

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12403 OF 2017**

Akrur Babanrao Kudale

..Petitioner

vs.

State of Maharashtra, through its Secretary and Ors.

...Respondents

Mr. Chintamani K. Bhangoji for the Petitioner.

Mr. Manish M. Pabale, AGP for the Respondent Nos.1 and 2.

Mr. Jagdish G. Aradwad (Reddy) for the Respondent No.3.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 13th FEBRUARY, 2018

P.C.:

. The parties were put to notice by the order dated 29th January 2018 that the matter will be disposed of finally at the stage of admission.

2. The Respondent No.3 contested the general ward election of the Pune Municipal Corporation. While contesting the election for a reserved constituency, the Respondent No.3 relied upon the caste validity certificate issued to him declaring that he belongs to 'Kunbi' caste. The caste validity certificate is issued on the basis of the order of the Scrutiny Committee, a copy of which is annexed at page No.116.

3. After having heard the learned counsel for the parties, we find that the order of the Scrutiny Committee is completely unsustainable. The order has been passed in a preconceived format. There are only 7 words and 2 figures filled in by hand in the preconceived format. There is no reference to any vigilance cell report in the order. Infact it records that the Committee has decided to issue a caste validity certificate without any inquiry by the vigilance cell or without calling upon the Respondent No.3 for hearing

4. Thus, the impugned order shows complete non application of the mind. The Caste Certificate Scrutiny Committee was bold enough to record that it has decided the caste claim without vigilance cell inquiry. The reliance is placed by the learned counsel appearing for the Petitioner on clause (5) of the judgment and order dated 8th August 2016¹ which reads thus:

“5. However, in view of the judgment of the Division Bench of this Court in **Mangesh Nivrutti Kashid and Ors. vs. District Collector & Ors. 2012(3) Bom. Cr. 716** we are of the view that Vigilance Cell Report is integral and core of the verification process and if validity certificate is to be issued to a candidate, then the requirement of calling for the Vigilance Cell report is must. Any deviation from this position will result in contravening the dictum of the Supreme Court in the Madhuri Patil's case and Dayaram's case. According to the Division bench of this Court Rule 12 does not dispense with calling for report from the Vigilance Cell. Rule 12 will have to be read in consonance with the judgments of the Supreme Court in Madhuri Pati's case and Dayaram's case, and it cannot be interpreted in the manner contrary to the aforesaid judgments of the Supreme Court. Thus the caste validity certificates which are issued without calling for the Vigilance Cell report cannot be considered as valid in the eyes of law, and suffer from jurisdictional error which goes to the root.”

(underline supplied)

5. Hence, the impugned order of the Caste Certificate Scrutiny Committee is completely illegal and the caste validity certificate stands vitiated.

6. Accordingly, the following order is passed:

- i) The order of the Caste Certificate Scrutiny Committee, Pune (Exh.T) and the Caste Validity Certificate dated 17th October 2016

¹ Smt. Vaijayanti Subhash Patil vs. State of Maharashtra and Others

are hereby quashed and set aside;

ii) The matter is remanded to the Caste Certificate Scrutiny Committee No.3, Pune Division, Pune for fresh consideration. Needless to state that the Caste Certificate Scrutiny Committee will call for a report of the Vigilance Cell and shall hold inquiry in accordance with law;

iii) We direct the Petitioner to appear before the Caste Certificate Scrutiny Committee No.3, Pune on 27th February 2018 for fixing the schedule of hearing;

iv) The Caste Certificate Scrutiny Committee shall make an endeavour to conclude the inquiry as expeditiously as possible and preferably within a period of 3 months from the date fixed for appearance of the parties;

v) We have made no adjudication on the merits of the case. All contentions of the parties on merits are kept open to be decided by the Caste Certificate Scrutiny Committee;

vi) Rule is made partly absolute on the above terms.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)