

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 422 OF 2017**

Shri Swapnil V. Shirodkar, son of late Shri Vilas Shirodkar, 38 years of age, married, residing at House No. 167/10, Khorlim, Mapusa, Goa. Petitioner

Versus

Shri Jawaharlal T. Shetye, major, residing at House No. 35/A, Ward No. 11, Khorlim, Mapusa, Goa. Respondent

Mr. Vilas P. Thali, Advocate for the Petitioner.

CORAM:- M. S. SONAK, J.

DATE:- 2nd MAY, 2017

ORAL ORDER:

The challenge in this petition is to the order dated 07.02.2017, by which the Scrutiny Committee has rejected the petitioner's objection, questioning the locus standi of the respondent-complainant to institute proceedings in relation to the Caste Certificate issued to the petitioner.

2. Mr. Thali, learned Counsel for the petitioner places reliance on the decision of the Hon'ble Supreme Court in the case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Others, (2013) 4 SCC 465**, to submit that a stranger like the

respondent, cannot be permitted to meddle in any proceedings, unless he satisfies the Court, that he falls within the category of "*aggrieved person*" and only a person who has suffered, or suffers from legal injury can challenge the act in a Court of law. Mr. Thali, submits that the respondent is neither a voter from the constituency from which the petitioner has been elected as Councillor, nor the respondent belongs to the other backward class. In such circumstances, Mr. Thali, submits that the respondent lacks locus standi to make any complaint with regard to the Caste Certificate, which has been issued in favour of the petitioner, after following the due process of law. He submits that the Scrutiny Committee by dismissing the petitioner's objection to the locus standi of the respondent has acted contrary to the law laid down by the Hon'ble Supreme Court in the case of **Ayaaubkhan Noorkhan Pathan** (supra).

3. Upon due consideration of the submissions made by Mr. Thali and upon perusal of the impugned order and material on record, it is not necessary to interfere with the impugned order. In this case, the Scrutiny Committee has held that the matter involves larger public interest and hence, it is necessary to verify

whether the petitioner indeed belongs to the other backward class and therefore, was entitled to the benefits reserved for such class. The Committee has observed that the respondent is a resident of Municipal area and therefore, has raised concern over the petitioner's position as the Councillor in the Municipal Council. The Committee has also opined that the persons actually aggrieved by the Caste Certificate issued in favour of the petitioner may be ignorant of the genuineness of the certificate and infringement of their legal right. The Committee has noted that the respondent has produced report of the Talathi and the Mamlatdar's report, which need to be considered and verified. There is also an allegation of breach of the guidelines of the order dated 19.02.1968 on the aspect of migration of the family of the petitioner to this State. The Committee has also noted that the respondent has produced additional documents and revealed some new facts, which were not available while issuing the provisional certificate and the matter needs to be examined in further details.

4. There is really nothing unreasonable on the approach of the Committee. The decision in the case of **Ayaubkhan Noorkhan Pathan** (supra) was in the context of a service matter.

It is well settled that no public interest litigations are normally entertained in relation to service matters. In this context that it was observed that unless, the petitioner can demonstrate "legal injury", it will not be appropriate to concede any locus standi in such petition. In the present case, we are concerned with the elected representative like the petitioner. If, the certificate on the basis of which, the petitioner has contested to a reserved seat, is found to be invalid, then, perhaps the right of the petitioner, to continue as Councillor, may be in issue. This is not a case of a service matter. The respondent, in the circumstances, cannot be regarded as some stranger or meddlesome interloper.

5. In **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar & Others, (2008) 9 SCC 54**, the Hon'ble Supreme Court, in the context of challenge to the Caste Certificate held that the Caste Certificate granted by a Committee is ordinary a matter between the employer and the employee. The Hon'ble Supreme Court, can take cognizance of a matter of such a grave importance. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is in the 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, the Supreme Court will not shirk its responsibilities from doing so.

6. These observations were in the context of a service matter. In the present case, as noticed earlier, we are not concerned with a service matter, but, a matter relating to an elected office. To the similar effect are the observations made by the Division Bench of this Court in the case of **Vishwanath Pandurang Mahadeshwar Vs. Caste Certificate Verification Committee, New Mumbai & Others, 2011 (1) Mh.L.J.**, where objections regarding locus standi were rejected, when the complaint was that wrong (pseudo) persons were getting benefit of reservation for OBC and were competing with genuine persons belonging to notified OBC, which entails in depriving opportunity to genuine and legitimate persons, whose caste had already been

included in the list of OBC in Maharashtra.

7. In such matters, the message and not the messenger, which is important. Since the Committee in the present case, has also examined the matter from the aforesaid perspective, it cannot be said that there is any jurisdictional error or perversity in approach, warranting interference in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

8. This petition is therefore dismissed. There shall be no order as to costs.

9. It is however clarified that this Court has not adverted to the merits of the claims and the counterclaims of the petitioner and the respondents. Therefore, the contentions on merits are left open for determination by the Committee. Nothing in this order may be taken as reflection upon merits.

M. S. SONAK, J.

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