

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2218 of 2018

Chetana Chandrakant LokhandePetitioner
versus
The State of Maharashtra and ors.Respondents

Mr. C. G. Gavnekar along with Mr. G. S. Hiranandani, advocate for the petitioner.
Ms. R. M. Shinde, AGP for the State.
Mr. Aniket Nikam i/b. Mr. Aashish Satpute, advocate for the respondent No.5.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 29th JUNE, 2018.

P. C. :

1. Rule. Rule is made returnable forthwith and by consent, the matter is heard finally.
2. Heard Mr. Gavnekar, learned counsel for the petitioner, Ms. Shinde, learned AGP for the State and Mr. Nikam learned counsel for the respondent No.5.
3. By this petition, the petitioner has challenged the following orders and notice:
 - (i) The order dated 12th September, 2017, passed by the respondent No.3 - Sub-Divisional Officer, Sub-Division Roha.
 - (ii) The order dated 19th January, 2018, passed by the respondent No.4-District Caste Scrutiny Committee.

- (iii) The notice dated 8th February, 2018 issued by the respondent No.2 - District Collector.
- (iv) The petitioner is also seeking direction to the respondent No.4 to consider the validity of the caste certificate dated 26th November, 2003 and amended caste certificate dated 1st July, 2017.

4. The petitioner obtained the caste certificate from the Sub-Divisional Officer, Mangaon Division on 29th November, 2003 showing that she belongs to Kunbi -OBC caste. On the basis of this certificate, the petitioner contested elections and was elected as member of the Roha Panchayat Samiti in the year 2017. In accordance with the relevant provisions of law, the said caste certificate dated 29th November, 2003 was sent for scrutiny to the respondent No.4 – Caste Scrutiny Committee. During the process of enquiry, the Caste Scrutiny Committee came to the conclusion that the caste certificate dated 29th November, 2003 issued to the petitioner and sent for scrutiny is not in proper format and directed the petitioner to obtain fresh certificate. The petitioner, accordingly, applied afresh to the Sub-Divisional Officer, Roha Division, and obtained fresh certificate dated 1st July, 2017 under Maharashtra Scheduled Caste, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Castes, Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short “the 2012 Rules”), showing that the petitioner belongs to Kunbi OBC caste.

5. In the meantime, the respondent No.5 made a complaint to the Sub-Divisional Officer, Roha Division, that the petitioner obtained fresh caste certificate dated 1st July, 2017 fraudulently by suppressing relevant materials. The Sub-Divisional Officer, accordingly, passed an order dated 12th September, 2017, thereby cancelling the petitioner's caste certificate dated 1st July, 2017. The respondent No.4-Caste Scrutiny Committee thereafter passed an order dated 19th January, 2018, and confiscated the petitioner's caste certificate dated 29th November, 2003 as the same was not as per the 2012 Rules.

6. The petitioner is, thus, mainly aggrieved by the decision dated 12th September, 2017 of the Sub-Divisional Officer, Roha Division and decision dated 19th January, 2018 passed by the respondent No.4-Caste Scrutiny Committee. Relying upon these two decisions, the Collector -Raigad has also issued notice to the petitioner asking her to show as to why she should not be disqualified as a member of Panchayat Samiti Roha.

7. Mr. Gavnekar, learned counsel for the petitioner submitted that when the earlier caste certificate of the year 2003 was granted to the petitioner, the 2012 Rules were not in force and the said certificate was granted in accordance with Government Resolution Nos.CBC/1467-M

dated 13th October, 1967 and CBC-1684/GOP-592(1999)/BCW-5 dated 19th October, 1986. He submitted that the petitioner obtained the subsequent certificate dated 1st July, 2017 from Sub-Divisional Officer, Roha Division, at the instance of the respondent No.4- Caste Scrutiny Committee. The second certificate was challenged by the respondent No.5 by making an application before the Sub-Divisional Officer, Roha Division. He submitted that the Sub-Divisional Officer, Roha Division, could not have reviewed his earlier order dated 1st July, 2017 and cancelled the caste certificate granted to the petitioner. He lastly submitted that the validity of the caste certificate dated 1st July, 2017 is required to be decided by the respondent No.4-Caste Scrutiny Committee.

