

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5332 OF 2015**

Sachin Pralhad Chavan ..Petitioner
v.
Divisional Caste Scrutiny Committee No.2 & Others ..Respondents.

ALONGWITH

WRIT PETITION NO.10062 OF 2015

Sachin Pralhad Chavan ..Petitioner
v.
The State of Maharashtra ..Respondent.

Mr.Tanaji Mhatungade, for the Petitioner in both the writ petitions.
Mr.Manish M. Pabale, AGP for respondent Nos.1 and 2 in WP No.5332 of 2015 and for respondent No.1 in WP No.10062 of 2015.
Mr.Balkrishna D. Joshi, for respondent No.4 in WP No.5332 of 2015.

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

DATE : 17th APRIL, 2018

P.C.

1 By order dated 13th October 2015 parties were put to notice that an endeavour shall be made to decide the Petition finally. When this Petition was called out on 12th March 2018, it was noticed that though the Advocate for 4th respondent was present, his appearance was not shown on the cause list. This Court called for the record and reiterated that the Petition will be disposed of finally at the stage of admission. On 9th April 2018 and on 16th April 2018 none appeared for the 4th respondent.

2 The challenge in this petition under Article 226 of the Constitution of India is to the order dated 10th June 2015 passed by the Caste Scrutiny Committee No.2, Kolhapur, by which the caste claim of the Petitioner was invalidated. The Petitioner was granted a caste certificate dated 4th May 2010 by which the Sub-Divisional Officer, Karvir District, Kolhapur, recording that the Petitioner belongs to a caste Kunbi which is notified as other backward class. By the impugned order, the said caste certificate has been invalidated on the ground that the Petitioner has failed to prove his caste claim.

3 The Petitioner was elected as a Councillor of the Kolhapur Municipal Corporation. As noted in the order dated 22nd June 2015, the Petitioner stood disqualified and ceased to be an elected Councillor.

4 The main contention of the learned Counsel appearing for the petitioner is that the 1st respondent- Caste Scrutiny Committee did not give proper opportunity of being heard to the Petitioner. The learned Counsel appearing for the petitioner pointed out that on 7th March 2013, the petitioner made an application before the 1st respondent. The prayer made in the said application by the petitioner was that Vigilance Cell should be directed to make an enquiry on the basis of affidavit filed by petitioner of one Mr.Helvi. It was pointed out that the genealogy submitted by the petitioner was proved by the said affidavit. On 30th September 2013, the caste claim of the petitioner was invalidated by the 1st respondent. In a writ petition filed by the petitioner, an order of remand was passed. After remand, on 9th April 2015 the petitioner filed an application requesting the Committee to send genealogy prepared by the said Mr.Helvi for conducting local enquiry through Vigilance Cell. On 23rd April 2015, the said application was rejected. A writ petition was filed by the petitioner for challenging the said order which was rejected by order dated 8th May 2015. A time bound programme was fixed by this Court for disposal of the caste claim.

5 The learned Counsel appeared for the petitioner pointed out that on 22nd May 2015, the petitioner made an application for adjournment on the ground that he wanted to engage another Advocate . The said application was rejected. Even the second application made on the very day was rejected. He pointed out that on 22nd May 2015 itself the case was closed by the 1st respondent Committee for judgment. He submitted that a reasonable opportunity ought to have been granted by the 1st respondent to the petitioner of making final submissions. The learned AGP appearing for the 1st respondent for State as well as the learned counsel for the 4th respondent supported the impugned order.

6 On the earlier date the learned AGP had produced for perusal of the Court, the entire record of the proceedings before the 1st respondent. Today he has placed on record the photocopies of roznama of the proceedings. We have perused the roznama dated 22nd May 2015 which refers to the order of this court dated 8th May 2015 by which a direction was issued to the 1st respondent to decide the caste claim of the petitioner, within a period of one month. The order records that on some of the earlier dates, the petitioner had applied for adjournment on the grounds which were not valid . The roznama records that on 22nd May 2015, the petitioner applied for time on the ground that he wants time to appoint a new Advocate. The said application was rejected. The roznama further records that another application was filed by the petitioner requesting for grant of time only till 26th May 2015. The roznama further records that even the said application was rejected. Lastly the roznama records that the 4th respondent had already filed written submissions and he made a statement that he was not desirous of making any further submissions. The case was closed for orders on the same date which was ultimately decided by the impugned order passed on 10th June 2015.

7 The net result of the two orders referred above passed on 22nd May 2015 is that an opportunity of making oral submissions was denied to the

petitioner. It is not as if that within few days from 22nd May 2015, the case was decided. The case was ultimately decided on 10th June 2015. In the second application made by the Petitioner on 22nd May 2015, time was sought only till 26th May 2016. According to us, the said request was reasonable especially in the light of the fact that the issue was of the caste status of the petitioner. In our view, the 1st respondent ought to have acceded to the request made on 22nd May 2015 of granting time only of 4 days till 26th May 2015. Thus, the impugned order has been passed without giving adequate opportunity of being heard to the petitioner. On that ground, the impugned order deserves to be set aside and 1st respondent will have to be directed to hear the matter from the stage at which it was there on 22nd May 2015. However, the Petitioner cannot not seek any further adjournment on any unreasonable ground. Writ Petition No.10062 of 15 does not survive as the impugned ordinance has already lapsed. Accordingly, we pass the following order :

ORDER

1 The impugned judgment and order dated 10th June 2015 is hereby quashed and set aside. The case of the Petitioner for verification of caste certificate dated 4th May 2010 is remanded to the 1st respondent;

2 We direct the Petitioner and 4th respondent to appear before the 1st respondent on 9th May 2018 at 11.00 a.m. for fixing the schedule of hearing . If the 4th respondent fails to appear on that day, the 1st respondent shall issue a notice to the 4th respondent of the date fixed;

3 On the date fixed for hearing, the 1st respondent to proceed with the further hearing from the stage at which the enquiry was pending as on 22nd May 2015. We make it clear that the Petitioner will not be entitled to seek adjournment on any unreasonable grounds;

4 The caste claim shall be decided afresh as expeditiously as possible and in any event, within a period of 3 months from 9th May 2018;

5 We make it clear that we have made no adjudication on the merits of the caste claim;

6 The order dated 22nd June 2015 records that by virtue of the impugned order, the petitioner stands disqualified and has ceased to be an elected Councillor. We make it clear that as the Petitioner stands disqualified on the ground of the failure to produce the Caste Validity Certificate within the time stipulated by law, this order of setting aside the impugned order will not affect the disqualification which the Petitioner has already incurred;

7 Rule is made partly absolute in above terms;

8 All concerned to act upon an authenticated copy of this order.

(RIYAZ .I.CHAGLA, J)

(A.S. OKA, J)