

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9380 OF 2014

Sandip Patil Buva Mate and anr. ..Petitioners.
vs.
Pratibha G. Shewale and ors. ..Respondents.

Mr. Tejas Dande a/w. Mr. Bharat Gadhavi i/b M/s. Tejash Dande & Associates for the Petitioners.

Mr. Rajiv Patil, Sr.Advocate i/b Mr. N.V. Bhutekar for Respondent No.1.

Ms Aparna Vhatkar, AGP for Respondent Nos.2 to 4.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 04 February 2015.

Date of Pronouncing the Judgment : 05 February 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is disposed of finally.

2] This petition is directed against the order dated 16 September 2014 made by the Additional Commissioner, Pune Region, Pune allowing the appeal against the order dated 4 January 2014 made by the Additional Collector, Pune disqualifying respondent No.1 from continuing as a Member and Sarpanch of the Grampanchayat Khadakwasla.

3] The respondent No.1 was elected as a Member of the Panchyat through a constituency reserved for 'OBC-Women' Thereafter,

respondent No.1 was elected as Sarpanch, which post, again was reserved for 'OBC-Women'. The election was on basis of Caste Certificate dated 6 June 2012 purportedly issued by the Caste Certificate Scrutiny Committee, No.3, Pune.

4] The petitioners, by resort to the provisions of Sections 14 and 16 of the Bombay Village Panchayats Act, 1958 (said Act), applied to the Collector to decide the question as to whether respondent No.1 was subject to any disqualification under Section 14 of the said Act, on the ground that the Caste Certificate had in fact not been issued by the Caste Certificate Scrutiny Committee at all.

5] The Additional Collector, by order dated 4 January 2014, upheld the petitioners' objection and declared that respondent No.1 stands disqualified from continuing as a Member or Sarpanch of the Grampanchayat. The Additional Commissioner, Pune by the impugned order dated 16 September 2014, however, reversed the Additional Collector's order. Hence, the present petition.

6] In this case, the Caste Certificate Scrutiny Committee, under the Right to Information Act, had informed the petitioners that the Caste Certificate No.69569 dated 6 June 2012, had in fact never

been issued by the Caste Certificate Scrutiny Committee. On basis of the same, the petitioners approached the Collector by invoking the provisions contained in Section 16(2) of the said Act. The Additional Collector, once again, made a reference to the Caste Certificate Scrutiny Committee. The Caste Certificate Scrutiny Committee by communication dated 23 July 2013, very categorically submitted that Caste Certificate No.69569 had in fact been issued in favour of one *Lahu Devram Salve*, who belongs to the Shegar Dhangar caste and that no Certificate bearing No.69569 or otherwise was even issued in favour of respondent No.1, certifying that she belongs to Kunbi caste.

7] On basis of the aforesaid, the Additional Collector, in exercise of powers conferred upon him by Section 16(2) of the said Act ruled that respondent No.1 stands disqualified from holding the post of Member or Sarpanch of the Grampanchayat.

8] The Additional Commissioner, in making the impugned order, however, has held that until and unless the Caste Certificate Scrutiny Committee actually cancels the Caste Certificate No.69569 dated 6 June 2012, there can be no bar to respondent No.1 continuing as a Member/Sarpanch of the Grampanchayat. On this basis, the

Additional Commissioner has reversed the Additional Collector.

9] Mr. Tejas Dande, learned counsel for the petitioners submitted that in the present case, since the Caste Certificate Scrutiny Committee has categorically come on record to state that Caste Certificate No.69569 dated 6 June 2012, had not at all been issued by them, there was no question of any formal cancellation thereof. In any case, the communication dated 23 July 2013, by itself ought to have been treated as a letter of cancellation of the Caste Certificate Scrutiny Committee of the Caste Certificate No.69569 dated 6 June 2012.

10] Mr. Rajiv Patil, learned senior advocate for respondent No.1 submitted that proper remedy for the petitioners was to either file an election petition under Section 15 of the said Act within the prescribed period of limitation or to approach the Commissioner under Section 39 of the said Act, seeking removal of respondent No.1 as Sarpanch of the Grampanchayat. The resort to proceedings under Section 16 of the said Act, were entirely misconceived and the Additional Collector ought not to have entertained the same.

