

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13161 OF 2017
WITH
CIVIL APPLICATION NO.2891 OF 2017
IN
WRIT PETITION NO.13161 OF 2017

Mohd. Arshad Mohd. Aslam Ansari Petitioner
Vs.
The State of Maharashtra & Others Respondents

Mr. Drupad Patil with Mr. Atharva Dandekar, Mr. F.N.
Momin & Mr. Gautam Jain for the Petitioner.
Mr. P.P. More, AGP, for Respondent Nos.1 & 2.
Mr. P.S. Dani, Senior Advocate i/by Mr. Amol Mhatre
for Respondent No.3.
Ms Manisha Salekar h/f Mr. N.R. Bubna for Respondent
No.4.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 15, 2017

P.C:

1. On 24-11-2017, the Caste Scrutiny Committee,
Thane has passed an order by which it has refused to issue Caste
Validity Certificate to the petitioner in terms of the Maharashtra

Act No.XXIII of 2001.

2. After this writ petition was argued for some time, on instructions, Mr. Patil, appearing for the petitioner, states that the petitioner withdraws all the allegations made against the Scrutiny Committee but prays that an opportunity be given to the petitioner to establish and prove that he belongs to the Other Backward Class ("OBC" for short), as claimed by him.

3. The petitioner says that he belongs to the Julaha Caste, which is recognised as OBC at serial No.57 under Government Resolution dated 13-10-1967, as amended from time to time. A Certificate to that effect is issued by the Sub-Divisional Officer, Bhiwandi, copy of which is at Annexure "A".

4. Since the petitioner was interested in contesting Elections of the Bhiwandi Nizampur City Municipal Corporation, as Councillor, from Ward 4A, which was reserved for OBC, he made the requisite application and thereafter filled the particulars, annexed the documents, including his own affidavit.

Based on that, the nomination form filed on 6-5-2017 was accepted, the petitioner was allowed to contest the Elections, upon contest the petitioner was declared elected, as evidenced by the result dated 26-5-2017.

5. So far there is no problem because these are undisputed facts except that the third respondent to this petition objected and claimed that the petitioner is not a Julaha OBC. However, it is evident that the petitioner is bound by the mandate of Maharashtra Act No.XXIII of 2001 which requires the claim to be referred to the Competent Scrutiny Committee even in the case of elected candidate who contests Elections as against a reserved seat.

6. The petitioner says that the Certificate was forwarded to the Competent Scrutiny Committee. The petitioner's claim was referred to a Vigilance Cell and whose report was obtained by the Scrutiny Committee, pursuant to which the petitioner was granted opportunity to explain as to why the report with the findings therein should not be accepted

but by assigning independent reason. To the show cause notice issued, the petitioner filed a reply.

7. It is claimed by the petitioner that after the written submissions were filed, there was also on record an affidavit of the third respondent dated 23-11-2017.

8. After withdrawal of the allegations against the Scrutiny Committee what we have noted is that there is a Vigilance Cell report. Thereafter, the Scrutiny Committee in its order has observed that the petitioner had amongst others furnished a copy of what is styled as a Registration Certificate. This Registration Certificate would enable the petitioner to establish and prove that his forefathers were engaged in Powerloom and they were carrying on the traditional business in textile. Secondly, the petitioner claimed that the home inquiry revealed that the petitioner's family was known to the residents of the area and equally their occupation. Further, we find that the Scrutiny Committee insisted on production of a pre-1967 document which would establish and prove that the petitioner

belongs to Julaha OBC. The Committee has found that though documents have been produced which would be termed as school records of the petitioner, the entry therein is pertaining to religion and not to the Class or Caste. Once this Class, which is termed as OBC, is not found to be inserted against the column pertaining to Caste/Tribe and none of these documents can be exhibited, the objection raised was also with regard to admissibility of the Registration Certificate. Finally, we find that the petitioner's father was known as Mohammad Aslam Mohammad Shafi. Thereafter, the name was changed to Mohammad Aslam Mohammad Shafi Ansari. The change of name is evident from the Gazette entry which was made based on an affidavit or application of the petitioner's father and there is no justification for seeking such change in the name after a considerable period of time and that too in the year 2016.

