

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12187 OF 2018**

Vaijayantimala Laxman Gholap @	]
Vaijayanti Shirish Gujar	]
Aged __ years, residing at 103,	]
1 st floor, Gaurish Apartment,	]
Rambaur Lane No.1, Kalyan West,	]
Dist. Thane	]... Petitioner

Vs.

- | | | |
|----|------------------------------------|---|
| 1. | State of Maharashtra |] |
| | Through Secretary, Social |] |
| | Justice and Special Assistance |] |
| | Mantralaya, Mumbai-400032 |] |
| 2. | Divisional Caste Certificate |] |
| | Scrutiny Committee through |] |
| | its Member Secretary having |] |
| | its office at Konkan Bhavan, |] |
| | 5 th floor, CBD Belapur |] |
| | Navi Mumbai |] |
| 3. | Kalyan Dombivli Municipal |] |
| | Corporation, Kalyan through |] |
| | its Commissioner having its |] |
| | Office at Shankarrao Chowk, |] |
| | Kalyan. |] |
| 4. | The Election Commission |] |
| | Mantralaya, Mumbai -400032 |] |

5. Gaurav Prakash Gujar]
 Aged 33 years, residing at]
 505, Shree Vignahar Sankul]
 Birla College Road, Opp.]
 Gurukripa Hospital, Kalyan (W)]
 421 301]... Respondents

....
 Mr. P.K. Dhakephalkar Senior Counsel I/b Mr. Balkrishna G. Tangsali along with Puja Acharekar for Petitioner

Ms. Pushpalata Diwan AGP for Respondent Nos. 1 and 2

Mr. Sandip D. Shinde Advocate for Respondent No.3

Mr. Rishin Mantri I/b Mr. Sachindra B. Shete for Respondent No.4 – State Election Commission

Mr. Chintamani K. Bhangoji along with Hamid Mulla and V.A. Madne Advocates for Respondent No.5

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

DATED : OCTOBER 25, 2018

ORAL JUDGMENT [PER S.C.DHARMADHIKARI, J.]:

1. By this petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 29th September, 2018 invalidating her claim of belonging to “Dhangar” Nomadic Tribe.

2. A copy of this order is at Exhibit-A to the Petition.
3. To appreciate the challenge to the order and the submissions of the learned Senior Counsel Mr. Dhakephalkar, we would be required to refer to the background facts.
4. The petitioner, prior to her marriage with Shirish Gujar, was known as “Vaijayantimala Laxman Gholap”. It is stated that a Certificate was issued by the competent authority under the Maharashtra Scheduled Caste, Scheduled Tribes, D-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Category (Regulation of Issuance and Verification of) Castes Certificate Act, 2000 (for short “Maharashtra Act XXIII of 2001”), certifying her as belonging to “Dhangar, Nomadic Tribe”. That certificate was issued on 7th January, 1994.
5. The Petitioner also possesses a Caste Validity Certificate issued by the Competent Scrutiny Committee dated 6th of February, 2010.

6. It is common ground that the Petitioner was a candidate at the Election of the Municipal Corporation known as “Kalyan - Dombivali Municipal Corporation”. She contested the election from Ward No. 26. Since this seat was reserved for Other Backward Class (OBC) (General) and though the Petitioner belonged to a Nomadic Tribe, her nomination form was found to be valid. She, therefore, was allowed to offer herself as a candidate at the Election. The polling was held and 5th Respondent to this petition, was a rival candidate. The Petitioner defeated this rival and other candidates by securing the highest votes. Her candidature was sponsored by ‘Shivsena’, a registered political party.

7. It is common ground that because of the Certificate of Validity in her possession, her nomination was not questioned and she is holding the post of Councillor of the Corporation (3rd Respondent to the Petition).

8. It is further common ground that Writ Petition

No. 7461 of 2016 was filed in this Court by the 5th Respondent to the present petition, challenging the Certificate of Validity dated 6th February, 2010 issued in favour of the Petitioner. The challenge, *inter alia* was on the ground that there was a suppression of material fact by the Petitioner. The complaint was found to be serious and that is how the 5th Respondent got an opportunity to approach the Scrutiny Committee. That complaint of the 5th Respondent was directed to be investigated under the Maharashtra Act XXIII of 2001. The written complaint and the order of this Court thus, formed the basis of the fresh scrutiny and verification with regard to the claim of the Petitioner.