11] Mr. Patil placed reliance upon the decision of Division Bench of this Court in case of *Shivling s/o. Umrao Jadhav vs. State of Maharashtra*¹, which lays down that the Collector is not empowered to exercise powers under Section 16 of the said Act to decide the verification of the Caste Certificate and disqualify an elected person on the ground that the Caste Certificate was forged and bogus or on the ground of invalidity of caste claim. In light of the law laid down by this Court in the said case, Mr. Patil submitted that the order of Additional Collector dated 4 January 2014 was without jurisdiction and therefore, the same was rightly set aside by the Additional Commissioner.

12] There is no serious dispute that in case respondent No.1 does not belongs to OBC category, then she would not qualifying to continue as either Member or Sarpanch of the Grampanchayat. In fact, the provisions contained in Section 10-1A of the said Act provide that every person desirous of contesting election to a seat reserved for Scheduled Castes, Schedule Tribes or, as the case may be Backward Class of citizens, shall be required to submit, alongwith the nomination paper, Caste Certificate issued by the Competent Authority and Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled

1 2008(2) Mh.L.J.553

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.

13] Further, in the present case, the dispute raised by the petitioners, was not whether the Caste Certificate issued by the Caste Certificate Scrutiny Committee was correctly issued or not. The dispute in the present case, is basically whether the Caste Certificate was at all issued by the Caste Certificate Scrutiny Committee.

14] The Additional Collector, in the present case, has not himself decided the issue of verification of the Caste Certificate, as was the position in case of *Shivling (supra)*. Instead, the Additional Collector made reference to the Caste Certificate Scrutiny Committee to enquire into the genuineness of the Caste Certificate purportedly issued in favour of respondent No.1. The Caste Certificate Scrutiny Committee, in terms, has responded that Caste Certificate No.69569 dated 6 June 2012 upon which respondent No.1 had placed reliance, was not at all issued by them. In such circumstances, it is apparent that the Additional Collector has not exceeded his jurisdiction in making the order dated 4 January 2014, holding that respondent

No.1 stands disqualified from continuing as a Member and Sarpanch of the Grampanchayat. In a situation of this type, there was no further necessity of proceedings before the Caste Certificate Scrutiny Committee for the purposes of declaring as invalid the Caste Certificate No.69569 dated 6 June 2012. The communication dated 23 July 2013 issued by the Caste Certificate Scrutiny Committee, was crystal clear. There was no ambiguity that the Caste Certificate, upon which respondent No.1 placed reliance, was not at all the Caste Certificate issued by the Caste Certificate Scrutiny Committee. In such circumstances, there arises no question of making any formal order of cancellation of the same. In any case, the communication dated 23 July 2013 itself should have been construed as cancellation or declaration of invalidity.

15] The Additional Commissioner has, therefore, adopted a hyper-technical approach in the matter. Ultimately, it is to be noted the posts of Member or Sarpanch of Grampanchayat are public posts vested with duties of public nature. Once, it is found that such post were usurped by a person, based upon a certificate, which is *ex-facie* a non-genuine one, there was no question of permitting such a person to continue in the Membership or as Sarpanch of the Grampanchayat on the spacious plea that there is no formal order of

cancellation of such Certificate. The issue of cancellation would have arisen in case, the Caste Certificate Scrutiny Committee had admitted that such Certificate had indeed been issued by the Committee and the allegations was that the same had been improperly issued. The impugned order made by the Additional Commissioner is therefore, vitiated by an error apparent on face of record.

16] There is no merit in the submissions of Mr. Patil that the resort ought to have been held to the provisions contained in Section 15 or Section 39 of the said Act. No doubt, resort to Section 15 of the said Act may have been permissible. However, that by itself would not bar the proceedings under Section 16(2) of the said Act, once it is found that Caste Certificate, on the basis of which respondent No.1 got elected, was far from genuine. Section 39 of the said Act, operates in different field. The same applies to removal from office any Member or Sarpanch, who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. The issue with which we are concerned is not the one which would ordinarily fall in the realm of Section 39 of the said Act, unless ofcourse, if it is assumed that the submission of such

a fake Caste Certificate, amounts to disgraceful conduct. Even in such a case, merely because some additional remedy may be available by way of resort to Section 39 of the said Act, that by itself would not bar the proceedings under Section 16(2) of the said Act, particularly where issue of disqualification is involved.

17] For the aforesaid reasons, the impugned order dated 16 September 2014 made by the Additional Commissioner, Pune Region, Pune is set aside. The order made by the Additional Collector, Pune dated 4 January 2014 is restored.

18] Rule is made absolute in terms of prayer clause (b). There shall be no order as to costs.

(M. S. SONAK, J.)