh D. Patil, advocates for the Petitioner.

Mr. Vikas Mali AGP for the respondent nos.1 to 3 and 6.

Mr. R.S.Apte, Senior Counsel i/by Mr. Mandar Limaye, advocates for the respondent no.4.

Mr. P.K.Dhakephalkar, Senior Counsel with Mr. R.K.Mendadkar, advocates for the respondent no.5.

**CORAM : SMT. VASANTI A.NAIK
& SHRI C.V.BHADANG, JJ.**

DATED : February 11, 2015.

ORAL JUDGMENT : (Per Mrs. Vasanti A. Naik, J.)

Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

By this petition, the petitioner challenges the order of the scrutiny committee, dated 29-30.12.2014 invalidating the claim of the petitioner of belonging to the East Indian Christian Community. The petitioner also challenges the consequential order disqualifying the petitioner as the Corporator of the Thane Municipal Corporation.

Few facts necessary for deciding the writ petition are stated thus:

The petitioner and the respondent no.5 contested the election

to the Municipal Corporation, Thane on a post reserved for the other backward classes. The petitioner claims to belong to East Indian Christian Community, which falls in the other backward classes. The caste claim of the petitioner was sent to the respondent no.2-scrutiny committee for verification and the scrutiny committee on a consideration of the material on record, validated the caste claim of the petitioner. The respondent no.5, who had also contested the election and was defeated, challenged the order of the scrutiny committee by filing a writ petition. The said writ petition was partly allowed and the matter was remanded to the scrutiny committee for a fresh decision on merits. The scrutiny committee, by the impugned order dated 30.12.2014 invalidated the caste claim of the petitioner. The said order, as also the consequential order of the Corporation, disqualifying the petitioner, has been impugned in the present petition.

Shri Sakhare, the learned senior counsel for the petitioner inter-alia challenges the order of the scrutiny committee on the ground that the scrutiny committee had not issued a show-cause notice to the petitioner as required by the provisions of Rule 17(11) of the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (herein after

referred to, as the Rules of 2012 for the sake of brevity). It is submitted that the vigilance enquiry was conducted after the remand of the matter on 17.11.2014 and the report of the vigilance cell dated 17.11.2014 supported the caste claim of the petitioner. It is stated that on 3.12.2014, an application was made by the respondent no.5-complainant for consideration of some additional documents and the scrutiny committee allowed the said application and the vigilance cell conducted a fresh enquiry and submitted the second report dated 6.12.2014. It is stated that after the vigilance cell submitted the second report dated 6.12.2014, no show-cause notice was issued to the petitioner, as required by the provisions of Rule 17(11) of the Rules of 2012. It is submitted that after the petitioner received the report dated 6.12.2014, the petitioner had sought permission to cross-examine the principal and the clerk of the concerned school as the statement of the principal dated 4.12.2014 was considered by the vigilance cell while preparing the report dated 6.12.2014. It is stated that the scrutiny committee did not grant an opportunity to the petitioner to cross-examine the principal, thereby violating the principles of natural justice. It is submitted that though there are other grounds for challenging the order of the scrutiny committee, the petitioner rests his case on the two aforesaid submissions as the order is liable to be set aside in view of the violation of the principles of natural justice.

Shri Mali, the learned Assistant Government Pleader appearing for the scrutiny committee submitted that the scrutiny committee was justified in invalidating the claim of the petitioner. It is, however, admitted by the learned Assistant Government Pleader on the basis of instructions and the original record of the proceedings that no show-cause notice, as required by the provisions of Rule 17(11) of the Rules of 2012 was issued to the petitioner after the vigilance cell submitted the second report dated 6.12.2014. It is also admitted that the scrutiny committee did not grant an opportunity to the petitioner to cross-examine the clerk and the principal of the concerned school after the second report was submitted by the vigilance cell on the basis of new material. It is stated that since the scrutiny committee was duty bound to take a decision within a period of three months as per the directives of this Court, the scrutiny committee, in its wisdom declined permission to the petitioner to cross-examine the principal of the concerned school. The learned Assistant Government Pleader submitted that there was ample material on record to prove that the petitioner did not belong to the East Indian Christian Community and, therefore, the order of the scrutiny committee is not liable to be interfered with.

Mr. Dhakephalkar, the learned Senior Counsel for the respondent no.5, supported the order of the scrutiny committee and submitted that there was substantial compliance of the principles of natural justice. It is submitted that the application filed by the respondent no.5 before the scrutiny committee for invalidating the claim of the petitioner on the ground of fraud was remanded to the scrutiny committee along with the caste claim of the petitioner by the High Court in the first round of litigation. It is stated that the school records were available before the scrutiny committee when it initially decided the caste claim of the petitioner and the statements of the principal and the clerk of the concerned school were recorded. It is stated that some prima-facie observations are made by this Court in the previous round of litigation while remanding the matter to the scrutiny committee and it is observed by this Court that the petitioner had fraudulently changed the entries in the school record. It is submitted that the principal of the concerned school was examined and the petitioner was permitted to cross-examine the principal before the remand and there was no necessity of again granting an opportunity to the petitioner to cross-examine the principal after the second vigilance report was submitted on 6.12.2014. It is stated that the vigilance report dated 6.12.2014 was supplied to the petitioner and the order of the scrutiny committee cannot be said to be bad only

because a show-cause notice was not issued to the petitioner in accordance with the provisions of Rule 17(11) of the Rules of 2012. The learned counsel sought for the dismissal of the writ petition.

