

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

43 WRIT PETITION NO. 1185 OF 2016

**WAHEB ALI ZAKER ALI HASHMI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. V. J. Dixit, Senior Advocate
h/for Mr. Shaikh Mazhar A. Jahagirdar
AGP for Respondents State: Mr. P. S. Patil
Advocate for Respondent No.5 : Mr. Vaibhav Pawar h/for Mr.
S.S. Tope
Advocate for Respondent No.7: Mr. M. K. Deshpande

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 30th January, 2017

ORDER:

1. The validity certificate issued to the present respondent No. 7 of 'Chapparband' Vimukta Jati is assailed in the present petition.

2. Mr.V.J. Dixit, the learned Senior Advocate for the petitioner strenuously contends that Respondent No. 7 contested the election for the post of Corporator of respondent No.5 Corporation for the seat reserved for V.J. Category. The petitioner has also contested against respondent No.7. Respondent No. 7 was declared elected. According to the learned Senior Advocate the respondent No. 7 was never issued with caste certificate of 'Chapparband' Vimukta Jati. The

Tahsildar has also filed his affidavit to that effect, the same is required to be considered. The learned Senior advocate further submits that the outward register maintained by the Office of Respondent No.3-Sub Divisional Officer, Aurangabad does not even show that that respondent No. 7 was issued with the caste certificate of Chapparband, Vimukta Jati. The learned senior counsel further submits that even the genealogy given by respondent No. 7 is not in Form No. III. The details to be given in the genealogy are spelt out in Form III. As the said details are not given, the genealogy could not have been relied by the Committee while validating the claim of respondent No.7. The learned Senior Advocate further submits that different dates are given in the affidavit and the genealogy, which itself show that fraud has been played by respondent no.7. There are three different dates before the Court, dual family trees are produced on record, which is nothing but a fraud played upon the Court and the judgment obtained by fraud can be assailed and the certificate obtained on the basis of such fraud cannot be sustained and deserves to be set aside.

3. Learned Senior Advocate relies on the judgment

of the Apex Court in a case of **Raju Ramsingh Vasave Vs. Mahesh Deorao Bhivapurkar & ors, reported in (2008) 9 SCC 54.** It is submitted that the fraud vitiates every solemn act. The learned Senior Advocate further relies on the judgment of the Division of this Court in a case of **Sagiruddin Israiluddin Mistry and another Vs. The state of Maharashtra, reported in 2007 (1) All.M.R. 627** and contends that if a person is holding a post on the basis of such a fraudulent certificate, his election cannot be protected. The judgment of Division Bench of this Court in Writ Petition No. 5260/2015 (Sau.Gauri w/o Ramesh Gedam Vs. Scheduled Tribe Certificate Scrutiny Committee) dated 23rd February, 2016 is relied on to suggest that if the Court is remitting the matter, the validity certificate is required to be set aside.

4. Learned Senior Advocate further submits that even otherwise the documents on record do not inspire confidence and the same are not sufficient to issue validity in favour of respondent No.7.

5. Mr. Deshpande, the learned counsel for respondent no.7 submits that the petitioner has no

locus standi to challenge the validity issued in favour of respondent no.7. The Committee after verifying the documents and after considering the Vigilance Cell report, has validated the claim of the petitioner. It would not be open for the petitioner to assail the same. The learned counsel relies upon the judgment of this Court in case of **Devendra Gurunath Khedgikar Vs. Scheduled Tribe Certificate Scrutiny Committee and another**, reported in (2009) 4 Bom.C.R 805 to submit that if the allegations are of certificate being obtained by misrepresentation or by fraud then only the Committee can entertain the grievance with regard to the same. The learned counsel also relies on the judgment of the Division Bench of this Court in case of **Mohd. Sharique-ur-Rehman & anr. Vs. State of Maharashtra** reported in 2012 (4) Bom. C.R. 547.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. The fact that respondent No. 7 and petitioner contested the election for the post of Corporator from the reserved category is not disputed. Respondent No.7 is elected on the seat reserved for Vimukta Jati. The

Committee has validated the claim of respondent No.7 as belonging to Chapparband, Vimukta Jati.

8. We have gone through the judgment delivered by the Committee. The Committee has considered the documents presented before it. However, on going through the vigilance report and the judgment of the Committee, it is manifest that the Committee has not at all considered the affinity test and ethnic linkage. The same is also relevant. The contention is raised that the certificate which the respondent No.7 has relied for obtaining validity is not issued by the office of the Sub Divisional Officer or the Tahsildar. The extract of the register has been produced. The same does not lead us anywhere. Though the Tahsildar has filed affidavit stating that the same is not issued by him, there are various entries in the said extract which go unexplained by the respondents. The Committee would be in a proper position to ascertain the same and then come to the conclusion. The petitioner can place all the material before the Committee.

9. Considering the aforesaid anomalies, it will be appropriate to ask the Committee to reconsider the

documents, the vigilance report, the say of the petitioner and take decision afresh. In the result, we pass the following order.

O R D E R

- i. The parties shall appear before the Committee on 15.02.2017.
 - ii. The Committee shall consider the affinity, ethnic linkage so also the documents that are filed on record and that may be filed on by the petitioner as well as respondent no.7. The Committee shall also consider the contentions raised by either of the parties before it with regard to the various aspects and the documents and decide about the claim of respondent No.7 belonging to 'Chapparband' Vimukta Jati, afresh, expeditiously preferably within three months from the date of appearance of the parties.
 - iii. Till the same is decided, the election of respondent no.7 is protected, however, respondent No.7 Corporater, shall not take benefit of the reservation for any other purpose.
10. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC