

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

WRIT PETITION NO.3696 OF 2014

Vandana Pandharinath Gidh .. Petitioner.
Vs.
Kalyani Nitin Patil & Ors. .. Respondents.

Mr.A.A. Kumbhakoni, Sr. Advocate a/w Mr.Ashutosh M. Kulkarni for
the Petitioner.
Mr.R. S. Apte, Sr. Advocate i/b Mrs.Neeta Karnik for the Respondent
No.1.
Mr.S.N. Patil AGP for Respondent Nos.2 to 4.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 26TH FEBRUARY, 2015

P.C.

1. When the petition was on board on 30th January, 2015 and on 17th February, 2015 and all subsequent dates, the parties were put to notice that the same will be disposed of finally at the stage of admission.

2. The challenge in this petition is to the Caste Certificate dated 12th August, 2005 issued to the first respondent and the order passed on 26th October 2006 by the Caste Scrutiny Committee by which the said Caste certificate was validated.

3. The petitioner was granted the Caste Certificate dated 12th August, 2005 by the Sub-Divisional Officer, Pachora Division,

District Jalgaon certifying that the first respondent belongs to Kunabi, Other Backward Class. The said certificate has been validated by the Caste Scrutiny Committee by the impugned order.

4. It will be necessary to make a reference to certain factual aspects of the case. It is pointed out in the petition that on 11th May, 2013 the first respondent was elected as the Mayor of the Kalyan Dombivali Municipal Corporation. It is pointed out that on 9th May, 2013 an objections were raised about the eligibility of the first respondent to contest the election for the post of Mayor on the ground that she does not belong to other backward class. In paragraph 12 of the petition, it is stated that the objection was raised by the petitioner and two others. It is pointed out by the petitioner that on 11th May, 2013 the said objection was rejected. The petitioner has referred to the communication dated 11th May, 2013 addressed by the Municipal Secretary to the effect. The case made out in the petition is that thereafter the petitioner applied under the Right to Information Act, 2005. The petitioner is relying upon an application made by her under the Right to Information Act, 2005 and the communication issued to her by the Secretary of the Divisional Caste Scrutiny Committee No.1 on 28th June, 2013. The said communication records that the file of the case of the first respondent was not traceable and it will be very difficult to trace the file.

5. The attention of the Court is invited to Writ Petition

No.4312 of 2006 filed by the first respondent in this Court. By the said petition a challenge was made to the order of the Caste Scrutiny Committee holding the Caste Certificate of the first respondent to be invalid. Under the order passed by this Court on 19th August, 2006, the Caste Scrutiny Committee was directed to decide the matter afresh. In paragraph 16 of the petition, it is pointed out that when another person made an application under the Right to Information Act, 2005 the information regarding the caste validity certificate was not granted on the ground that the file could not be traced.

6. Thereafter, the petitioner filed Writ Petition No.8590 of 2013 in this Court. The said writ petition was disposed of by this Court by the order dated 3rd March, 2014 by passing the following order :

“The affidavit filed by the first Respondent discloses that by order dated 26th October 2006, the Caste Scrutiny Committee has granted the caste validity certificate. In view of the said statement, the learned senior Counsel appearing for the Petitioner seeks permission to withdraw this Petition with liberty to file a fresh Petition for various reliefs including the relief of setting aside the order dated 26th October 2006. We accordingly dismiss the Petition as withdrawn with liberty as prayed.

However, we make it clear that all objections of the first Respondent to the Petition which may be filed by the Petitioner are also kept open.”

In terms of the liberty granted by this Court under the said order, the present petition has been filed on 19th March, 2014.

7. When this petition was placed on board on 13th November, 2014 this Court directed the Government Pleader to produce the record of the case of the first respondent for perusal of the Court.

