

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.556 OF 2017**

Shri. Balasaheb Kisan Kakare and Anr.	... Petitioners
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. P.K. Dhakephalkar, Senior Advocate i/by Mr. Madhav J. Jamdar for the Petitioners.

Mr. Rajan Pawar, AGP for the Respondent Nos.1 to 4, 4-I, 4-II, 4-III.

Mr. Rishin Mantri i/by Mr. S.B. Shetye for the Respondent No.7.

Mr. Deepak R. More for the Respondent No.10.

Mr. G.S. Godbole i/by Mr. Rahul P. Walvekar for the Respondent No.11.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 15th JUNE 2018

P.C.

1 Rule. Rule returnable forthwith. The learned counsel appearing for the respondents waives service.

2 Parties were put to notice on the earlier date that the petition will be taken up for final disposal at admission stage. As per the direction issued on 4th May 2018, the learned AGP has produced the file of the case. The challenge in this petition under Article 226 of the Constitution of India is to the caste validity certificate granted by the Divisional Caste Validity Committee No.3, Pune to the 11th respondent on 25th January 2012 thereby validating the caste certificate granted to

the 11th respondent recording that he belongs to Other Backward Class. The main ground of challenge is that the Caste Scrutiny Committee has made no enquiry and no findings have been recorded. It is pointed out that the Caste Scrutiny Committee by a cryptic order (Exhibit - "R") running only into six lines validated the caste certificate produced by the 11th respondent.

3 The learned counsel appearing for the 11th respondent does not dispute that the impugned caste validity certificate is granted only on the basis of the order at Exhibit- R. However, firstly he objects to the locus of the petitioner and secondly he submits that there is a gross delay. His contention is that in view of gross delay, the writ petition should not be entertained.

4 We have perused the original record. It appears from the record that there is an entry in the roznama maintained by the Caste Scrutiny Committee that on 23rd January 2012, the 11th respondent as well as the complainant Shri Nandkumar Kale were present and their arguments were heard. There is no reference in the roznama about passing of any order on the issue of validity of the caste certificate produced by the 11th respondent. From the original of the order at Exhibit- R which is on the file, it is clear that the date of the order is kept blank. From the record it appears that there is a report submitted

by Vigilance Cell and large number of documents have been annexed to the report. In fact, annexures to the report consist of several documents running into 107 pages. As stated earlier, the impugned order at Exhibit - R is a very cryptic order. There is no consideration of even a single document on record. There is no consideration of observations made by the Vigilance Cell in its report and the documents brought on record by the Vigilance Cell. It was the duty of the Caste Scrutiny Committee to consider each and every document on record and to record at least brief reasons as to why a particular documentary evidence is accepted or a particular documentary evidence is not accepted. The Caste Scrutiny Committee has failed to perform its statutory duty and therefore, there is no hesitation in holding that the impugned order is illegal.

5 As far as the objection to the locus of the petitioner is concerned, the 11th respondent is an elected Councilor of the Pimpri Chinchwad Municipal Corporation. Paragraph 1 of the petition contains material averments. The second petitioner is residing within the limits of the said Municipal Corporation and is a voter. The 11th respondent is an elected Councilor of the said Municipal Corporation who got elected by claiming that he belongs to a particular reserved category. Being a voter and a citizen residing within the limits of the said Municipal Corporation, surely the second petitioner has locus to maintain the petition.

6 As regards delay, firstly, we must note here that the impugned order is vitiated by non-application of mind and the Caste Scrutiny Committee has not recorded any reasons. Secondly, the 11th respondent has obtained a benefit on the basis of the impugned order by contesting general ward election of a Municipal Corporation on a reserved seat. Thirdly, in paragraph IX, there is an explanation for delay. The petitioners received the documents on 14th December 2016 and the present petition is lodged in January 2017.

7 Therefore, considering the facts of the case and the said averments, we do not think that this is a case where writ petition under Article 226 of the Constitution of India should be thrown out on the ground of delay.

8 Hence, the petition must succeed and we pass the following order :-

ORDER

- (i) The impugned order at Exhibit – R and the impugned Caste Validity Certificate dated 25th January 2012 are hereby set aside only on the ground that the impugned order shows non-application of mind and no reasons have been recorded therein. Even on the file, there is no such decision recorded. We direct the 11th respondent to

appear before the fourth respondent – Committee on 3rd
July 2018 at 11.00 am;

- (ii) The fourth respondent – Committee shall make enquiry in accordance with law. If any additional documents are produced, needless to add that enquiry through vigilance cell will have to be ordered on the basis of the said documents;
- (iii) The fourth respondent – Committee shall endeavour to decide the caste claim as expeditiously as possible and in any event by 29th September, 2018;
- (iv) We make it clear that we have made no adjudication on the merits of the caste claim of the 11th respondent and all contentions in that behalf are left open;
- (v) Rule is made partly absolute on above terms.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)