

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO.4801 OF 2017

Smt. Maheshwari Sanjay Tare

.. Petitioner

Vs

State of Maharashtra & Ors.

.. Respondents

...

Mr. R. K. Mendadkar for the Petitioner.

Mr. A. A. Alaspurkar, AGP for the Respondent Nos. 1 to 3.

Mr. K. S. Dewal i/b. Mr. Jayesh M. Joshi for the Respondent No. 4.

***CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.***

DATE : 18/07/2017.

PC. :

1] Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the 4th Respondent and the learned AGP for 1st to 3rd Respondents.

2] Rule. The learned counsel for the Respondents waives service. By consent of the Petitioner and the 4th Respondent, forthwith taken up for final hearing.

3] One of the challenges in this petition under Article 226 of the Constitution of India to the Caste Validity Certificate dated 14th January 2012 (Exhibit-B to the Petition) granted to the 4th Respondent is on the ground that the Caste Scrutiny Committee has issued Caste validity Certificate to the 4th Respondent without making any inquiry as required by law.

4] Though record of the case is not produced by the Caste

Scrutiny Committee, the learned counsel appearing for the 4th Respondent on instructions stated that even 4th Respondent is not in a position to produce reasoned order passed by the Caste Scrutiny Committee. Therefore, he has no objection, if a fresh inquiry by the Caste Scrutiny Committee is ordered. He submits that the election dispute filed by the Petitioner should not proceed till the Caste Scrutiny Committee makes fresh adjudication. This prayer is opposed by the learned counsel appearing for the Petitioner.

5] As even 4th Respondent is unable to produce a reasoned order on the basis of which impugned Caste Validity Certificate has been issued, there is no reason to discard the contention raised by the Petitioner that without holding any inquiry and calling for the Vigilance Report, the impugned Caste Validity Certificate has been issued. The document at Exhibit 'F' also supports this conclusion. Another contention of the Petitioner is that there is no entry in the register maintained by the 3rd Respondent of having issued a Caste Certificate to the 4th Respondent. As we have no option but to remand the matter for fresh inquiry, this issue will have to be gone into by the Caste Scrutiny Committee.

6] As regards the prayer for grant of stay of proceeding of the Election Petition, in our view, the same will have to be granted as the 4th Respondent should not suffer on account of the failure of the Caste Scrutiny Committee to pass a reasoned order after holding proper inquiry in accordance with law.

7] Accordingly, we dispose of the petition by passing the following order:-

ORDER

- a) The impugned Caste Validity Certificate dated 14th January 2012 is hereby quashed and set aside. The case of the 4th Respondent for considering the prayer for grant of Caste Validity Certificate on the basis of the Caste Certificate dated 3rd August 1990 is remanded to the Caste Certificate Scrutiny Committee having its office at Kokan Bhavan at CBD Belapur, Navi Mumbai;
- b) We direct the Petitioner and the 4th Respondent to appear before the said Caste Scrutiny Committee on 28th July 2017 on 11.00 am for fixing the schedule of hearing. The Caste Scrutiny Committee shall ensure that an inquiry is made through Vigilance Cell as required by law. After giving an opportunity of being heard to the parties, the Caste Scrutiny Committee shall pass appropriate order in accordance with law as expeditiously as possible and in any event, within a period of four months from 28th July 2017;
- c) We direct that till the date of passing order by the Caste Scrutiny Committee in terms of this order, the Election Petition filed by the Petitioner for challenging the election of the 4th Respondent shall not proceed;
- d) We have made no adjudication on the merits of the caste claim and all contentions of the parties are kept

open;

- e) Rule is made partly absolute on the above terms. No orders as to costs.

- f) The Second Respondent shall act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)