9. The complainant pointed out that there is a difference between a Genealogy and a Family Tree. The Family Tree denotes that the Petitioner's branch and commencing from her great grand-father Ranuji was not the only member but even Ranuji was one amongst others who had a common ancestor. Thus, Joguji Zhuraji Gholap was the common ancestor. Joguji had three sons Manaji, Narayan and Ranuji. The Petitioner claims to be

belonging to the branch and represented by her great grand-father and that was the Genealogy relied upon to claim Certificate of Validity. True it is, that in relation to that branch, the oldest document (prior to Constitution) demonstrated that the Petitioner's grand-father Ganpat entered in the caste column the name of the caste / tribe as "Dhangar". This is a document of 1946. The Petitioner's great grand-father Bhaguji had also a daughter known as Dhondibai and the document pertaining to her contained similar entry of "Dhangar". Thus, relying upon these pre-constitutional documents of 1944 and 1946 and projecting them to be the oldest one, this Certificate of Validity was obtained. However, there is a suppression in the sense that Bhaguji is claimed to be the great grand-father. However, the full name of Bhaguji is Bhaguji Ranuji Gholap. Thus, Bhaguji was the son of Ranuji. Ranuji was one of the sons of Joguji. The Genealogy depicting Ranuji's branch alone was produced. The fact that Bhaguji had two brothers Narayan and Manaji was suppressed in order to obtain this Certificate of Validity. It is, relying upon such a complaint that the fresh scrutiny was undertaken.

10. In the fresh scrutiny, the Committee found that there are as many as 64 documents placed on record by the parties. From these 64 documents, it is evident that the Petitioner intentionally did not produce the whole Family Tree. It is only one Genealogy and in relation to one branch which was produced and relied upon to obtain the Certificate of Validity. Pertinently, prior to 1946, there are several documents in relation to the members of Manaji's branch which would evidence the entry "Khatik" as against the caste column. Thus, this is not a genuine and *bona fide* claim of belonging to Dhangar, Nomadic Tribe, but at best, reflecting to be that of Hindu Khatik Scheduled Tribe. This is a gross suppression and on this ground, this Certificate of Validity deserves to be recalled and set aside.

11. It is on this foundation that the impugned order has been passed.

12. Mr. Dhakephalkar, learned senior counsel appearing for the Petitioner would submit that the

Committee's findings suffer from a serious error of law apparent on the face of the record. On the record, there are several documents and which are equally pre-constitutional. They are of the years 1944 and 1946. They are also pertaining to the members of the same family. The great grand-father of the Petitioner was held to be "Dhangar". Relying upon that the Petitioner's father could successfully enter his caste as "Dhangar". These documents are heavily relied upon in addition to that of paternal Grand Aunt Dhondibai which would evidence that the Petitioner's claim was genuine and *bona fide*. This is not a case of fraud. This is not a case of intentional or deliberate suppression either. The Caste Certificate was obtained by the Petitioner in the year 1994. The Caste Validity Certificate is dated 6th of February, 2010. On the date when the Certificate of the Validity was issued, there was no election in the offing. The elections were notified and declared in the year 2014-2015. This Certificate of Validity was not disputed or questioned when the Petitioner filed her nomination form. That was treated as valid. When the people chose her as their representative, then, that aspect of the matter is equally crucial and

relevant. Now, going back to the legality and validity of her nomination and relying on the documents produced for the first time, and unseating the Petitioner, relying on them, is unjust and illegal. The perversity in the findings, according to him, is that the Committee does not doubt the veracity and genuineness of the documents produced by the Petitioner. The Committee does not hold that they are to be discarded from consideration altogether. The Committee does not hold that they have no probative value. In such circumstances and absent their probative value, the findings of fact, cannot be termed as consistent with the materials on record. Such findings are clearly perverse and deserve to be interfered with in our extraordinary, discretionary and equitable jurisdiction under Article 226 of the Constitution of India.

13. Since the impugned order was passed on 29th of September, 2018 and relying upon the same, the serious consequences in terms of the Maharashtra Act XXIII of 2001 ensue, we allowed mentioning of this petition yesterday. We took up the matter for admission forthwith. We have extensively heard Mr. Dhakephalkar and with his

assistance, we have perused the paper-book including the impugned order. We have also perused a copy of the Family Tree produced by the 5th Respondent - complainant.

14. The Committee had earlier before it the Genealogy and styled as Family Tree produced by the Petitioner. That excluded completely the two branches of Narayan and Manaji. That omitted totally the name of Joguji Zhuraji Gholap as the common ancestor. Once the complainant produced the entire Family Tree showing Joguji as the common ancestor and depicting that Joguji had three sons, then, the claim of the Petitioner that she belongs to the branch of Ranuji and Ranuji is the common ancestor, was *ex facie* contradictory and false. What was revealed from the Genealogy and Family Tree produced by the complainant is that the Petitioner does not dispute that Bhaguji who is her great grand-father was one of the sons of Ranuji. Bhaguji has a real brother Dharma and another brother Arjuna. As far as Dharma is concerned, he had one son Bansi. In relation to Bansi, another document and which was the oldest one, came on record. It shows that Bansi Dharma Gholap was admitted to a

