

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2204 OF 2014

Minakshi Manohar Gholap @
Mrs.Priyanka Suryakant Shrungare ... Petitioner

v/s

State of Maharashtra & ors. ... Respondents

Mr.Y.S. Jahagirdar, senior counsel along with Mr.Vikram Chavan for
the petitioner.

Mr.Niranjan Pandit, A.G.P for Resp. Nos.1 and 2.

Ms.Shobha Ajitkumar for the Resp. No.3 B.M.C.

Mr.R.K. Mendadkar for the respondent No.4.

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

DATED : 28 JANUARY 2015

P.C.:

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

By this petition, the petitioner impugns the order dated 19th January 2012 rejecting the claim of the petitioner of belonging to Khatik, Schedule Caste.

The petitioner had contested the election of Mumbai Municipal Corporation on a seat earmarked for the Schedule Caste-Schedule Tribe category. The petitioner was elected. The respondent No.4 had also contested the election and had secured the second highest votes. The validity certificate issued to the petitioner on 19th January 2012 was submitted to challenge at the behest of the respondent No.4 in Writ Petition No.10028 of 2012. The High Court allowed the writ petition filed by the respondent No.4 and remanded the matter to the Scrutiny Committee. This Court observed that the Scrutiny Committee had not recorded reasons for validating the caste certificate of the petitioner. After the remand of the matter, the Scrutiny Committee, after giving an opportunity to the parties, by the impugned order dated 4 March 2014 invalidated the claim of the petitioner.

Mr.Jahagirdar, the learned senior counsel appearing on behalf of the petitioner submitted that the order of the Scrutiny Committee is liable to be set aside as the Scrutiny Committee did not consider the material documents tendered by the petitioner before the Committee. It is submitted that the old document of the year 1934, in respect of the cousin grandfather of the petitioner by name Sadashiv, though was referred to by the Committee in the order, the same was not considered while deciding the claim of the petitioner. It is stated that only the objection raised by the respondent No.4 in regard to the document of the year 1934 was

recorded in the impugned order but the Scrutiny Committee has not considered the said document while recording the reasons for invalidating the caste claim. It is stated that it was necessary for the Scrutiny Committee to have considered the document. That was old and had great probative value. It is stated that the Committee has committed a serious error in not considering the material document which could throw light on the caste claim of the petitioner.

It is then submitted that the vigilance enquiry was not conducted by the Vigilance Cell at the native place of the petitioner i.e. Palghar and the vigilance enquiry was conducted at Mumbai. It is submitted that proper reasons are not recorded by the Scrutiny Committee while invalidating the claim of the petitioner. It is stated that the Scrutiny Committee has not considered the caste claim of the petitioner by referring to the important relevant documents tendered by the petitioner before the Scrutiny Committee. It is stated that non-consideration of material documents would vitiate the order of the Committee. The learned counsel for the petitioner submitted that from the DNA test it was found that the real brother of the petitioner and the son of Sadashiv are related by birth. It is stated that the said report of the Forensic Department is annexed by the petitioner to the writ petition.

Mr.Pandit, the learned Assistant Government Pleader appearing on behalf of the respondent Nos.1 and 2 supported the

order and submitted that the vigilance report would clearly establish that the petitioner has no relationship with Sadashiv. It is stated that Sadashiv is said to be the brother of Shyam and the vigilance cell had recorded the statement of Shyam that he had no relationship with Sadashiv. It is stated that, it is apparent from a perusal of the vigilance report that the petitioner has no relationship with Sadashiv. The learned A.G.P. sought for the dismissal of the writ petition.

Mr.Mendadkar, the learned counsel for the respondent No.4 submitted that the petitioner did not cooperate with the Scrutiny Committee. It is stated that since no relative of the petitioner was found at Palghar, the vigilance enquiry was conducted in Mumbai. It is stated that the brother of Sadashiv by name Shyam had clearly denied that he was related to Sadashiv and that Sadashiv was his brother. It is stated that Shyam made a statement before the vigilance cell that the petitioner was in no way related to Sadashiv or to the family of Shyam. It is stated that, in this back ground, the Scrutiny Committee was justified in rejecting the caste claim of the petitioner. It is stated that though a show cause notice was issued to the petitioner asking the petitioner to establish her relationship with Sadashiv, the petitioner had not replied the notice. It is stated that the various documents tendered by the petitioner clearly showed that the petitioner does not belong to Khatik, Schedule Caste. It is stated that the document in respect of the cousin grandfather of the petitioner also shows that the petitioner does not

belong to Khatik, Schedule Caste and the caste of the petitioner is Dhangar. It is submitted that the report of the Forensic Department cannot be considered either by this Court or by the Scrutiny Committee as the said report is not issued by a forensic department in the State of Maharashtra and the said is issued by the forensic department in Haryana. The learned counsel for the respondent No.4 also sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on perusal of the impugned order, it appears that the Scrutiny Committee was not justified in not considering the material document of the year 1934 while rejecting the caste claim of the petitioner. It was the case of the petitioner before the Scrutiny Committee that Sadashiv is the cousin grandfather of the petitioner and hence the document of the year 1934 should be considered while deciding the caste claim of the petitioner. The Committee could have either accepted the document and considered the same in favour of the petitioner or could have rejected and discarded the same by giving reasons for doing so. However, it was necessary for the Scrutiny Committee to have considered the old document of the year 1934, which surely had more probative value, while deciding the caste claim of the petitioner.

We have minutely perused the order of the Scrutiny Committee. There is a reference to the document of the year 1934 in respect of Sadashiv only in the submission made on behalf of the

respondent No.4. There is however no consideration of the said document while recording the reasons for invalidating the claim of the petitioner. That there were many documents which could have disproved the case of the petitioner, would be no ground for not considering the important document which could have thrown much light on the controversy. There may be a dozen documents against a party but a 13th relevant document could turn the table and if the 13th document is not considered by an authority, the order would be bad in law. It is a well settled position of law that the non-consideration of a material document would vitiate an order. The Scrutiny Committee was duty bound to consider the document tendered by the petitioner, more so, when the document was old and was specifically relied on by the petitioner. The non-consideration of the material document in respect of Sadashiv would vitiate the order of the Scrutiny Committee.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the Scrutiny committee for a fresh decision on merits. The petitioner and the respondents undertake to appear before the Scrutiny Committee on 16th February 2015 so that issuance of notice to the parties could be dispensed with.

Since the Additional Commissioner of Mumbai Municipal corporation had disqualified the petitioner by the order dated 27th

March 2014 only on the basis of the invalidation of caste claim of the petitioner by the Divisional Caste Scrutiny Committee, the consequential order dated 27th March 2014 is also quashed and set aside.

Rule is made absolute in the aforesaid terms with no order as to costs.

The prayer made by the learned counsel for the respondent No.4 for staying this judgment by a period of four weeks is rejected in the facts of the case. Order accordingly.

At the request of the learned counsel for the respondent No.4, the Scrutiny Committee is directed to decide the caste claim of the petitioner as early as possible and positively within a period of four months from the date of appearance of the parties before the Scrutiny Committee.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)