

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7714 OF 2017

Santosh Jairam Khurpade

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. P.S. Dani, Senior Advocate with Mr. Ruchir L. Tolat i/b. M/s.L.C. Totlat and Co. for the Petitioner.

Mr. A.V. Anturkar, Senior Advocate with Mr. Sandesh Pathak i/b. Mr. A.V. Anturkar for the Respondent No.4.

Mr. R.S. Datar for the Respondent No.5.

Mr. V.N. Sagare, AGP for the Respondent -State.

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

DATED: 22nd FEBRUARY, 2018.

P.C.:-

Heard Mr. P.S. Dani, the learned senior counsel for the Petitioner, Mr. A.V. Anturkar, the learned senior counsel for the Respondent No.4, Mr. R.S. Datar, the learned counsel for the Respondent No.5 and Mr. V.N. Sagare, the learned AGP for the Respondent-State.

2. By this Petition, the Petitioner is challenging the order of the Respondent No.2 Caste Scrutiny Committee validating caste

certificate of the Respondent No.4 that he belongs to the Kunbi (OBC) caste. Mr. Dani, the learned senior counsel for the Petitioner invited our attention at Roznama at page 53 and pointed out that the arguments of the Respondent No.4 as well as of the Petitioner were concluded before the Respondent No.2 Caste Scrutiny Committee on 21st March, 2017 and the proceedings were closed for orders. He submitted that the impugned order discloses that Caste Scrutiny Committee has relied upon the genealogy dated 31st March, 2017, which was apparently filed by the Respondent No.4 after the hearing was concluded and the matter was closed for the orders. He submits that the Petitioner was not heard in this regard and was not given opportunity to meet this document.

3. Mr. Anturkar, the learned senior counsel for the Respondent No.4 does not dispute the facts stated hereinabove. He however, submits that the Respondent No.4 is not at fault and he cannot be disqualified pending reconsideration of the matter by the Caste Scrutiny Committee.

4. We have perused the records. The arguments of Mr. Dani, the learned senior counsel for the Petitioner are substantiated by the

Roznama at page 53. It is clear from this roznama that hearing of the parties before the Caste Scrutiny Committee was concluded on 21st March, 2017 and the matter was posted for decision. The impugned order dated 2nd May, 2017 makes a reference to the document dated 31st March, 2017. The impugned order reveals that the Caste Scrutiny Committee has relied upon the documents / genealogy dated 31st March, 2017, which was filed by the Respondent No.4 subsequent to closing of the matter for orders. The Petitioner was not given any notice about filing of the said document and he was not given any opportunity to deal with this document. We are of the view that the principles of natural justice have not been followed by the Respondent No.2-Caste Scrutiny Committee. The impugned order, therefore, cannot be sustained. Hence, the same is quashed and set aside and the matter is remanded to the Respondent No.3 with directions to decide the same afresh on the basis of evidence on record and after hearing both the sides. The matter be decided expeditiously, in any case within a period of three months from the date of receipt of copy of this order.

5. On the basis of the said caste certificate, the Respondent No.4 was elected as councilor of the Khopoli Municipal Council. In terms of provisions of Section 9(A) of the Maharashtra Municipal

Council, Nagar Panchayat and Industrial Township Act, 1965 the caste certificate of the Respondent No.4 was sent to the Caste Scrutiny Committee for scrutiny and by the impugned order same was validated. Since the impugned order is being set aside on the ground that principle of natural justice is not followed, within the period of six months from the date of general elections of Khopoli Municipal Council, the Respondent No.4 apprehends that the Respondent No.4 would be disqualified. We must mention that the question whether the provisions of Section 9(A) of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 regarding the submission of caste validity certificate is mandatory or directory is held for consideration before the Full Bench in ***Anant Hanumant Ulhalkar Vs. Chief Election Commissioner and Ors., 2017 (1) Mh. L.J. 431*** and the Full Bench of this Court held that said provisions are mandatory in nature. Both the learned senior counsels make a statement that judgment and order of the Full Bench is carried to the Supreme Court and the Supreme Court has stayed the judgment and order of the Full Bench of this Court. Thus, the question whether the provisions of Section 9(A) of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965 are mandatory or directory are subjudice before the Apex Court. In that view of the

matter we direct that during the pendency of the reconsideration by the Respondent No.2 Caste Scrutiny Committee the Respondent No.4 shall not be disqualified and in the event the decision of the caste scrutiny committee is adverse to the interest of the Respondent No.4 same shall not be implemented for a period of two weeks from the date of serving copy of such order on the Respondent No.4. Parties are at liberty to file additional documents, if so need.

6. The Writ Petition stands disposed of.
7. All concerned to act on an authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)