

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7095 OF 2018

Nagesh Sidram Paskanti

.. Petitioner

Versus

Riyaz Ahmed Ibrahim Hundekari & Ors.

.. Respondents

-
- Mr. S.V. Gutte for the Petitioner
 - Mr. V.M. Mali, AGP for the State
 - Mr. V.V. Pai, Advocarte for Respondent No. 1
-

**CORAM : R.M. SAVANT &
M.S. KARNIK, JJ.**

DATE : SEPTEMBER 26, 2018.

P.C.:

1. Rule, made returnable forthwith and the matter is heard finally by consent of the parties.

2. The above Writ Petition has been filed challenging the caste validity certificate dated 17.12.2011 issued to Respondent No. 1 by the Caste Scrutiny Committee No. 1 Solapur. By issuing the said caste validity certificate, the claim of Respondent No.1 as belonging to “Julaha” which falls in Other Backward Classes in the State of

Maharashtra was upheld. The issuance of the said caste validity certificate to Respondent No. 1 is principally challenged on the ground that there is no speaking order passed by the concerned Caste Scrutiny Committee whilst issuing the validity certificate to Respondent No. 1.

3. In view of the factual situation arising out of the aforesaid submission made by the learned counsel for the Petitioner, we had directed the learned AGP to produce the original record of the Caste Scrutiny Committee before us. The learned AGP has accordingly produced the original record. He fairly admits that there is no speaking order passed by the concerned Caste Scrutiny Committee and that the caste validity certificate has been issued relying upon the certificate issued by the Anjuman-e-Julah Samaj which is at page 24 of the above petition.

4. In terms of the law laid by the Apex Court in the case of **Kumari Madhuri Patil Vs. Addl. Commr. Tribal Development, Thane & Ors.** Reported in (1994) 6 SCC 241, a modicum of procedure is required to be followed by the Caste Scrutiny Committee in the proceedings concerning the application for validation, however, in the instant case,

the record does not disclose such a procedure was followed and thereafter, the caste validity certificate has been issued by the Caste Scrutiny committee.

5. Mr. V. V. Pai, the learned counsel appearing for Respondent No. 1 sought to question the locus of the Petitioner to file the above petition seeking the reliefs which we have adverted to in the earlier part of this order. It was the submission of Mr. Pai that the Petitioner would have no locus insofar as the questioning the caste validity certificate issued to Respondent No. 1 is concerned.

6. With the assistance of the learned counsel for the parties, we have gone through the averments made in the above Writ Petition. On such perusal, we find that in paragraphs 3 and 4 of the petition, it is stated that the Petitioner along with Respondent No. 1 had contested the election to Ward No. 18A of Solapur Municipal Corporation in a seat reserved for the Other Backward Classes and in which election, Respondent No. 1 was the successful candidate and the Petitioner had come second, hence, the Petitioner being a contestant in the election to the said Ward No. 18A from which Respondent No.1 had also

contested and was declared elected, it cannot be said that the Petitioner has no locus standi to question the caste validity certificate issued to the Respondent No. 1 especially in view of the fact that the seat was meant for the reserved category. That apart, once an illegality in respect of issuance of the caste validity certificate on the basis of which a person seeks to derive the benefit is brought to our notice, we would be falling in our duty if we do not take cognizance of such an illegality and set it right. For the reasons afore stated, we deem it appropriate to set aside the caste validity certificate issued to Respondent No. 1 and remand the matter back to the Caste Scrutiny Committee No. 1 Solapur for a de novo consideration on the issue as regards the validation of the caste certificate issued to Respondent No. 1 as belonging to "Julaha" which falls in Other Backward Class. On such remand, Respondent No. 1 to appear before the concerned Caste Scrutiny Committee, Solapur on 8.10.2018. The Caste Scrutiny Committee to decide upon the validation latest by 31.1.2019 by giving proper opportunity to Respondent No. 1 and by adhering to the law laid down by the Apex Court in the case of Kumari Madhuri Patil (Supra). Respondent No. 1 would be at liberty to file further documents if so advised. We, however, make it clear that setting aside

of the caste validity certificate issued to Respondent No. 1 would not result in his disqualification to continue as a Municipal Corporator on the ground that he had not produced the caste validity certificate within the time that is stipulated by the statute. It would be contingent upon the decision that would be rendered by the Caste Scrutiny Committee on remand that the fate of the Respondent No. 1 to continue as a Corporator would depend.

7. We also make it clear that we have not considered the other prayers of the Petitioner and they are accordingly kept open for being sought in appropriate proceedings at the appropriate time.

8. The petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[M.S. KARNIK, J.]

[R.M. SAVANT, J.]