

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8334 OF 2017

Mrs.Kiran Nilesh Jathar nee Kiran Suresh Kasbe ... Petitioner

Vs

The District Caste Certificate Validity
Committee, Pune and Ors. ... Respondents

WITH
CIVIL APPLICATION NO.897 OF 2018
IN
WRIT PETITION NO.8334 OF 2017

Ms.Renuka Hulgesh Chawadi ... Applicant/
Orig. Respondent No.6

In the Matter Between :-

Mrs.Kiran Nilesh Jathar @ Kiran Suresh Kasbe ... Petitioner

Vs

Pune District Caste Certificate Validity
Committee, Pune Division, Pune and Ors. ... Respondents

.....

Mr.Ram S. Apte, Senior Counsel a/w Jayesh Kocheta, Pralhad Paranjape
and C.S. Zende for the Petitioner.

Ms.P.N.Divan, AGP for the Respondent-State.

Mr.Madhav J. Jamdar a/w Mr.Ravi Kadam for Respondent No.3.

Mr.Pradip Chincholikar a/w Mr.Vikrant Desai for Respondent No.6.

Mr.Abhijeet P. Kulkarni, Counsel for Pune Municipal Corporation.

**WITH
WRIT PETITION NO.10134 OF 2017**

Ms.Renuka Hulgesh Chawadi ... Petitioner

Vs

The Pune District Caste Certificate
Validity Committee, Pune Division and Ors. ... Respondents

.....

Mr.Pradip Chincholikar a/w Mr.Vikrant Desai i/b Mr.Sanjay S. Mehta
for the Petitioner.

Mr.Ram S. Apte, Senior Counsel a/w Jayesh Kocheta, Pralhad Paranjape
and C.S. Zende for Respondent No.3.

Ms.P.N. Divan, AGP for the Respondent-State.

Mr.Abhijeet P. Kulkarni, Counsel for Pune Municipal Corporation.

Mr.Madhav Jamdar a/w Mr.Ravi Kadam for Respondent No.4.

Mr.Shivshree Dilip Orape for Respondent No.5.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

MONDAY, 15TH OCTOBER, 2018

P.C. :

1 By this Writ Petition under Article 226 of the Constitution
of India, the petitioner challenges the order passed by the District Caste
Certificate Validity Committee, Pune.

2 That order has been passed in the following facts and circumstances.

3 The petitioner before us is Mrs.Kiran Nilesh Jathar. Prior to her marriage to Nilesh Jathar, she was known as Kiran Suresh Kasbe. The petitioner applied for a caste certificate. It is stated by her that she was born on 2nd May, 1989 at Pune. On 2nd May 1999, she was admitted to a school and she left the school on 31st May, 2004. Annexure 'A' to the Petition is a copy of the School Leaving Certificate. That Certificate carries an entry against the Religion/Caste column as 'Nav Buddha'. The petitioner, however, claims that she is 'Mahar' and since her forefathers professed 'Buddhist' Religion, they are also known as 'Nav Buddha'. However, 'Mahar' is a Scheduled Caste and the Constitution (Scheduled Castes) Order, 1950 enlists 'Mahar' at serial number 37. It is in these circumstances the petitioner says that though her father professed Buddhism and was issued a conversion certificate, the original claim of the family being 'Mahar' cannot be said to be given up or abandoned.

4 The petitioner says that on 16th December 2007, she

married Nilesh Baban Jathar at Pune. She submitted an application for issuance of a certificate, styled as 'Caste Certificate', and the Competent Authority issued her a Caste Certificate on 23rd September 2016, copy of which is at Exhibit D. That Certificate shows that the petitioner belongs to 'Mahar' Scheduled Caste. This Caste Certificate was issued following the guidelines laid down by the Government of Maharashtra in a Resolution dated 16th October, 1985.

5 It is the claim of the petitioner that on 21st January 2017, she filed an application requesting the Committee to verify and validate her Caste Certificate. Along with that, she filed number of documents. In the month of February 2017, elections for the Pune Municipal Corporation were held. The post of 'Councillor' from Ward No.1A, Kalas Dhanori, Pune was contested by the petitioner as a candidate of 'Bhartiya Janata Party (BJP)'. It was a seat reserved for Scheduled Castes (Woman) category. On 23rd February 2017, the results were declared and the petitioner was elected.

6 It is her case that on 20th March 2017, the Scrutiny Committee forwarded the documents for a vigilance inquiry and that

vigilance report was submitted on 18th April 2017, copy of which is annexed as Exhibit K to the Petition.

7 In terms of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of issuance and verification of) Caste Certificate Act, 2001, (for short, Maharashtra Act 23 of 2001) and the Rules framed thereunder, the Scrutiny Committee issued a show cause notice to the petitioner observing that the report submitted by the Vigilance Cell is not binding on them, and, therefore, she must show cause as to why that should not be excluded from the process of scrutiny and verification. The petitioner furnished her reply to this show cause notice, copy of which is at annexure M to the Petition.

8 Thereafter the principles of natural justice have been followed and by the impugned order dated 11th July 2017, the claim of the petitioner as belonging to Scheduled Caste 'Mahar' was rejected. Consequently, the Caste Certificate was cancelled.