8. Mr. Nikam, learned counsel for the respondent No.5, submitted that the earlier caste certificate of the petitioner is not in accordance with the 2012 Rules. He submitted that the second caste certificate dated 1st July, 2017, was fraudulently obtained by the petitioner by suppressing material facts. He, therefore, submitted that no interference is called for.

9. Ms. Shinde, learned AGP has filed an affidavit of Mr. Avinash Deosatwar, Research Officer and Member Secretary, District Caste Certificate Scrutiny Committee, Raigad-Alibag. In paragraph 2,

a statement is made that the earlier caste certificate dated 29th November, 2003 obtained by the petitioner was not in prescribed format and, therefore, the petitioner was asked to obtain a new certificate in accordance with the 2012 Rules. She submitted that the impugned order passed by the Caste Scrutiny Committee could not be faulted with, as the earlier caste certificate of 2003 obtained by the petitioner was not in proper format.

10. Having considered the rival submissions and having gone through the petition and the annexures thereto as well as affidavit-in-reply, we find merit in the petition. The earlier caste certificate dated 29th November, 2003 issued to the petitioner by the Sub-Divisional Officer, Mangaon Division was undoubtedly prior to the coming into force of the 2012 Rules, and therefore, this certificate was not in prescribed format under the said Rules. Nevertheless, the said certificate was issued in the format prescribed under Government Resolution Nos. CBC/1467-M dated 13th October, 1967 and CBC-1684/GOP-592(1999)/BCW-5 dated 19th October, 1986. Be that as it may, the petitioner, at the instance of the respondent No.4 – Caste Scrutiny Committee approached the Sub-Divisional Officer, Roha Division and obtained a fresh caste certificate in the format prescribed under the 2012 Rules. As stated above, the said certificate was cancelled by the Sub-Divisional Officer, Roha Division in view of the complaint of the

respondent No.5. In our view, the Sub-Divisional Officer could not have reviewed the earlier order and cancelled the second certificate dated 1st July, 2017 granted to the petitioner. If it is the contention of the respondent No.5 that the said certificate was obtained by the petitioner fraudulently by suppressing material facts, then, it was within the domain of the respondent No.4 – Caste Scrutiny Committee to consider all the objections and grievances of the respondent No.5 and come to conclusion. In our opinion, the Sub-Divisional Officer, Roha Division, exceeded his jurisdiction and, therefore, the order dated 12th September, 2017 cannot be sustained and the same will have to be quashed and set-aside. At the same time, the respondent No.4 has not invalidated the earlier certificate dated 29th November, 2013, obtained by the petitioner on merits but mainly on the ground that it is not in proper format as per the 2012 Rules. So far as the second certificate dated 1st July, 2017 is concerned, that is required to be scrutinized by the respondent No.4 – Caste Scrutiny Committee. The second certificate was not considered by the respondent No.4 – Caste Scrutiny Committee as it was already cancelled by the Sub-Divisional Officer, Roha Division, by order dated 12th September, 2017. Since, we have already observed that the said order cannot be sustained, the latter certificate issued to the petitioner is required to be scrutinized by the respondent No.4-Caste Scrutiny Committee after giving an opportunity of hearing to the petitioner as well

as respondent No.5 and by following the procedure prescribed under the Act and 2012 Rules.

11. Rule is, accordingly, made absolute in terms of prayer clauses (a), (b) and (c) and the respondent No.4 – Caste Scrutiny Committee shall consider the validity of the caste certificate dated 1st July, 2017 obtained by the petitioner, a copy of which is annexed at “Exhibit - D”, in accordance with law as expeditiously as possible and preferably within a period of one year from the date of receipt of this order after granting an opportunity of hearing to all concerned including the respondent No.5.

12. In order to enable the respondent No.4 - Caste Scrutiny Committee to comply with this order, the petitioner shall remain present before it along with a copy of this order as well as caste certificate dated 1st July, 2017 on 1st August, 2018 at 11.00 pm..

13. The Sub-Divisional Officer, Roha Division is directed to return to the petitioner, the caste certificate dated 1st July, 2017, which was confiscated by them, so as to enable petitioner to produce the same before the respondent No.4-Caste Scrutiny Committee.

14. The writ petition stands disposed of.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]