

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11797 OF 2012

...

1.Mr.Kaustubh D.Gokhale

2.Mr.Sulekh Anees Don

...Petitioners

v/s.

1.Mr.Harishchandra G.Hardas

2.Kalyan Dombivali Municipal Corporation

3.The State Election Commission

4.The Returning Officer

5.The Caste Certificate Scrutiny Committee

6. The State of Maharashtra

through its Secretary,
 Department of Administration,

Mantralaya, Mumbai

...Respondents

...

Mrs.Neha Bhide with Mr.Y.M.Pendse for the Petitioners.

Mr.R.D.Soni I/b Ram & Co. for Respondent No.1.

Mr.A.S.Rao for Respondent No.2.

Ms.D.S.Mondkar-Hule for Respondent No.3.

Mr.C.P.Yadav, AGP for Respondents Nos.5 & 6.

...

CORAM : ANOOP V. MOHTA &

A.A.SAYED, JJ.

DATED : 25 AUGUST 2015

ORAL JUDGMENT: *(Per Anoop V.Mohta, J.)*

Rule. Returnable forthwith. Heard finally.

2. The Petitioners by this Petition have challenged the stated inaction on the part of the Commissioner of Kalyan Dombivali Municipal Corporation (K.D.M.C.) and prayed that the Office of the Municipal

Councilor for Ward No.19 of Respondent No.2-KDMC be declared as vacant and also prayed to set aside the Caste validity Certificate issued to Respondent No.1. Prayer is also made to direct the Respondent No.2-KDMC and Respondents Nos.3 & 4 to take steps to fill the vacant post of Municipal Councilor for the said Ward and with further prayer to recover the deposit availed by Respondent No.1 from the State Exchequer for the period from 2010 to 2012 in his capacity as Municipal Councilor of Ward No.19.

3. Respondents contested the issues in all respect. However, considering the undisputed position on record and in view of the judgment of Division Bench of this Court in Writ Petition No.10194 of 2010 (Smt.Chaitrali Prakash Borhade v/s. Mr.Rejendra Jaywant Dewalekar & ors.) dated 8 June 2012, whereby this Court declared that “Dewalekar as belonging to OBC are declared as non-est from its inception and the same are quashed and set aside”. By reasoned order highlighted portion of paragraph 3 of the Government Resolution dated 19 July 2011 was also quashed and set aside being illegal and unconstitutional. The Respondent No.1 got elected on the basis of same Vaishya-Wani caste (OBC). Therefore, in view of above judgment of this Court the caste Vaishya-Wani itself is not in existence to claim the benefits of OBC so availed by

Respondent No.1. Therefore, there is no question to continue to enjoy the post of Councilor as contended by the learned Counsel appearing for the Petitioners.

4. There is substance in the argument so made. However, the contention of the Respondents is that by Government Resolution dated 1 March 2014 the same caste Vaishya-Wani (OBC) has been included in the list and therefore Respondent No.1's case can be saved and/or protected in view of this inclusion & it goes to the root so far as the Respondent No.1's case is concerned. The fact of non-existence of the caste on the date of claim of Respondent No.1, till Government Resolution dated 1 March 2014, itself sufficient to dislodge the claim and the case and related benefits of Respondent No.1.

5. However, in the interest of justice and by keeping all points open we are inclined to direct Respondent No.2-KDMC to decide the representation dated 14 August 2012 of the Petitioners afresh in accordance with law, as the same is also supported by communication of the Commissioner dated 6 October 2012. Since the representation is pending since 2012 for no justifiable reason, we are inclined to direct the Respondent-Corporation to dispose of this representation as early as possible preferably within four weeks from today.

6. Rule made absolute accordingly. The Petition is disposed of with liberty. All points kept open. No order as to costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA J.)