

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

ELECTION PETITION NO. 10 OF 2009

Sahebrao Ashruji Sardar

-VS-

The Election Commission, State of Maharashtra, thr. Election Commissioner and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

None for the petitioner.
Mr.Alok Daga, counsel for the respondent No.3.

CORAM : SMT. VASANTI A. NAIK, J.

DATE : 22.04.2016.

The counsel for the petitioner was absent on several dates of hearing and the election petition was adjourned from time to time in his absence with a view to pass appropriate orders in the election petition, in view of the expiry of the term of the respondent No.3 as a member of the Legislative Assembly from 25-Mehkar (Scheduled Castes) Constituency in the election held on 13/10/2009 and declared on 22/10/2009.

By this election petition, the petitioner has sought a declaration that the election of the respondent No.3 from the 25-Mehkar (Scheduled Castes) Constituency of the Legislative Assembly of the State of Maharashtra is void and may be set aside.

The Election Commissioner had issued the Notification declaring the election programme for the Legislative Assembly of the State of Maharashtra from the 25-Mehkar (Scheduled Castes) Constituency on 18/09/2009. The respondent No.3 had filed the nomination form for the said election as the candidate of Shiv Sena Party on a claim that he belongs to caste Balai, which is recognized as a scheduled caste. Though an objection was raised before the Returning Officer that the respondent No.3 belongs to caste Sutar and does not belong to caste Balai, the said objection was overruled and the respondent No.3 was permitted to contest the election.

The petitioner is a member of the Nationalist Congress Party and claims to belong to Mahar Caste, which is a scheduled

caste. The petitioner had filed the nomination form for contesting the election. The result of the elections held on 13/10/2009 was declared on 22/10/2009 and the respondent No.3 was declared to have been elected as a Member of Legislative Assembly from the 25-Mehkar (Scheduled Castes) Constituency. According to the petitioner, the respondent No.3 was not qualified to contest the election on a seat that was reserved for the Scheduled Castes, as he belongs to Sutar caste, which is not a Scheduled Caste. According to the petitioner, certain documents were fabricated by the respondent No.3 for making a claim of belonging to Balai Scheduled Caste. Since the petitioner had secured 58,380 votes and the respondent No.3 had secured 91,475 votes, according to the petitioner, if the nomination form of the respondent No.3 had been rejected, the petitioner would have secured the highest number of votes and would have been declared as elected.

The respondent No.3 filed the written statement on 19/04/2010 denying the claim of the petitioner. Apart from the other objections raised in the written statement, it was asserted by the respondent No.3 that he belongs to Balai Scheduled Caste. It was stated that the caste certificate was issued by the Sub-Divisional Officer, Mehkar, in favour of respondent No.3 on 06/07/2006 and the said authority was competent to issue the said certificate. It was stated by making a reference to various documents that the respondent No.3 belongs to Balai Scheduled Caste. It was stated that the caste certificate of the respondent No.3 was referred to the Scrutiny Committee at Amravati for verification.

Earlier, Hon'ble Justice Shri R.C.Chavan was appointed to hear this election petition. However, since, during the pendency of this election petition, the headquarters of the Hon'ble Judge were changed from Nagpur Bench to the Principal Seat, the election petition was assigned to me for hearing and adjudication. Certain applications were filed on behalf of the parties and an application was also filed by the respondent No.3 seeking a stay of the election petition, as the caste claim of the respondent No.3 was pending before the Scrutiny Committee for verification and the Scrutiny Committee had called for the report of the Handwriting Expert and

the applications made by the petitioner before the Scrutiny Committee were being enquired, into.

