

Sharayu.

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

WRIT PETITION NO. 9528 OF 2017

Mrs. Anuradha Sudhakar Katkar **...Petitioner**

Versus

Divisional Caste Scrutiny Committee, **...Respondents**
Solapur, Ambedkar Bhawan
Satrasta, Solapur & Ors.

AND

CIVIL APPLICATION NO. 2327 OF 2017

IN

WRIT PETITION NO. 9528 OF 2017

Smt. Archana Raju Wadnal **...Applicant**

In the matter between

Mrs. Anuradha Sudhakar Katkar **...Petitioner**

Versus

Divisional Caste Scrutiny Committee & **...Respondents**
Ors.

Mr. A.B. Tajane, for the Petitioner.

Mr. Shrishail Sakhare, for the Applicant in Civil Application.

Mr. A.P. Vanarse, AGP, for the Respondents No. 1, 4 and 5.

Mr. I.M. Khairadi, for Respondent No. 2.

Mr. S.B. Shetye, for Respondent No. 3.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 3 October 2017

ORAL JUDGMENT : *[Per Riyaz I. Chagla J.]*

1. Rule, returnable forthwith. Heard by consent.
2. The Petitioner has in the present Petition sought direction against the Respondent No. 2 that till the decision of the caste claim of the Petitioner by the Respondent No. 1-Committee and till the serving of the copy of the decision to the Respondent No. 2, the Respondent No. 2 be restrained from disqualifying the Petitioner in view of the Section 5B of the Maharashtra Municipal Corporation Act, 1949.

3. The brief background of the facts are necessary. The Petitioner has been elected as a candidate in the election of the Solapur Municipal Corporation. The Petitioner had contested the election as candidate of Congress (I) party for the seat available for OBC category. The Petitioner at the time of filling election form, submitted the documents in support of her caste case claiming as “Tambat” OBC on the basis of her husband's caste and not her father's caste. The Petitioner's election form was accordingly accepted. The Petitioner upon submitting her caste claim as Tambat OBC had been elected as Corporator of Solapur Municipal Corporation in the election conducted in February 2017. The Respondent No. 1-Committee had thereafter directed the Petitioner to submit the caste of her father's side and accordingly, the Petitioner had submitted the documents of her father's side which supported the caste claim of “Lohar NT”. It appears that the State Election Commission on 10 March 2017 informed the Secretary of Town Planning Department, Mantralaya that the orders regarding cancellation of election of a candidate should be passed with retrospective effect. The

Caste Scrutiny Committee at Solapur had sent the file of the Petitioner to the Caste Scrutiny Committee at Beed. The Special Divisional Officer, Parali, District Beed sent letter dated 22 June 2017 to the Caste Scrutiny Committee, Beed informing them that the Petitioner had been issued the caste certificate of Lohar caste from the office of Collector, Beed. The caste validity procedure was started at Beed before the Caste Scrutiny Committee, Beed in July 2017. The Petitioner had requested the Director of BARTI (Dr. Babasaheb Ambedkar Research & Training Institute, Pune) to decide the caste claim at the earliest. It was also informed that in the event the caste claim is not decided before the cut off date, the Caste Scrutiny Committee at Solapur will be responsible for the same. The Caste Scrutiny Committee at Solapur had on 28 July 2017 informed the Petitioner that since the President and Secretary of the Committee was not available, the decision could not be taken on the caste validity. The Petitioner again by correspondence dated 2 August 2017 requested the Caste Scrutiny Committee, Solapur for giving the caste validity. In

view of the delay in decision of the caste claim of the Petitioner by the Respondent No. 1-Committee, the present Writ Petition has been filed.

