

Jagadish Revansiddha Patil	}	Petitioner
versus		
The Collector, Solapur and Ors.	}	Respondents

J. V. Salunke, PA

elected. The Petitioner claims that because of his social work and dedication, he has been successful in four consecutive elections. The Petitioner claims that Ward No. 14A was reserved for candidates belonging to OBC category. Respondent No. 4 filed his nomination papers claiming that he is a "Gawali", which is one of the 'Other Backward Classes' (OBC). That is how the nomination form was presented, but at that time, the Petitioner did not have information with regard to this social status claimed by Respondent No. 4. At that time, a caste certificate was produced. The caste certificate was issued without verifying and scrutinising the claim. That is how a letter was addressed to the Committee for verifying and validating the caste certificate. Annexure 'A' is a copy of the caste certificate and Annexure 'B' to the Petition is a copy of the application made by Respondent No.4.

2) The Petitioner submits that Respondent No. 4 has raised a bogus and fraudulent claim. The father of Respondent No. 4 executed an affidavit before a Special Executive Magistrate, Solapur contending that he is illiterate and not taken education in any school. However, on perusal of School Leaving Certificate issued by a high-school in Solapur, it is clear that the father of Respondent No. 4 had taken education up to 4th Standard in the said school and had obtained a School Leaving Certificate.

However, what the Petitioner alleges is that Respondent No.4 suppressed that the entry in the caste column of the said certificate issued by the school Superintendent to his father is that he belongs to Lingayat community. That is not a caste but a community. Several other certificates and documents produced were therefore not genuine. The Petitioner has also approached the Court of the Chief Judicial Magistrate by filing a private complaint. According to him, a process has been issued at the instance of the Petitioner. It is in these circumstances that he submits that the Caste Certificate Scrutiny Committee failed in its duty to scrutinise and verify the caste claim in accordance with law.

3) One of the contentions raised before us by Mr. Sarda is that the Caste Certificate Scrutiny Committee should have obtained a report from the Vigilance Cell. After the Maharashtra Scheduled 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), 2001 came into force, the Rules under the said Act were notified by the Social Justice and Special Assistance Department, Government of Maharashtra on 31st August, 2012 and published in the Government Gazette dated

12th September, 2012. However, the Hon'ble Supreme Court, in the case of *Kumari Madhuri Patil and Another. vs. Additional Commissioner, Tribal Development and Others*¹ had directed that in such cases a Vigilance Cell inquiry should be ordered and that a report of that inquiry be obtained at the time of scrutiny and verification of the caste claim. It is in these circumstances, and alleging the claim to be fraudulent and lacking in bonafides that the request is to quash and set aside the order of the Committee.

4) On one of the grounds as urged above, this Court, at the threshold, directed production of original record and enquired in particular whether any Vigilance Cell report was forwarded. It is apparent that the inquiry was held without any such Vigilance Cell report being obtained. Ms. Bhende, learned AGP appearing for the State, fairly concedes this position and submits that the matter being old, the other record is untraceable.

5) Respondent No. 4 is represented by Mr. Kudle and our attention is invited by him to an affidavit in reply filed in the Writ Petition and it is urged that re-appreciation or re-appraisal of the factual material is not permissible in Writ Jurisdiction. For that reason, the Writ Petition be dismissed.

¹ (1994) 6 SCC 241

6) We have heard both sides and we have perused the Petition, the Annexures thereto and the reply affidavits. There is an additional affidavit filed by the Petitioner, in which he refers to the orders passed on 5th February, 2015 by this Court and also the information obtained under the Right to Information Act, 2005.

7) The Committee had before it a caste certificate which was issued to Respondent No. 4 Anil Sambhaji Gavali. Then the Committee issued a caste validity certificate dated 7th December, 2011. This certificate states that the Caste Certificate Scrutiny Committee verified the caste certificate and that was found to be valid. The Petitioner assails this exercise by stating that no order, as is mandated by the above Act, has been passed. The Petitioner relies upon the fact that the affidavit filed by Respondent No. 4 states that his father was illiterate. However, the family tree and assertion in respect of the father are incorrect and false.

8) We say nothing on this aspect, because, admittedly, a criminal case is pending. However, the caste validity certificate issued in favour of Respondent No. 4 is supported by him by filing an affidavit in reply. He stated that he did not produce before the Scrutiny Committee any School Leaving Certificate. Respondent No. 4 asserts that no certificate much less the School Leaving

Certificate dated 6th April, 2012 pertaining to the father has been produced. The Petitioner is faulted for not having filed any such certificate before the Scrutiny Committee. The Petitioner is equally faulted for filing a false affidavit by Respondent No. 4. The said School Leaving Certificate, allegedly produced, is questioned by Respondent No. 4 and in para 3 of his affidavit in reply, he states that his father was not born at Solapur, and, therefore, there was no question of attending any school in Solapur. Respondent No. 4 relies upon the birth certificate stated to have been issued. It is in these circumstances that he would complain that the Petitioner has not approached this Court for any bonafide reasons, but in order to oust his political opponent from the field.

8) We are mindful of the fact that the Act was promulgated to take care of the instances as are highlighted by Mr. Sarda from the Judgment of Hon'ble Supreme Court in the case of *Kumari Madhuri* (supra). It was precisely for that reason and to avoid false and bogus claims being allowed that the Hon'ble Supreme Court directed that a mechanism be put in place for a proper scrutiny of all certificates based on which persons belonging to these categories and classes claim benefit in education, Government Jobs and political offices. The Hon'ble Supreme Court directed constitution of a Vigilance Cell and

Scrutiny Committees. It is in pursuance of such directions and after prolonged efforts that the enactment was put in place in Maharashtra. After the Maharashtra Act XXIII of 2001 was notified, the Rules could not be immediately promulgated and notified. The Rules were notified later in the above notification.

9) A careful perusal of these Rules would reveal as to how the caste claim has to be verified. In terms of Rules 15 and 16, the application for verification of caste certificate claim has to be made. The submission of the application and scrutiny and verification of the claim is mandated. Thereafter, the information has to be supplied by the applicant in terms of Rule 16. Then, the procedure of Scrutiny Committee is set out in Rule 17. Sub-Rules (6) and (7) of Rule 17 read as under:-

“17(6) If the Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal is satisfied, about the genuineness of Scheduled caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimuktajatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category claim the scrutiny committee shall forthwith issue Validity Certificate in **FORM-20** without enquiry by vigilance cell.

(7) If the Scrutiny Committee, upon appreciating the statement of applicant or claimant submitted in the form of Affidavit filed in consonance with Order 18 Rule 4 of the Code of Civil Procedure, 1908, as well as other evidence and documents furnished along with any application or proposal, is of the opinion that the documents do not satisfy or conclusively prove the Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special backward Category claim, the Scrutiny Committee by mentioning the same in the roznama, shall refer such case to the Vigilance Cell for carrying out suitable inquiry, as is deemed fit, by the Scrutiny Committee:

Provided that, findings recorded by the Vigilance Cell shall not be binding on the Scrutiny Committee, as the vigilance inquiry is meant for internal assistance to the Scrutiny Committee. The Scrutiny Committee shall record its reasons for discarding the report of Vigilance Cell.”

10) Thus, the inquiry by the Vigilance Cell has to be ordered in the event the satisfaction in terms of sub-Rule (6) cannot be reached. If the Committee is of the opinion that the documents do not satisfy or conclusively prove the Scheduled Caste or Scheduled Caste or converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special backward Category claim, the Scrutiny Committee by mentioning the same in the roznama, shall refer such case to the Vigilance Cell for carrying out suitable inquiry, as

is deemed fit by the Scrutiny Committee. The Proviso to sub-Rule (7) indicates that the findings recorded shall not bind the Committee. The Vigilance inquiry is provided for internal assistance of the Committee. The report of the Cell can be discarded by recording reasons. However, if directed, the Vigilance Cell is to complete the inquiry within the time specified in further sub-Rules.

11) It is in these circumstances that we are of the view that in the facts peculiar to this case, the grant of validity certificate by the Committee is not vitiated only for failure to comply with these Rules. The Vigilance Cell report is intended to aid the Scrutiny Committee; the report does not bind the Scrutiny Committee and, in a given case, can even be rejected. Therefore, since the Rules themselves came into play only much later and the detailed procedure was subsequently notified, then a non-compliance with that procedure is not fatal and would not by itself allow us to interfere with the order of the Scrutiny Committee. We also cannot interfere with it because of disputed questions of fact and particularly whether the father of Respondent No. 4 was illiterate and whether he had gone to school and as claimed by Respondent No. 4, whether at all he resided in Solapur though not born in that city. Such disputed

questions can be gone into during the trial of the complaint before the competent Criminal Court. It would be open for the Petitioner to establish and prove the fraud and alleged forgery. Now that the process has been issued and on trial if Respondent No. 4 is found to be guilty of the offences alleged, then it is apparent that all consequences in law would follow. In such circumstances, merely because persons belonging to the Lingayat community are allegedly raising false claims, that itself without anything more cannot enable us to interfere in Writ Jurisdiction. The Writ Petition is dismissed. There would no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)