

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

WRIT PETITION NO. 2629 OF 2017

Rajaram s/o. Pralhad Adbane .. Petitioner
Age. 37 years, Occ. Agri.,
R/o. At/Po. Panchanwadgaon,
Tq. & Dist. Jalna.

Versus

1. Madansing s/o. Shivilal Ghusinge .. Respondents
Age. Major, Occ. Agri.,
R/o. At/Po. Panchanwadgaon,
Tq. & Dist. Jalna.
2. Badalsing s/o. Bhausing Ghusinge
Age. Major, Occ. Agri.,
R/o. At/Po. Panchanwadgaon,
Tq. & Dist. Jalna.
3. The Additional Collector of district,
Collector Office, Jalna.
4. The Divisional Commissioner,
Divisional Commissioner Office,
Aurangabad.
5. The Sub-Divisional Officer,
Jalna, Dist. Jalna.
6. The Tahsildar, Jalna,
District – Jalna.
7. District Caste Scrutiny Committee, Jalna,
Through its Member Secretary

Mr.Abhineet P. Avhad, Advocate for the petitioner.
Mr.S.K. Chavan, Advocate for respondent Nos. 1 and 2.
Mr.P.A. Bhosale, Advocate for respondent Nos. 5 & 6.
Mr.A.V. Deshmukh, A.G.P. for respondent/State.

**CORAM : R.M. BORDE &
S.M.GAVHANE, JJ.**
DATED : 14.08.2017

ORAL JUDGMENT : [PER : R.M. BORDE,J.] :-

1. Heard.

2. Rule. Rule made returnable forthwith and with the consent of the parties the petition is taken up for final disposal at this stage.

3. The petitioner is objecting to the order passed by the Collector holding him disqualified to continue as a Member of the Village Panchayat on the ground that the petitioner while tendering nomination papers for contesting election has relied upon a tribe certificate issued by the Executive Magistrate, Jalna, on 27.02.1998, who according to the Collector was not authorized to

issue such certificate. It is held by the Collector that on 27.02.1998, the Executive Magistrate was not authorized to issue caste certificate certifying that the petitioner belongs to scheduled tribe category. The decision has been rendered by the Collector under section 14-k read with section 16(2) of the Maharashtra Village Panchayat Act, 1958. The Collector, in order to conclude that the Executive Magistrate is not invested with the jurisdiction to issue tribe certificate, has placed reliance on the Government Resolution bearing No. सीबीसी 1096/प्र.क्र.48/मावळ-5 dated 03.06.1996. The Government Resolution referred to above bears the same number as has been recorded in the title except for the date 9th July, 1996. Both the Resolutions allegedly are issued on 03.06.1996 and 09.07.1996 relating to the procedure for issuance of the caste certificate to the reserved category candidates belonging to the schedule castes, VJ, OBC and special backward category. The Government Resolution referred to above does not relate to scheduled tribes category. The petitioner belongs to scheduled

tribe category and as such reliance placed by the Collector on the Government Resolution dated 09.07.1996 is misplaced. The Collector has proceeded to pass order without application of mind to the record of the case and as such order deserves to be quashed and set aside.

4. Apart from this, it is informed by the Counsel appearing for the petitioner that the caste certificate issued to him is referred to the scrutiny committee and the proposal is stated to be pending. The Division Bench of this Court to which one of us [R.M.Borde,J.] was party, while dealing with identical issue in the matter of Shivling Umrao Jadhav Vs. State of Maharashtra, reported in 2008(1) Bom.C.R.622 has held in Para 20 of the judgment as under :-

"21. We are supported in our view by the reported judgments cited (supra) by the learned Counsel for the petitioner. We are therefore convinced that the Caste Scrutiny Committee is empowered to enquire into the genuineness of the caste certificates. At the same time the Collector is not empowered and entitled under the provisions of sections 14 and 16 of the Act,

1958 to disqualify an elected candidate and unseat him by declaring his seat as fallen vacant on the ground that the caste certificate was not issued by the competent authority or the caste certificate was a forged and bogus one."

5. The exercise of jurisdiction by the Collector is beyond powers vested in him under section 16 of the Act. Even otherwise reliance placed by the Collector on the Government Resolution dated 09.07.1996 is misplaced. It is not even factually clear as to whether on the given date the Executive Magistrate was empowered to issue caste certificate or not. Since the issue is pending with the Scrutiny Committee, it would be open for the Scrutiny Committee to deal with the said issue.

6. In the circumstances, the writ petition is allowed. The order passed by the Collector on 28.12.2016 impugned in this petition is quashed and set aside. The Scrutiny Committee is directed to decide the caste certificate verification proposal of the petitioner pending with it as expeditiously as possible, preferably

within a period of six months from today and it is accordingly directed.

7. Rule is made absolute accordingly. There shall be no order as to costs.

[S.M.GAVHANE, J.]

[R.M.BORDE, J.]