

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.W. NO. 598/15 IN WRIT PETITION NO. 4796 OF 2013.
Salim Baig Yusuf Baig .vs. State of Maharashtra & others

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr. N.C. Phadnis, Advocate for petitioner,
Mrs. B.P. Maldhure, Assistant Government Pleader for respondent
nos. 1 to 3,
Mr. J.B. Kasat, Advocate for respondent nos. 4 & 5,
Mr. U. Dastane, Advocate for respondent no.6.

CORAM : B.P. DHARMADHIKARI & S.B. SHUKRE, JJ.

DATED : APRIL 8, 2015.

The petitioner, a candidate who contested elections as a Ward Member of Amravati Municipal Corporation and lost against respondent no.6 is before this Court challenging validity given by respondent no.3 Committee to respondent no.6 as Lohar Nomadic Tribe.

Mr. N.C. Phadnis, learned Advocate for petitioner/applicant, submits that the petitioner is giving up challenge to composition of Special Committee which has granted caste validity to respondent no.6. He submits that without recording any reasons or conducting any investigation, mechanically validity has been given. Vigilance report was called for after grant of validity and it reveals absence of any document in which caste is recorded as Lohar. He points out that petitioner has produced documents which show that everywhere caste is recorded as Musalman. The petitioner had sought opportunity before Committee and requested it to recall validity. However, on the

ground that it does not have power to review, grievance of petitioner has not been looked into. He, therefore, requests to send back the matter to Committee and extend opportunity of hearing to petitioner.

Mr. U. Dastane, learned Advocate for respondent no.6, is opposing the request. According to him, validity has been granted after due application of mind and as validity was being granted, the reasons were not recorded. He also submits that stand of petitioner does not militate against caste claim of respondent no.6. He, therefore, opposes the petitioner's application.

Mrs. B.P. Maldhure, learned Assistant Government Pleader for respondent nos. 1 to 3, points out that the Committee does not have power to review and hence, grievance made by petitioner/applicant cannot be looked into.

Mr. J.B. Kasat, learned Advocate for respondent nos. 4 & 5, submits that grievance is between petitioner and respondent no.6.

The documents produced on record show that petitioner has got some material to demonstrate that respondent no.6 does not possess a single document in which his caste is mentioned as Lohar. In this situation, when after grant of validity vigilance report was called and the report also reveals misrepresentation, it was open to respondent no.3 to extend opportunity of hearing to petitioner as also to respondent no.6. It is to be noted here that the Special Committees constituted by State of Maharashtra on the eve of election in dispute granted several such validities and composition or constitution of those Committees was found vitiated by Division Bench of this Court. That judgment has been assailed before the Hon'ble Apex Court and Hon'ble Apex Court has stayed the same. However, petitioner before this Court has given up that challenge.

In this situation, the only question is whether the petitioner

needs to be given an opportunity to demonstrate that respondent no.6 has been erroneously given the validity as Lohar N.T. The issue can be gone into after giving necessary opportunity not only to petitioner but also to respondent no. 6.

In this situation, we restore the application/representation moved by petitioner to the file of respondent no. 3 for its consideration in accordance with law. Its copy shall be made available to respondent no.6 and he shall be given opportunity to submit reply to it. Thereafter, Scrutiny Committee shall extend opportunity of hearing to both and after receipt of vigilance cell report, proceed further with determination with controversy in accordance with the Act No. 23 of 2001.

We direct parties to appear before the respondent no.3 on 15.5.2015 and to abide by its further instructions in the matter. The respondent no.3 Committee shall attempt to complete the verification within next one year.

The respondent no.6 is today functioning as Corporator. His functioning shall not be disturbed until further orders of the Scrutiny Committee in the matter.

With the above directions, the Civil Application as well as Writ Petition stand disposed of.

Judge

Judge

J.