Normally, this Court would have framed the issue in regard to the validity of the caste certificate issued in favour of respondent No.3 and would have referred the same to the Scrutiny Committee, Amravati, that was competent to verify the caste claim of the respondent No.3 for adjudication and would have stayed the hearing of the election petition till then. However, this was not done, as the parties had approached the Scrutiny Committee in the matter of the verification of the caste claim of the respondent No.3 and the caste claim of the respondent No.3 was being verified. This Court as well as the parties did not find it proper that this Court should decide the question of validity of the caste certificate issued in favour of respondent No.3, more so, when as per the Maharashtra Scheduled Caste, 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, 2000, the only authority, to decide the caste claim or verify the caste certificate is the Scrutiny Committee, duly constituted under the Act of 2000. Since a vigilance enquiry is required to be conducted while verification of a caste claim as per the provisions of the Act and the Rules and since the three members on the Committee are experts in the concerned fields, this Court did not find it appropriate to permit the parties to tender evidence in the election petition and to decide the validity of the caste claim of the respondent No.3. Since an Expert Committee like the Scrutiny Committee is duly constituted for verification of the caste claims and since a vigilance enquiry is required to be conducted in the matter of verification and the claim of the respondent No.3 was being scrutinized by the competent Scrutiny Committee, the matter was adjourned from time to time only to ascertain about the progress of the proceedings before the Scrutiny Committee. Normally, in the election petition, a direction could have been issued to the Scrutiny Committee and/or a request could have been made to decide the caste claim of the respondent No.3 within a time frame. However, this was not done, as a direction was issued by the Division Bench of this Court in the writ petition,

including Writ Petition No.1800 of 2014 to decide the caste claim of the respondent No.3 within a time frame. Since directions were already issued by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India, there was no propriety in issuing similar directions in the election petition. The matter lingered before the Scrutiny Committee for long, as time and again applications were made by the respondent No.3 and the petitioner for tendering the evidence of the parties and the witnesses. The Caste Scrutiny Committee ultimately, by the order dated 09/01/2016, invalidated the caste claim of the respondent No.3 and held that the respondent No.3 had failed to prove that he belongs to Balai Scheduled Caste. It was informed to this Court by the learned counsel for the parties on one of the previous dates of hearing that the order of the Scrutiny Committee was challenged by the respondent No.3 in a writ petition and though the writ petition is admitted, the order of the Scrutiny Committee is not stayed. Since the stay to the order of the Scrutiny Committee was refused, the respondent No.3 had challenged the order refusing stay before the Hon'ble Supreme Court in a special leave petition and the said petition was disposed of. It is thus apparent from the aforesaid position that the caste claim of the respondent No.3 is invalidated and the order of the Scrutiny Committee is not stayed though the writ petition challenging the order of the Scrutiny Committee is admitted.

Be that as it may, since the election petition pertains to the election of the respondent No.3 to the Legislative Assembly of the 25-Mehkar (Scheduled Caste) Constituency, dated 13/10/2009 and the term of the respondent No.3 as an elected Member of the Legislative Assembly, in pursuance of the election conducted on 13/10/2009 has expired, the cause for filing the election petition has been rendered infructuous. Though, normally election petitions are required to be decided on priority, the present election petition could not be decided within a reasonable time like the other election petitions, as the caste claim of the respondent No.3 was pending before the Scrutiny Committee, that was competent to decide the same. Since the authority to decide the caste claims under the Maharashtra Scheduled Caste, 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, 2000 is the Scrutiny Committee and since the Members on the Committee have special knowledge and expertise in respect of verification of caste claims and are entitled to the assistance of a competent Vigilance Cell, this Court had refrained from embarking upon the exercise of permitting the parties to tender evidence in the matter of caste claim of the respondent No.3 and adjudicate the said issue.

As already mentioned herein above, since by this election petition, the election of the respondent No.3 to the 25-Mehkar (Scheduled Caste) Constituency of the Legislative Assembly, dated 13/10/2009 was challenged and since the term of the respondent No.3 in pursuance of the election held on 13/10/2009 has expired, the cause for filing this election petition is unfortunately rendered infructuous due to the expiry of the term of the respondent No.3 as the Member of the Legislative Assembly from the 25-Mehkar (Scheduled Caste) Constituency.

In this background, the election petition is disposed of. This decision may be reported to the Election Commission for appropriate action under the provisions of the Representation of the People Act.

Order accordingly. No costs.

JUDGE