School and he left the School for the reasons set out in the Certificate. It shows that on 7th of February, 1923, he was admitted to the School. The entry therein and against the column Caste / Tribe is "Khatik". The Committee, therefore, expresses an opinion that if this had been produced, an adverse inference would have definitely been drawn against the Petitioner. Pertinently, the Petitioner did not deny that the Family Tree produced by her, shows nothing in relation to other relatives from the paternal side. If Bhaguji was the great grand-father from the paternal side of the Petitioner, then, it was incumbent upon the Petitioner to have produced the entire record in relation to Bhaguji's family. The details of his relatives should have been produced. Bhaguji belongs to the branch of Ranuji. In the case of Ranuji, it was discovered that he had three sons including Bhaguji. Dharma was the son and real brother of Bhaguji. His son was Bansi. The above is the document in relation to Bansi. Therefore, if the Petitioner had produced the entire Family Tree, the revelation would have been as above. The Petitioner cannot get away by then claiming that as far as Bansi's son is concerned, though in relation to Sharad Bansi

Gholap, the school register was relied upon but the complainant did not point out that in the caste column the entry pertaining to Sharad is that he is a Hindu Dhangar. Therefore, Bansi's son is shown as "Dhangar", would enable the Petitioner to contend that she is also "Dhangar". The Committee does not allow such a line of argument to be towed further. It says that as far as Sharad is concerned, Sharad could not have explained as to how in his father's school record, the caste is entered as "Khatik". Therefore, once there is a suppression of the Family Tree and equally the entire Genealogy, then, it is clear that as far as the other son of Joguji, his grand son Dhondur has been recognised as Khatik, Bansi who is the son of Dharma and another grand-son from the branch of Ranuji is also Khatik. These documents of 1923 would take precedence over the documents of 1944 and 1946 relied upon by the Petitioner. There is thus, overwhelming evidence to the contrary. This is a case of comparative analysis and undertaken by the Committee. This evaluation by the Committee and by weighing the documents in so far as their probative value, is perfectly legal and permissible within the Scheme of Maharashtra

Act XXIII of 2001. This is not a case of perversity but a request is made to a Constitutional Court to re-appreciate and re-appraise the oral and documentary evidence on record. That is certainly not permissible. Equally, this is not a case of error of law apparent on the face of record as contended by Mr. Dhakephalkar. The Committee need not have termed every document produced by the Petitioner as false. While making a comparison amongst the pre-constitutional documents, the Committee found that there is a suppression of fact by the Petitioner. The Petitioner knew and from inception that had she entered the details in her caste column as "Khatik", she would not have been able to contest a seat reserved for Other Backward Class. She therefore, intentionally entered the details convenient to her. The details in relation to the caste entered by her were derived from the documents pertaining to only one branch of Ranuji. This was as a matter of convenience. Though, it was incumbent upon the Petitioner to produce the entire Family Tree, she suppressed the same from the Committee. The complainant brought it on record. The complaint was supported by an affidavit. The complainant discharged

the initial burden and thereafter it shifted on the Petitioner. The petitioner was required to establish and prove that though the Family Tree produced by the complainant is not false, there is enough material even in relation to other relatives, which will indicate that she has come not forward with a false and bogus claim. There are equal number of Certificates certifying persons in the family as "Dhangars". She could have proceeded thus but the Committee found that as against this, there was overwhelming evidence to the contrary. The oldest document in relation to the member of the family depicted the caste as "Khatik". These are two different Castes / Tribes. One is Scheduled Tribe and the other is a Nomadic Tribe. The Petitioner claims to be belonging to Dhangar, Nomadic Tribe. That is not established and proved by her bearing in mind this overwhelming evidence to the contrary. Once the above exercise was permissible in law, then, we cannot agree with Mr. Dhakephalkar that there is an error of law apparent on the face of the record in the impugned order.

15. As a result of the above discussion, we do not

find any merit in this Writ Petition. The same is dismissed but without any order as to costs.

16. At this stage, Mr. Dhakephalkar prays that our order of dismissal of the Writ Petition, be stayed for a period of two months so as to enable the Petitioner to challenge it in the higher Court.

17. The request of Mr. Dhakephalkar belies the fact that it is the Petitioner who has challenged an adverse order of a Statutory / quasi judicial authority before us. We have merely upheld it. We have rejected the challenge to it. Such an order passed by us, cannot be stayed by us. A dismissal of the Writ Petition cannot be stayed and the order dismissing it thus, cannot be stayed. The request is therefore, rejected.

B.P.COLABAWALLA , J.

S.C.DHARMADHIKARI, J.