9 Pertinently, there was a complaint made by the opponent of the petitioner at the elections, namely, respondent No.3 to this Petition and the Committee in the impugned order has made a reference to that complaint. It is stated that respondent No.3 pointed out that there is a fraud perpetrated by the petitioner inasmuch as her claim as belonging to 'Mahar' Scheduled Caste is belied by the fact that in her own school records, there is no such entry. The only entry to this effect is to be found in her grandfather's School Leaving Certificate. However, that School Leaving Certificate has been obtained by dubious means. It is a fraud. That Certificate was obtained in the year 1999. However, when inquiry was made with the School and which is purportedly attended by her grandfather, that School informed the Inquiry Officer in writing that there was no such student admitted in that School nor the registration number and the details are found in the School Register. Thus, the School Leaving Certificate is not a genuine, but a forged and fabricated document. If, on the strength of such a Certificate, the claim of the petitioner's cousin sister has been validated and a Validity Certificate has been issued in her favour does not mean that the same has any probative value. It is evident that such certificate of validity issued to the cousin sister of the petitioner from paternal side

has lost its evidentiary value in the light of the proven fraud. Even a criminal complaint is pending and under investigation against the petitioner. For these reasons, the Committee feels that her claim should be invalidated. It is this order which is challenged in this Writ Petition under Article 226 of the Constitution of India.

10 Mr.R.S. Apte, learned senior advocate appearing in support of this Petition would submit that on this Petition, noticing the apparent inconsistency and contradiction in the findings of the Committee, on 26th July 2017, this Court passed a reasoned ad-interim order. This Court has noted in its order that the Committee records a categorical finding that the petitioner belongs to 'Hindu Mahar' Scheduled Caste. However, the Caste Certificate is invalidated on the ground that the same has been granted on the basis of fabricated documents. Still, the Scrutiny Committee grants a declaration that the petitioner belongs to 'Hindu Mahar' Scheduled Caste. It is in these circumstances, this ad-interim relief has been granted and is continued till date. In the absence of a Caste Validity Certificate, the petitioner will be deemed to have vacated her office as an elected Councillor. According to Mr.Apte, once there is a apparent inconsistency and contradiction and the two

findings cannot be reconciled, then, we must entertain the Petition. Thus, according to him, dismissing this Petition would cause irreparable harm, in the sense, the people of the Ward will lose a representative. In that sense, this is contrary to public interest as well.

11 On such a Writ Petition, on the initial occasion, we passed a detailed order summoning the records. Our order to this effect has been passed on 9th October, 2018. That order reads as under :-

- “1. Leave to amend to annexe copy of the communication received from the Pune Municipal Corporation.
2. Having heard Mr.Apte, learned Senior Counsel appearing on behalf of the petitioner, we deem it fit and proper to peruse the original record before rendering any opinion on the issue raised in the petitions.
3. In the circumstances, let the original record be produced for our perusal by the learned Government counsel.
4. It is stated by the learned Government counsel that the record will be produced on Friday, 12th October, 2018.
5. List on 12-10-2018, on the supplementary board.
6. Learned counsel appearing for the Pune Municipal Corporation in Writ Petition No.10134 of 2017 waives service.”

12 Precisely taking note of this Court's observation made in the order dated 26th July, 2017 and also not to cause any injustice in the light of the submissions of the petitioner's senior counsel, we called

for this original record.

13 Ms.P.N.Divan, 'B' Panel counsel appearing for the State produces the original record.

14 In the original record, there are two important and equally relevant documents. Insofar as the Certificate issued to the petitioner's grandfather from the paternal side, Laxman Gangaram Kasbe, that records against the column Religion and Caste, including Sub-Caste 'Hindu-Mahar'. It is stated that this is issued by Netaji Subhashchandra Bose Primary and Secondary as also Higher Secondary School, Yerwada, Pune.

15 When this Certificate was relied upon to obtain a Caste Validity Certificate for the cousin sister from the paternal side as also a Caste Certificate in favour of the petitioner, we have found that the Vigilance Cell attached to this Scrutiny Committee has forwarded together with its report, a communication from this School. In the communication dated 6th April, 2017 addressed to the Inquiry Officer heading this Vigilance Cell, it is stated in unequivocal terms that

Laxman Gangaram Kasbe was not a *bona fide* student of this School at all. The registration number appearing on this Certificate does not tally with the entries in the School Register. The Head Master of the School informs this Inquiry Officer that he has perused and verified the original School Register from 1957. In the said School Register, there is no entry bearing Registration No.25832 and depicting the name of Laxman Gangaram Kasbe. In the circumstances, this child was not a student of the said School. Now, in the light of this, it is evident that the Certificate of Validity granted to the petitioner's cousin sister from the paternal side loses its probative value. It is settled law that if a Certificate of Validity has been procured by fraud or misrepresentation, then, it has no evidentiary value. It cannot be taken as a precedent as well. Ordinarily in one family, there cannot be a situation where one person or the head of the family is a Scheduled Caste whereas the children are not. However, there is an exception to this general rule and which is that fraud vitiates everything. That would vitiate every claim from inception. Pertinently, the petitioner does not dispute that she attended a primary and secondary school which is known as 'Genaba Sopanrao Moze Secondary & Higher Secondary School, Pune'. It is stated that in this School, the petitioner was admitted on 2nd May,