8. The submission of the learned senior counsel appearing for the petitioner is that there is a serious doubt whether the impugned order dated 26th October, 2006 was actually passed on that day or was an ante-dated document. The attention of the Court was invited to another order of the same date passed by the second respondent-Caste Scrutiny Committee in the case of the first respondent. The said order is a part of the roznama. It is pointed out that the said order is not signed by the Chairperson of the Scrutiny Committee. A contention is raised that on 26th October, 2006 there appear two orders passed by the Scrutiny Committee, one is a very cryptic order and the other one is a detailed order. After the record of the case of the first respondent was produced before this Court, it was submitted before the Court that the first order dated 26th October, 2006 is signed only by two members of the second respondent committee which records that on 26th October, 2006 in a meeting held by the committee, a decision was taken to validate the caste claim of the first respondent. However, it is pointed out that

another order purportedly passed on the same day was a detailed order, which is signed by the Chairman and other two members. The learned senior counsel representing the first respondent pointed out that the roznama shows that when the parties were heard on 20th October, 2006 all three members of the committee were present. He pointed out that merely because the entry in the roznama dated 26th October, 2006 is not signed by the Chairman, it does not mean that there is any illegality committed by the Scrutiny Committee. He pointed out that the reasoned order passed by the Scrutiny Committee is signed by the Chairman of the committee and other two members. He urged that if the Chairman was not agreeable, he could have passed a separate order.

9. The learned senior counsel appearing for the first respondent also submitted that this Court should decline to entertain this petition on account of gross delay. He urged that challenge to the order 26th October, 2006 is belated.

10. The first issue which is to be dealt with is of the gross delay in filing this petition. There is an averment made in the petition that when the first respondent sought to contest the election of the Mayor, an objection was raised to the eligibility by the petitioner and two others. The fact that the objection was raised by the petitioner is borne out by the communication of 11th May, 2013 issued by the Municipal Secretary. The petitioner has averred that

an application was made by her on 7th June, 2013 under the Right to Information Act 2005 to the Information Officer of the second respondent for demanding the copies of various documents in relation to validation of the caste claim of the first respondent. The communication dated 20th June, 2006 was issued by the Member Secretary of the Divisional Caste Scrutiny Committee stating that the record of case could not be traced. It is stated that approximately there were 5 to 6 lacs files in the record and considering limited hands available, it is not possible to trace out the file. It is stated that a period of 9 to 10 months will be required for the computerisation of record of the disposed of cases. One Sarika Nitin Shelar applied under the Right to Information Act, 2005 for the same documents. By a letter dated 13th December 2011, the member secretary of the Caste Scrutiny Committee informed her that the file of the case could not be traced out.

11. As pointed out earlier, the impugned order dated 26th October, 2006 was passed by the second respondent committee on the basis of the order of remand passed by this Court in the petition filed by the first respondent. It will be necessary to make a reference to paragraph 17 of the petition which reads thus :

“Therefore the Petitioner earlier had filed Writ Petition No.8590 of 2013 challenging the Caste Certificate as well Caste Validity Certificate issued in

favour of the Respondent No.1 wherein the Respondent No.1 filed her reply and in her reply the Respondent No.1 annexed the copy of the impugned order dt.26/10/2006 passed by the Respondent No.2, the copy of which is hereto annexed and marked as Exhibit-L. In view thereof when the petition appeared for admission on 3/03/2014 the Petitioner sought for withdrawal of the said petition with liberty to file fresh petition for challenging the order dt.26/10/2006. Accordingly, the Hon'ble Court (Coram : A.S.O.Ka & A.A. Sayed, JJ.) was pleased to dismiss the petition as withdrawn with liberty as prayed. Hereto annexed and marked as Exhibit-M is the copy of the said order dt.3/03/2014."

We have also quoted the order dated 3rd March, 2014 passed by this Court in Writ Petition No.8590 of 2013. After hearing the learned counsel appearing for the first respondent, the petition was permitted to be withdrawn with liberty to file a fresh petition. The present petition has been filed on 19th March 2014. The petitioner became aware of the impugned order when it was annexed to reply in the earlier petition.

12. In any event, it is not the case that the petitioner was a party to the proceedings before the second respondent - committee. There is a specific averment made in the petition as to why the earlier petition was withdrawn by the petitioner. Therefore, we are of the view that the delay does not come in the way of entertaining this

petition. Moreover, the issue involved is about the manner in which the second respondent - Caste Scrutiny Committee has dealt with the caste claim of the first respondent, who is the elected councilor of a Municipal Corporation.

