

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8196 OF 2015

Maharashtra Rajya Madhyamik Va
Uccha Madhyamik Shikshan Mandal
Karmachari Mahasanghatana,
Pune Division, Pune, through
its President
Dnyaneshwar s/o Ramchandra Kamthe,
age: 65 years, Occ:Pensioner,
R/o 413, Guruwar Peth, Gavari Ali,
Pune.

Petitioner

Versus

01 State of Maharashtra,
through its Principal Secretary,
Social Welfare Department,
Mantralaya, Mumbai.

02 The Caste Certificate Validation
Committee, Aurangbad,
through its Member Secretary.

03 The Tahsildar/Executive Magistrate,
Poona City, Pune.

04 The Maharashtra State Secondary
and Higher Secondary Education
Board, Pune, Survey No.832,
Bhaburda,
Shivajinagar, Pune-411 004.

05 Deerajsingh Pratapsingh Chandele,
age: 59 years, Occ: service,
R/o Flat No.4, C-Wing,
Ardeshi Residency,
Sai Chowk, New Sangvi,
Pune-411 027.

Respondents

Mr.P.S.Dighe, advocate with Mr.V.R.Dhorde, advocate for the petitioner.

Mr.S.S.Dande, A.G.P. for Respondents No.1 to 3.

Ms.Surekha Mahajan, advocate for Respondent No.4.

Mr.M.S.Kulkarni, advocate for Respondent No.5.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.**

DATE : 19th July, 2016

PER COURT:

1 Heard.

2 Petitioner-Union is objecting to the Caste validity certificate issued in favour of Respondent No.5 by Respondent No.2 – Scrutiny Committee on 29.11.2012.

3 The petitioner is a branch of Union of Employees of Secondary & Higher Secondary Education Board, Pune and aims to work in the interest of its members.

4 It is contended that Respondent No.5 has been issued caste certificate certifying that he belongs to '*Rajput Bhamta*' caste by the Tahsildar/Executive Magistrate, Poona, which is recognised as *Vimukta Jatis*. Respondent No.5 was appointed as Junior Clerk on 31.01.1983 and he is in employment of Respondent No.4-Board since then. The proposal for verification of caste certificate of the petitioner was forwarded to the Scrutiny Committee in the year 2011-2012. The caste claim of Respondent No.5 was scrutinised by the Scrutiny Committee and validity certificate has been issued in his favour.

5 Petitioner-Union contends that Respondent No.5 does not belong to reserved category and that the certificate issued by the Executive Magistrate/Tahsildar, Pune ought not to have been verified by the Scrutiny Committee at Aurangabad. It is also contended that the order passed by Scrutiny Committee is unreasoned and as such, same deserves to be quashed and set aside.

6 It must be noted, at this stage, that since Respondent No.5 is appointed in the year 1983, even in the absence of validity certificate, his services are liable to be protected under the policy adopted by the State Government as well as in view of the judgment of the Full Bench of this Court in the matter of **Arun Vishwanath Sonone Vs. State of Maharashtra**, reported in 2015(1) Bom.C.R. 568.

7 *Prima facie*, we are of the opinion that Petitioner-Union does not have *locus standi* to challenge the validity certificate issued in favour of one of the employees i.e. Respondent No.5, who is working in Secondary and Higher Secondary Education Board. Respondent No.5 is a member of different Union, whereas, petitioner-Union consists of membership of different employees. Instant petition appears to be an outcome of Union rivalry. Instant petition is not registered as a Public Interest Litigation, but as a writ petition. The petitioner-Union shall have to satisfy that the Union comes within the definition of “aggrieved person” so as to maintain a writ petition objecting to the appointment and the validity certificate issued in favour of Respondent No.5.

8 In this respect, reliance can be placed on the judgment of the Supreme Court in the matter of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & others**, reported in (2013) 4 SCC 465. In the matter before the Supreme Court, the validity certificate issued in favour of an employee of the Municipal Corporation was objected by the petitioner before the Supreme Court, who was functioning as a Corporator. While considering the issue of *locus standi*, the Hon'ble Supreme Court has observed in paragraphs no.9 and 10 of the judgment, as follows:

9 It is a settled legal position that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that

can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta, Saghir Ahmad v. State of U.P., Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Rajendra Singh v. State of M.P. And Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar.]

10 A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “persons aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York and State of Rajasthan v. Union of India.)

In paragraph no.14 of the judgment, the Apex Court has observed thus:

14 This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddles do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain

strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide P.”S.R. Sadhanantham v. Arunachalam, Dalip Singh v. State of U.P., Staet of Uttaranchal v. Balwant Singh Chaufal and Amar Singh v. Union of India.)

9 In para 21 of the judgment, the Apex Court has referred to the judgment in the matter of **Raju Ramsing Vasave Vs.Mahesh Deorao Bhivapurkar**, reported in (2008) 9 SCC 54, and observed thus:

21 In *Balbir Kaur v. U.P. Secondary Education Services Selection Board*, it has been held that a violation of the equality clauses enshrined in Article 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar* held : (SCC p. 74, para 45)

“45 We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee

is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibility from doing so.”

(See also *Manohar Joshi v. State of Maharashtra*)

10 In the instant matter, since the issue raised relates to validity certificate issued to an individual i.e. Respondent No.5, it is amply clear that the inquiry is not likely to subserve larger public interest or it has a longstanding effect on the society.

11 As has been observed by the Hon'ble Supreme Court in the matter of **Raju Vasave** (*supra*), it would be open for the Court to take cognizance of matters of public importance *suo motu*. However, a Special Leave Petition ordinarily would not be entertained questioning validity of appointment or otherwise on the

basis of a caste certificate, which is ordinarily a matter between employer and employee. However, since the issue before the Supreme Court was, as to whether *Halba Koshtis* can be termed to be belonging to Scheduled Tribe; and the matter before the Supreme Court relates to interpretation of the judgment of the Constitution Bench in the matter of **State of Maharashtra Vs. Milind**, reported in (2001) 1 SCC 4, the petition was entertained and issue raised has been dealt with. In paragraph no.45 of the judgment in the matter of **Raju Vasave** (*supra*), the Hon'ble Supreme Court has observed thus:

“45 We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so.”

12 In the instant matter, it can be said that the issue raised in respect of genuineness and correctness of validity certificate, issued in favour of Respondent No.5, is not of a general public importance. The issue, in fact, relates to matter between the employer and employee. The petitioner, before the Court, is not employer of Respondent No.5 and as such, petition, at the instance of rival Union, is not maintainable. The petitioner-Union has no *locus standi* to challenge the validity certificate issued in favour of Respondent No.5.

13 It is informed that Respondent No.5 has tendered an application seeking voluntary retirement and is due to retire on 31.07.2016. The petition is aimed at causing harassment to Respondent No.5, may be, by the office bearers of petitioner-Union and to settle individual score with Respondent No.5.

14 In the facts and circumstances of the case, while dismissing the petition, we direct petitioner-Union to deposit cost of Rs.1,00,000/- (Rs. One lac), in this Court, within a period of four weeks from today.

15 Writ Petition stands dismissed.

K.L.WADANE
JUDGE

adb/wp819615

R.M.BORDE
JUDGE