

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1167 OF 2013

Deepaksing Shantilal Rajput .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. U. R. Awate, Advocate h/f. Mr. S. B. Talekar,
Advocate for the Petitioner.
Mr. K. S. Patil, A.G.P. for Respondent Nos. 1 to 3
and 5.
Mr. Mahesh S. Deshmukh, Advocate for Respondent
No. 4.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 29th November, 2018

PER COURT :

1. The petitioner contested the election against the present respondent no. 4 from Other Backward Class category. The petitioner is a defeated candidate. The petitioner challenged the validity issued in favour of the respondent.
2. Mr. Awate, learned counsel for the petitioner submits that initially when the validity is issued, the same is issued without any reasoned

order. The petitioner filed complaint. After the complaint is filed the vigilance has been conducted. In the vigilance it is not proved that Shama son of Sakharam Patil and Sonu son of Sakharam Patil are one and the same person. Respondent no. 4 is trying to take undue advantage of similarities in the name. In absence of proof that Sonu and Shama are one and the same person, the committee could not have relied upon the document Gaon Namuna No. 14 of Shama. The said document is of the year - 1917 and discloses the birth of the child of Sakharam. The learned counsel submits that the personnel from the Tahsil office has said that the said document is not available. The learned counsel further submits that the entry as appearing in Gaon Namuna No. 14 is not appearing in original register. These aspects have not been considered by the committee. The affinity is also not conducted. The erroneous affidavit is filed by respondent no. 4. The vigilance has also relied only upon the statement

of the person from the Tahasil office without verifying original register. The school record of respondent no. 4 discloses caste being recorded as 'Maratha'.

3. Mr. Deshmukh, learned counsel for respondent no. 4 supports the order.

4. The review by the committee can be on limited ground. The validity is issued in favour of present respondent no. 4 in the year - 1998 of 'Kunbi' OBC. In the year - 2012, the petitioner filed a complaint regarding the validity issued to respondent no. 4. Pursuant to the complaint vigilance was directed to be conducted. The vigilance is conducted. The basic reliance is on the document of the year - 1917, wherein it deals with the birth of the child of Sakharam Ananda Patil namely Shama.

5. The focal point of the contention of the learned counsel for the petitioner is that the father of the petitioner is Sonu and not Shama.

The respondent in order to prove that Sonu is the son of Sakharam and he was only known as Shama earlier, has relied on the mutation entries wherein the partition has taken place amongst three sons of Sakharam Ananda Patil.

6. The petitioner is not in position to show that the Sakharam did not have these three sons and that Shama was some another son begotten to Sakharam.

7. The mutation entries relied shows that the Sakharam has partitioned his properties in favour of his sons and subsequently the properties are partitioned by Sonu also. The said mutation entries are placed on record.

8. The personnel from the Tahasil office has not said that the certificate of birth is not issued by the Tahasil office. It is come on record that the record is in a torn condition. The said entry cannot be verified. The certificate has been issued in the year - 1996. The complaint was made

in the year - 2012. Unless it can be said for sure that the document was not issued way back in the year - 1996, it would be now unsafe to hold that the same was not issued, more particularly, when earlier validity is granted on the basis of the said document, the same was also considered.

9. In the light of above, no case for interference is made out. The writ petition is dismissed. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

marathe