13. We have carefully perused the record. On 19th August, 2006 in Writ Petition No.4213 of 2006 filed by the first respondent, an order of remand was passed by directing the second respondent Committee to decide the caste claim within a period of four months from 11th September, 2006. The roznama shows that on 4th October, 2006, the matter was placed before the second respondent Scrutiny Committee. The roznama is signed by two members of the Scrutiny Committee. The matter was adjourned till 18th October, 2006. The roznama dated 18th October, 2006 is signed by the Chairman and a member. The roznama records that the case was adjourned to 20th October, 2006. The English translation of the roznama of 20th October, 2006 which is written in Marathi reads thus :

“Today on 20th October, 2006 the complainant filed written arguments and the opponent made the oral submissions. Hence, the matter is kept pending for the Judgment. “

This is a handwritten roznama. The roznama of this date is signed by all the three members including the Chairman.

14. Thereafter, there is a roznama dated 26th October, 2006

again in Marathi language. The English translation thereof reads thus:

“On 26th October, 2006 in the meeting of the committee, there was an indepth discussion on the papers produced by Smt. Kalyani Patil, and the facts brought on record from the written as well as oral submissions of her Advocate Shri Jagtap, the arguments of the Advocate for the complainant and the evidence / deposition of the complainant dated _____. After accepting the evidence available, the caste claim of Smt. Patil is proved and therefore, it is unanimously decided to accept her claim.”

15. The aforesaid order is signed on the same day by only two members. The Chairman of the said Committee has not signed the order dated 26th October, 2006 recorded in the said roznama. The roznama clearly records that there was a meeting of the Committee held on 26th October, 2006 in which the material and evidence on record was discussed and considered. There is a clear finding recorded that the evidence adduced by Smt. Patil establishes her caste claim. It records that her caste claim is unanimously held to be valid. This unanimous decision is signed only by two members. The said order does not record that there is a separate judgment delivered or proposed to be delivered containing the reasons. Though only two members have signed, it is recorded that the Committee unanimously decided to uphold the validity of the caste

claim. More importantly, in the typed separate order, it was specifically recorded that in the meeting there was unanimous decision to uphold the caste claim of the first respondent. The roznama does not record that there are separate reasons recorded. The roznama order itself records a finding that the evidence adduced by the first respondent was valid and therefore, her caste claim has been established. Apart from the fact that the roznama order does not record existence of any separate order recording reasons, we fail to understand as to how there could be a separate judgment when the order recorded in the roznama itself records a finding that the caste claim of the first respondent was valid. The roznama does not record that the Chairman was present. The roznama does not record that subsequently the Chairman approved unanimous decision taken by the two other members. On the contrary, what is recorded in the roznama in the form of the order, clearly shows that when the meeting of the Caste Scrutiny Committee was held, the Chairman was absent. The Respondents have contended that a very specific reference to the meeting held on 26th October, 2006 is made in the typed reasoned order. This has to be considered in the context of the fact that the roznama dated 4th October 2006 and 18th October 2006 shows that only two members of the Committee were present and the roznama is signed only by the two members who were present. The roznama dated 20th October, 2006 when arguments were heard is signed by all the three members including the Chairman. This has to be also appreciated in the light of communication dated 28th June,

2013 issued by the Member Secretary of the second respondent committee to the petitioner stating that the file of the case was not available. It specifically records that the work of computerisation will be completed in 9 to 10 months and if the file is traced out, a communication will be issued thereafter.

16. We must note here that the said letter dated 28th June, 2013 is based on the report of the same date signed by the Record Keeper and Clerk addressed to the second respondent Committee. The said letter records that the file was searched continuously for a period of eight days but the same was not found. It is also pertinent to note that the order dated 3rd March, 2014 passed by this Court in Writ Petition No.8590 of 2013 records that after an affidavit was filed by the first respondent disclosing that by the order dated 26th October, 2006, the caste scrutiny committee has granted the caste validity certificate, the earlier petition filed by the present petitioner was withdrawn and within few days the present petition has been filed.

17. At this stage we must make a reference to the Government Resolution dated 25th January, 2000. Before the Statutory Rules were framed, the Government Resolution was issued prescribing the procedure. The argument is that in view of the Government Resolution, two out of three members can hear and decide the caste claim. The said submission is made on the basis of what is provided

in the Government Resolution. However, in the facts of the present case, the roznama order dated 20th October, 2006 shows that all three members of the Committee were present when the arguments were heard. The roznama order dated 26th October, 2006 shows that in the meeting held on that day, a conclusion was arrived at that the first respondent has established her caste claim. Sub-clause (3) of clause 2 of the Government Resolution provides that quorum of the Committee is of two members. It provides that even if two members decide the Caste claim, the ultimate validity certificate will be issued under the signature of three members. Sub-clause (3) of clause 2 will have no application to the facts of the present case inasmuch as the roznama dated 20th October, 2006 shows that hearing was given by all the three members including the Chairman. But the roznama dated 26th October, 2006 shows that the decision was only by two members.