4. The learned Counsel appearing for the Petitioner has submitted that the Petitioner had submitted all requisite documents in support of her caste claim to the Caste Scrutiny Committee, Solapur. The Petitioner had provided the Caste Certificate from her father's side. The Petitioner should have been given the caste validity of Lohar caste based upon the Caste Certificate issued by the Authority within the jurisdiction of the Caste Scrutiny Committee, Beed. The documents from the father's side of the Petitioner shows the caste of the Petitioner as Lohar-NT-B. The Caste Validity Certificate has been given to the son and daughter of the real brother of the Petitioner apart from being given to the father of the Petitioner. The learned Counsel appearing for the Petitioner has submitted that there is no fault of the Petitioner in not producing the Caste Validity Certificate within the cut off i.e. six months from the date of election, as

the Respondent No. 1-Committee kept pending the Caste Scrutiny case of the Petitioner from 27 January 2017 i.e. over a period of six months from the date of the election. He has therefore, submitted that although the Petitioner had submitted her caste claim as Tambat OBC from her husband's side and had contested the election under that caste and obtained seat available for the candidate of OBC category, the Petitioner had thereafter, complied with the requisition of the Caste Scrutiny Committee and had furnished the documents of father's side in support of her caste claim as Lohar NT. He has therefore, submitted that the Respondent No. 2 should not disqualified the Petitioner in view of Section 5B of the Maharashtra Municipal Corporation Act, 1949.

5. The learned AGP has submitted that it is very clear from the law laid down by the Hon'ble Supreme Court that the Petitioner cannot rely on the caste of her husband's side as Tambat OBC and contest the election under that caste. He has submitted that the Petitioner has been elected as Corporator of

the Solapur Municipal Corporation as candidate of the OBC category solely on the basis of her husband's caste. He has submitted that there is no merit in the Petition, as the Petitioner is now seeking validity of her caste from her father's side after having been elected as Corporator. He has submitted that the period of six months has also expired since the date of filing her Caste Certificate for the contesting election and for seeking seat available for the candidate of OBC category. He has therefore, submitted that the present Petition ought to be dismissed.

6. We have carefully considered the submissions. We find that the issue of whether a woman by virtue of her marriage can rely upon her husband's caste and claim entitlement to the benefit of reservation as a Scheduled Castes and/or be entitled to contest the election for the seat reserved for a Scheduled Castes candidate has been answered by the Supreme Court. The Supreme Court in ***Meera Kanwaria Vs. Sunita & Ors***¹. relying upon the judgment of the Supreme Court

¹ 2006(1) SCC 344

in *Mrs. Valsamma Paul v. Cochin University and Others*² after reviewing the entire law on the subject in paragraph 24, held thus:-

“It is, therefore, beyond any doubt or dispute that a person who is a high caste Hindu and not subjected to any social or educational or backwardness in his life, by reason of marriage alone cannot ipso facto become a member of Scheduled Caste or Scheduled Tribe. In the absence of any strict proof he cannot be allowed to defeat the very provisions made by the reserving certain seats for disadvantaged people.”

It is thus clear that a married woman cannot by relying on her husband's caste claim entitlement to contest election for the seat reserved for a Scheduled Caste candidate.

7. In the present case, the Petitioner has admittedly, relied upon the caste of her husband, who belongs to the

² (1996)3 SCC 545

Tambat OBC and by virtue of her caste case as belonging to the Tambat OBC had been elected as a Corporator in the election of Solapur Municipal Corporation conducted in February 2017. We therefore, find no merit in the Petitioner's case that she had made out a caste case and had thereafter, submitted her caste claim from her father's side and that it was the Respondent No. 1-Committee who had kept pending the Caste Scrutiny case of the Petitioner from 27 January 2017 and hence, no fault could be found with the Petitioner in not producing the Caste Validity Certificate within six months from the date of the election.

8. We are of the view that the Petitioner has been wrongfully elected as Corporator based on the caste case from her husband's side. We are therefore of the view that the Petition deserves to be dismissed, in view of the law laid down by the Hon'ble Supreme Court in ***Meera Kanwaria*** (supra).

9. We accordingly, dismissed the Writ Petition with no order as to costs.

10. The learned Counsel for the Petitioner has applied for stay of this order. We reject the application in light of the law laid down by the Hon'ble Supreme Court.

11. In view of having dismissed the Writ Petition, the Civil Application is accordingly disposed of.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]