Mr. Apte, the learned senior counsel for the corporation stated that the corporation has no role to play in the matter of the caste claim of the petitioner and the corporation will take appropriate steps in accordance with the result in the petition and the directions , issued by this Court, if any.

On hearing the learned counsel for the parties, it appears that the scrutiny committee had not granted a fair opportunity to the petitioner before invalidating his caste claim. After the remand of the matter by the High Court to the scrutiny committee, the vigilance cell had submitted the report dated 17.11.2014. It is the case of the petitioner that the first report of the vigilance cell supports the case of the petitioner, however, the scrutiny committee declined to accept the report on the ground that some of the witnesses were not cross-examined by the petitioner. On 3.12.2014, an application was made by the respondent no.5 asking the committee to refer certain documents to the vigilance cell. The application was allowed by the scrutiny committee and the vigilance cell, on a consideration of those documents as also the statement of the principal

,that was submitted to the vigilance cell on 4.12.2014, prepared the second vigilance report dated 6.12.2014. According to the petitioner, the second vigilance report is adverse to the petitioner. After the second vigilance report was submitted by the vigilance cell to the scrutiny committee, it is an admitted position that the scrutiny committee had not issued a show-cause notice to the petitioner though a copy of the report was served on the petitioner. Rule 17(11) casts a duty on the scrutiny committee to call upon a claimant to prove his caste claim by discharging the burden, by issuing a notice in FORM-25, if the scrutiny committee is not satisfied about the claim. Rule 17(11) of the Rules of 2012 clearly necessitates the service of the report on the claimant and also the issuance of the show-cause notice in FORM 25. After the vigilance report was received by the petitioner, by an application dated 9.12.2014, the petitioner requested the scrutiny committee to either grant an opportunity to the petitioner to cross-examine the principal and the clerk of the concerned school or ignore the certificates issued by the concerned school, that were considered by the vigilance cell in the second report dated 6.12.2014. However, the scrutiny committee considered the new documents that were considered by the vigilance cell in the second report dated 6.12.2014 while invalidating the caste claim of the petitioner and also did not grant an opportunity to the petitioner to cross-examine the principal of the concerned school. Since the second vigilance report

dated 6.12.2014 was based on the statement tendered by the principal of the concerned school to the vigilance cell on 4.12.2014 along with a new annexure and document, that was not before the scrutiny committee initially, it was necessary for the scrutiny committee to have issued a show-cause notice to the petitioner against the second vigilance report dated 6.12.2014 and also granted an opportunity to the petitioner to cross-examine the principal of the concerned school. This was all the more necessary, as a statement of the principal of the concerned school was again accepted by the vigilance cell on 4.12.2014 and the documents tendered by the respondent no.5-complainant in pursuance of the application made to the committee on 3.12.2014 were considered while preparing the second report dated 6.12.2014. It was obligatory for the scrutiny committee to grant an opportunity to the petitioner to show cause against the adverse vigilance report. The provisions of Rule 17(11) of the Rules of 2012 are mandatory and the failure on the part of the scrutiny committee to issue a notice in FORM 25 before invalidating the claim of the petitioner would vitiate the order of the scrutiny committee. FORM-25 is so styled, that a claimant is made aware of the reasons for the dis-satisfaction of the committee about the caste claim. In the absence of a show-cause notice, much less a notice in FORM-25, the petitioner had no opportunity to show cause. Also, if the fresh statement of the principal of the concerned school was considered by the vigilance

cell, it was necessary to grant an opportunity to the petitioner to cross-examine the principal. The order of the scrutiny committee is rendered vulnerable due to the non-compliance of the principles of natural justice. Merely because some prima-facie observations were made by this Court while remanding the matter to the scrutiny committee, it cannot be said that an opportunity to the petitioner was not necessary. Firstly, the observations are prima-facie observations and secondly, if a finding of fraud is to be recorded against the petitioner on an application by the respondent no.5, it would be necessary to grant an opportunity to the petitioner before recording the finding.

For the reasons aforesaid, the writ petition is partly allowed. The impugned orders dated 29.12.2014 and 30.12.2014 are hereby quashed and set aside. The matter is remanded to the respondent no.2-scrutiny committee for deciding the caste claim of the petitioner and the application filed by the respondent no.5 in accordance with law. It is needless to state that the scrutiny committee would be required to grant an opportunity to the petitioner to cross-examine the principal and the clerk of the concerned school if the petitioner, so desires and also issue a show-cause notice to the petitioner in FORM-25 as per Rule 17(11) of the Rules of 2012, if the scrutiny committee is not satisfied with the claim. We direct the scrutiny committee to decide the matter as expeditiously as

possible and positively within a period of three months from the date of appearance of the parties before the scrutiny committee. The petitioner undertakes to appear before the scrutiny committee on 27.2.2015 so that issuance of notice to the petitioner could be dispensed with. Since the order of the of the scrutiny committee is set aside, the consequential order of the corporation, disqualifying the petitioner would not survive and the same is set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

(C.V.BHADANG, J.)

(MRS. VASANTI A.NAIK, J.)