9. Barring these three observations, we do not find the Committee having applied its mind to the relevant tests and particularly the inquiry with regard to the traditional occupation, custom, practices, usage and rituals. Further, no

inquiry or anything in regard to the ceremony performed at the time of marriage, death, etc., are referred.

10. We were earlier, after hearing both sides, disinclined to grant any opportunity to the petitioner, particularly bearing in mind his conduct. The petitioner first made a grievance that the Committee did not afford him a reasonable opportunity of being heard. The petitioner also made a grievance that the Committee adopted procedure unknown to law or rather suspicious. The Committee's order results in undue benefit and advantage to the third respondent. Such allegations have been made against the Committee which now stand withdrawn. Importantly, the ground was that copy of the alleged Vigilance Cell report is not supplied to the petitioner. It is stated that the Certificate produced on record was referred to the Vigilance Cell and after inquiry the Cell submitted a report that the originals are not made available for its inspection. Now it is conceded in the additional affidavit that the reports are kept on record of the Committee and copies thereof have been furnished.

11. The argument is that the petitioner and his ancestors are known as Ansari prior to 13-10-1967. The OBC, as now recognised and identified, was known as Ansari. It is in these circumstances that Mr. Patil has made a request to the Court that in the event the petitioner possesses proof of the above trait and characteristics peculiar to his Community/Class, then, an opportunity be given to the petitioner to establish and prove his case. More so, when the petitioner has come out clean and now withdrawn all allegations against the Committee.

12. On this limited point only the matter was kept back today and we heard both sides. We find that the Committee should, in the larger interest of justice, grant an opportunity to the petitioner but at the same time we have to balance the rights and equities. There is some substance in the complaint made by Mr. Dani, learned Senior Counsel appearing for the third respondent, that the petitioner has deliberately delayed the matter. The petitioner knows the outer limit within which the scrutiny and verification has to be completed. He has allowed that time to lapse and on the eve of that period of six months

coming to an end the petitioner has filed the petition by levelling baseless allegations against the Committee and his reckless pleadings alone should disentitle him to any discretionary relief.

13. We have now before us even the additional affidavit and in which the petitioner has stated that he was under a genuine impression that the finding in the Vigilance Cell's report is factually incorrect. He has now received a copy of the *Roznama* and it reveals that copy of the Vigilance Cell's report was supplied on 23-11-2017 but his Advocate failed to handover the same to him. The petitioner states that he was under the genuine impression that fresh Vigilance inquiry was conducted after 21-11-2017 and the Vigilance Cell has not submitted any report. However, that position having been explained to him, it is claimed that his allegations were completely erroneous and misplaced.

14. We find that in the light of this stand taken by the petitioner, though belatedly, but the petitioner also relying on the documents annexed to the Civil Application, we quash and

set aside the order dated 24-11-2017, impugned in the petition.

15. We do not express any opinion on the merits of the controversy. We keep open the contentions of all parties in that behalf. Since there are serious allegations made and equally of manipulation of the records and Certificates, in the peculiar facts and circumstances, we permit the third respondent also to participate in the inquiry which will be held afresh pursuant to our direction. To take care of the apprehension of the third respondent, we ourselves decide the timetable within which the inquiry/scrutiny by the Committee in terms of the law would be undertaken and completed. We will grant no extension of time to complete it.

16. The parties shall appear before the Committee on 20-12-2017, at 11:00 a.m.. The Committee thereafter to conclude the proceedings and, if necessary, by conducting day-to-day hearing, on or before 21-1-2018. We direct that the Committee should allow the petitioner to produce all the relevant materials including placing reliance upon any anthropological data or research papers concerning the

Community. Equally, any material to the contrary should also be allowed to be produced at this inquiry by the third respondent. We direct the Committee to pass a reasoned order, uninfluenced by its earlier conclusion but before the stipulated date.

17. This writ petition and the civil application stand disposed of.

18. The ad-interim order passed by this Court shall continue till 22-1-2018.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)