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

WRIT PETITION NO. 11964 OF 2017

Kiran Arvind Bartakke

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

Mr. Ganesh Bhujbal, for the Petitioner.

Mr. A.I. Patgel, Addl. GP with Mr. Manish M. Pabale, AGP for Respondent Nos. 1 and 2.

Mr. G.S. Godbole, with Ms. Ketki Gadkari, for Respondent No.3.

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

DATED: 6TH MARCH 2018.

ORAL JUDGMENT :- (Per A.S. Oka, J.)

1. By order dated 29th November 2017, notice for final disposal of this Petition was issued on the ground that the impugned order is an undated order which does not contain any reasons by which the caste certificate granted to the third Respondent has been validated.

2. It appears that on the basis of caste certificate issued to the third Respondent on 1st October 2011 by the Deputy Collector which certifies that he belongs to Kunbi caste which is recognised as Other Backward Class, the third Respondent applied to the second Respondent Scrutiny Committee for grant of validity certificate. Accordingly, caste validity certificate dated 24th

January 2012 was issued. The said caste validity certificate mentions that the application of the third Respondent along with documents received by the second Respondent Committee was placed before the meeting of the second Respondent on 23rd January 2012. The caste validity certificate was issued on the very next day i.e. on 24th January 2012.

3. Exhibit "A" to the Petition is the Roznama recorded on the file of the third Respondent by the second Respondent committee which records that the third Respondent was present at the time of hearing. He informed the committee that his case should be decided on the basis of documents already on record and he does not wish to lead any documentary evidence. The Roznama specifically records that the judgment was reserved. Page 16 is a short and cryptic order passed by the second Respondent committee on which the date is kept blank. The order runs into only four lines. The first line refers to the documents in relation to the birth of the son of real brother of the Respondent No.3's grandfather. The second line vaguely refers to documentary evidence and the report of the vigilance cell. The third and the fourth lines record that the second Respondent – Committee has unanimously decided to validate the caste certificate.

4. Firstly, no reasons have been assigned for upholding the

caste claim. Secondly, there is a vague reference to documents produced by the third Respondent. However, there is no finding recorded about the genuineness and / or evidentiary value of the said documents. There is no consideration of the contents of the documents. There is no reference to the contents to the vigilance cell report. More important is the fact that on 23rd January 2012, the judgment was reserved and the caste validity certificate was issued on 24th January 2012. The order on page 16 does not bear any date.

5. The learned counsel appearing for the third Respondent tendered across the bar an Affidavit of the third Respondent. The first objection raised is of the delay. It is the contention of the third Respondent that in the year 2012, he was elected as a Councillor of the concerned Municipal Corporation on a seat reserved for OBC. He contested the election from Ward No.31 and the same election was contested by the Petitioner from ward No.30. It is contended that though the caste validity certificate was issued on 24th January 2012, the present Petition is filed in August 2017. The second contention is that there is full fledged vigilance cell inquiry and large number of old documents have been produced. The submission is that there is more than enough evidence in support of the caste claim of the third Respondent.

6. We may note here that even the third Respondent has relied upon the same Roznama dated 23rd January 2012, which is annexed at Exhibit “A” to the Petition.

7. The issue is of granting validity to the caste certificate issued to the third Respondent. As observed earlier, the impugned order is a non-speaking order. There is a serious doubt about the date on which the said non-speaking order was passed in as much as on 23rd January 2012, the judgment was reserved by second Respondent – Committee and immediately on next day, the caste validity certificate was issued to the third Respondent. Thus, after the judgment was reserved on 23rd January 2012, it appears that no date was fixed for the pronouncement of the judgment and straight away on the next day caste validity certificate was issued.

8. The third Respondent has got elected as a Municipal Councillor on a seat reserved for OBC. Unless the third Respondent properly establishes his caste claim, he is not entitled to represent a reserved seat.

9. Considering the nature of the impugned order and considering the fact that the third Respondent has taken advantage of the said order, delay in filing the Petition does not

come in the way of entertaining this Petition.

10. Notwithstanding the series of decisions of this Court and Apex Court, the second Respondent has chosen to dispose of the caste claim of the third Respondent without recording any reasons whatsoever. The order of the caste scrutiny committee shows complete non-application of mind and therefore, the order stands completely vitiated.

11. It is true that the third Respondent has relied upon several old documents. However, a factual inquiry on the basis of the documents produced by him will have to be made by the second Respondent in accordance with law.

12. Accordingly, the Petition must succeed and we pass the following order:-

- (a) The impugned order on page 16 and the caste validity certificate dated 24th January 2012 issued to the third Respondent are hereby quashed and set aside;
- (b) The matter of verification of the caste of the third Respondent based on the caste certificate on 1st October 2011 (Exhibit 'B' to the Petition) is remanded to the second Respondent;
- (c) We direct the parties to remain present before the second

Respondent on 26th March 2018 at 11.00 a.m. for fixing the schedule of hearing;

- (d) Considering the fact that the third Respondent has applied for grant of caste validity certificate in the year 2012, the caste scrutiny committee shall give necessary priority to the disposal of the caste claim of the third Respondent;
- (e) Needless to add that the caste scrutiny committee will hold inquiry in accordance with law and pass a reasoned order;
- (f) All contentions on merits are kept open;
- (g) Rule is partly absolute in the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)