1999. When she left the School on 31st May 2004, it is evident that against the entry Religion/Caste, the particulars entered are 'Nav Buddha'. Now it is well settled that 'Buddhism' or 'Nav Buddha' is a religion. If 'Hindu-Mahar' is Scheduled Caste notified in terms of the Presidential Order issued under the powers derived from the Constitution of India, then, in Hindu Religion, certain castes have been shown as Scheduled Castes. The petitioner's School Leaving Certificate does not carry the entry 'Hindu-Mahar' Scheduled Caste. It only refers to her religion. There is always, therefore, a lure of an electoral office and a temptation to obtain a Caste Certificate or Certificate of Validity so as to pass oneself off as a Scheduled Caste or Scheduled Tribe candidate. That enables a candidate like the petitioner to contest the elections from a Reserved Seat. It may be that the petitioner's father was issued a Caste Certificate on 28th March, 1985 and certifying him to be belonging to 'Mahar' Scheduled Caste and though he converted to 'Buddhism' in 1956, he claims that he belongs to 'Mahar' Scheduled Caste. Since there is a School Leaving Certificate pertaining to the petitioner's grandfather, which is now proven to be fabricated, then, reliance on the petitioner's father's Caste Certificate would not assist the petitioner. We find that the petitioner cannot capitalise on the

inconsistencies or contradictions in the order of the Scrutiny Committee. In the presence of overwhelming evidence and to the contrary, the Scrutiny Committee could not have held that the petitioner belongs to 'Hindu-Mahar' Scheduled Caste.

16 In this regard, we can make useful reference to the affidavit, which has been filed by respondent No.3 to this Writ Petition. With regard to the Caste Certificate issued by Tahsildar and Executive Magistrate, Pune City in favour of the petitioner's father, Suresh Kasbe, it is stated that the Government Information Officer-Resident Nayab Tahsildar, Pune has informed the respondent No.3 that if this Certificate had been issued from his office, there will be a contemporaneous record. The contemporaneous record is conspicuous by its absence. The Outward Register does not reflect and prove issuance of such a certificate. There is an interpolation in the said Register and changes have been made so as to mention the name of the petitioner's father. The interpolation is also proved by producing the relevant documents. Further, we have on a record a First Information Report No.0648 dated 28th July, 2017 referring to the petitioner as an accused and charging and alleging that she has committed offences

punishable under Sections 464, 465, 471, 468 and 420 of the Indian Penal Code. It is alleged that she has produced a false and fabricated School Leaving Certificate of her grandfather. The FIR has been lodged by the Resident Nayab Tahsildar, Pune City. During the course of investigation, the statement of respondent No.3 has also been recorded.

17 There is also an affidavit in reply filed by respondent No.6. She has also referred to the allegations against the petitioner made in the First Information Report.

18 To our mind, once such findings of fact are rendered against the petitioner and consistent with the material placed on record, then, the impugned order cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. In the absence of such a position in law, we cannot interfere with the order of the Scrutiny Committee. Our jurisdiction under Article 226 of the Constitution of India cannot be equated with a Appellate jurisdiction. We have no powers to re-appreciate and re-appraise the factual finding or interfere with it unless it is demonstrably perverse. We also remind parties like the petitioner that our jurisdiction under Article 226 of the

Constitution of India is extraordinary, equitable and discretionary. It cannot be exercised so as to defeat justice. It is exercised to promote honesty, justice and good faith. When justice is not on the side of the petitioner, then, we cannot interfere with the order under challenge. In the light of the observations made above, the Writ Petition is dismissed.

19 Mr.Apte, learned senior counsel prays for continuation of the ad-interim order dated 26th July, 2017 for a period of two (2) months to enable the petitioner to approach a higher Court or to take an appropriate decision. Every contesting respondent has opposed this prayer. In the light of our findings and particularly that there is a proven case of fraud, we are disinclined to grant the request of Mr.Apte. The prayer to continue the ad-interim order is, therefore, rejected.

20 The original record be returned to learned AGP by replacing it with certified true copies.

21 In view of the dismissal of the Writ Petition, Civil Application No.897 of 2018 does not survive and stands disposed of.

22 The second Writ Petition No.10134 of 2017 is clearly not maintainable under Article 226 of the Constitution of India and particularly when a the writ of certiorari can be claimed challenging the order of the Statutory Authority like the Scrutiny Committee provided that order is adverse to the petitioner. The order impugned in the Writ Petition passed by the Scrutiny Committee is not adverse to the interest of the petitioner at all. It may contain some findings here and there, but, no Writ Petition can lie under Article 226 of the Constitution of India to challenge them. The Writ Petition is entirely misconceived and it is dismissed. No costs.

[B.P. COLABAWALLA, J.]

[S.C. DHARMADHIKARI, J.]