

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

WRIT PETITION NO. 7461 OF 2016

Gaurav Prakash Gujar

... Petitioner.

Versus

State of Maharashtra
and others.

... Respondents.

....

Mr. C.K. Bhangoji for the Petitioners.

Mr. R.S. Apte, Senior Counsel a/w Mr. Aniruddha Garge for
Respondent No.3.

Mr. N.C. Walimbe, AGP for Respondent Nos.1,2 and 5.

Mr. A.S. Rao a/w Mr. Prashant Kamble for Respondent No.2.

Mr. D.S. Patil, Law Officer, District Caste Scrutiny Committee,
Thane, Konkan Bhavan, New Mumai is present in the Court.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 29th November, 2017.

P.C. :

By this writ petition, the petitioner challenges the caste validity certificate granted by the respondent-scrutiny committee in favour of the respondent no.3, dated 06.02.2010.

Mr. Bhangoji, the learned counsel for the petitioner, *inter alia* submitted that the impugned caste validity certificate is liable to be set aside as the same is granted in favour of the respondent no.3 without conducting a vigilance enquiry in the matter of the caste claim of the respondent no.3. It is submitted that the petitioner and the respondent no.3 had contested the

election to the Corporation on a seat that was earmarked for the backward class citizens. It is stated that the respondent no.3 had falsely claimed that she belongs to 'Dhangar', Nomadic Tribe and without conducting a vigilance enquiry in her caste claim, validity certificate is issued in her favour.

Though we had granted time to the learned Assistant Government pleader to produce the original record and proceedings and inform this Court whether a vigilance enquiry was indeed conducted in the matter of the caste claim of the respondent no.3, the learned Assistant Government Pleader, on instructions from the concerned employee in the office of the scrutiny committee states that despite the best efforts, the record pertaining to the caste claim of the respondent no.3 is not traced.

Mr. Apte, the learned senior counsel appearing for the respondent no.3 submitted that the caste claim of the respondent no.3 was rightly validated on the basis of the documents produced by her. It is stated that certain enquiry was made in the school of the father of the respondent no.3 to consider whether the school had indeed issued the copies of the documents. It is however fairly stated by the learned senior counsel, on instructions that a copy of the vigilance report is not available with the respondent no.3 and a concrete statement cannot be made on behalf of the respondent no.3 that a vigilance enquiry was indeed undertaken in the caste claim of the respondent no.3.

In the circumstances of the case, it would be necessary to set aside the caste validity certificate issued in favour of the

respondent no.3 as none of the respondents are in a position to claim that a vigilance enquiry was conducted in the caste claim of the respondent no.3. In fact, a copy of the record maintained by the vigilance officers is produced by the petitioner to point out that a vigilance enquiry was not conducted in the caste claim of the respondent no.3. In the absence of any material before this Court that vigilance enquiry in the caste claim of the respondent no.3 was conducted, it would be necessary to quash and set aside the impugned caste validity certificate and remand the matter to the scrutiny committee for a *de novo* enquiry in the caste claim of the respondent no.3.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned caste validity certificate is hereby quashed and set aside. The respondent no.6-scrutiny committee is directed to decide the caste claim of the respondent no.3 in accordance with law. The petitioner and the respondent no.3 are entitled to produce additional documents before the caste scrutiny committee in support of their rival claims. The parties undertake to appear before the scrutiny committee on 18.12.2017 so that the issuance of notices to the parties could be dispensed with. The scrutiny committee is directed to decide the caste claim of the respondent no.3, as early as possible. Since the respondent no.3 is elected as a corporator, the office of the respondent no.3 is protected till her caste claim is decided. Order accordingly. No costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)