18. Thus, there are two orders on record granting validly certificate to the first respondent. The first order of the same date recorded in the roznama is signed by only two members and the Chairman has not signed the same. The said order refers to the meeting of the Scrutiny Committee held on that day. The said order records that there were deliberations on the material on record. Even a conclusion has been recorded that considering the evidence adduced by the first respondent, her caste claim is unanimously held as valid. From the language of what is recorded in the roznama, it is apparent that it is not merely a recording of what transpired in the

meeting but in so many words it records that the first respondent has established her caste claim and therefore, unanimously, her caste claim is held as valid. In the face of this order signed by the two members, we fail to understand how there could be a separate typed judgment recording additional reasons which is signed by all three members including the Chairman in which surprisingly there is a reference to the meeting of the Committee held on 26th October, 2006. The caste claim of the first respondent could not have been decided under two separate orders, one signed by two members and the other signed by all three members. Apart from well settled principle that the justice should not only be done but it should manifestly seen be done, we are of the view that the entire process followed by the Caste Scrutiny Committee while determining the caste claim stands vitiated. Considering the manner in which the whole exercise has been done, this Court cannot affix its seal of approval on the orders of the Caste Scrutiny Committee. Therefore, there is no option but to set aside the impugned order and direct the Caste Scrutiny Committee to consider the caste claim afresh and pass fresh orders.

19. Learned AGP states that now the caste claim will have to be considered by the Caste Scrutiny Committee at Dhule. There are three prayers made in this petition. There is a prayer for setting aside the Caste Certificate. It is obvious that the caste certificate cannot be set aside as a fresh adjudication will have to be ordered on the

caste claim. Another prayer is for setting aside the election of the first respondent as an elected councilor of Kalyan Dombivli Municipal Corporation. The last substantive prayer is to initiate action against the first and second respondents for manipulating the record. As held earlier, we propose to pass an order of remand. The validity of the caste claim will be decided by the Scrutiny Committee afresh. Unless the caste claim of the first respondent is finally decided by the Scrutiny Committee, the drastic order of setting aside the election of the first respondent as the elected councilor cannot be passed. Suffice it to say that considering the order which we propose to pass, at this stage, we are not inclined to grant the relief in terms of prayer clause (d) of directing prosecution

20. Accordingly, we dispose of the petition by passing the following order :

- (i) The impugned order dated 26th October, 2006 is hereby quashed and set aside;
- (ii) The matter of the verification of the caste claim of the first respondent on the basis of caste certificate dated 12th August, 2005 is remanded to the Divisional Caste Scrutiny Committee at Dhule;
- (iii) We direct the petitioner and the first respondent to appear before the Divisional Caste Scrutiny Committee at Dhule on 13th April, 2015 at 11 am. The Caste Scrutiny Committee at Dhule shall issue notice to the complainant who was heard, before

passing the impugned order. The Caste Scrutiny Committee on the basis of material available on record shall decide the caste claim afresh after giving an opportunity of being heard to all concerned. The caste claim shall be decided afresh as expeditiously as possible and preferably within three months from the date on which the parties appear before the Caste Scrutiny Committee;

- (iv) We make it clear that no adjudication on the merits of the caste claim of the first respondent is made by us and all issues are kept open;
- (v) Prayer (d) is rejected. As far as prayer clause (c) is concerned, we grant liberty to the petitioner to take out appropriate proceedings in accordance with law, in the event the caste claim of the first respondent is invalidated after the remand;
- (vi) We direct the AGP to place on record a complete photocopy of file perused by this Court;
- (vii) The file produced for perusal of the Court is returned to AGP with a direction to forward to the Divisional Caste Scrutiny committee, Dhule.
- (viii) The petition is disposed of on above terms.

(A.K. MENON, J.)

(A.S. OKA, J.)