

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2192 OF 2015

WITH

RA NO. 939 OF 2015

IN

WRIT PETITION NO. 2192 OF 2015

Mrs Bhavna Bhavin Jobanputra

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Drupad S. Patil, for the Petitioner.

Ms. Geeta Shastri, Addl.G.P., for the Respondents No. 1 to 4.

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

DATE : 11 July 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner and the learned Additional Government Pleader for the State Government.

2. By the order dated 2nd May 2018, the parties were put to notice that an endeavour shall be made to decide the Petition finally at the stage of admission. The 5th Respondent was represented by an Advocate on that day.

3. Today when the matter was called out, none appeared for the 5th Respondent. Therefore, it was kept back. After the matter was called out on the second occasion, none appeared for the 5th Respondent.

4. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the Caste Certificate as well as the Caste Validity Certificate granted to the 5th Respondent. The Caste Validity Certificate was granted to the 5th Respondent on 30th September 2005 on the basis of the Caste Certificate dated 18th December 2001. The Caste

Certificate was issued to the 5th Respondent certifying that she belongs to the Caste of Hindu Bhandari which is recognized as the Other Backward Class. Though this Petition is filed in February 2015, the Petitioner has given reasons as to why the Petition should be entertained. In paragraph 9 of the Petition, the reasons have been stated. It is stated that a copy of the Caste Validity Certificate as well as Caste Certificate granted to the 5th Respondent was provided to the Petitioner under the Right to Information Act, 2005 on 3rd March 2015 and thereafter, the present Petition was lodged.

5. It appears from the averments made in the Petition that the Petitioner and the 5th Respondent contested the General Ward Election of the Mumbai Municipal Corporation held on 16th March 2012 from Ward No. 99 which was reserved for backward class of citizens. The Petitioner was elected. The 5th Respondent challenged his election by filing Election Petition in the Court of Small Causes Court, Mumbai. By an order passed in a Writ Petition on 8th January 2014, the Caste

Validity Certificate granted to the Petitioner was set aside and the case was remanded to the Divisional Caste Scrutiny Committee for fresh consideration. After remand, the Caste Validity Certificate of the Petitioner was cancelled. Being aggrieved by the said order, the Petitioner has filed a Writ Petition. The learned Counsel appearing for the Petitioner pointed out that as per the order passed in the Election Petition, the 5th Respondent was declared as elected. He pointed out that now the term of the 5th Respondent has come to an end.

6. We had called for the record of the case of the 5th Respondent. Photocopies of the entire file of the case of the 5th Respondent was placed on record. We have also perused the original file. The Roznama of the case shows that on 20th August 2003, a statement of the 5th Respondent was recorded. On the same page, there appears to be one line order passed by the three members of the Caste Scrutiny Committee which reads thus:-

“Valid on the basis of the SLC and A/SLC.”

7. Perusal of the file shows that except the single line order which presumably appears to be of 30th September 2005 (as the Caste Validity Certificate bears the date of 30th September 2005), there is no other order in the file. There are two letters on record addressed by the Senior Inspector of Police, Vigilance Branch to two different schools referring to the School Leaving Certificates issued to the 5th Respondent and one Shri. Patil Ramesh Pandurang. In the letter in relation to the 5th Respondent, the Senior Inspector has stated that she has claimed her Caste as “Hindu”. There is a report on record which refers to school register of the school in which the 5th Respondent had studied. According to the said report, her caste is shown as “Hindu Bhandari”.

8. In any case, we find that the proceedings are vitiated on account of non speaking order passed by the Caste Scrutiny Committee. The Roznama shows that absolutely no enquiry was

held by the Caste Scrutiny Committee.

9. There is an Affidavit in Reply filed by the 5th Respondent in which the issue of delay has raised. It is contended that at the time of scrutiny of nomination form held on 2nd February 2012, the Petitioner did not raise any objection to the caste of 5th Respondent. Thus, one of the objections is that there is a delay of three years. In paragraph 9, it is contended that an enquiry was held by the Caste Scrutiny Committee. It is claimed that by the letter dated 9th March 2015, the Divisional Caste Scrutiny Committee, Mumbai informed the 5th Respondent's son that the record of the cases from 2001 to 2005 is not available. It is not the case made out in the Affidavit of the 5th Respondent that a speaking order was passed.

10. As far as the objection regarding delay is concerned, it is not the case of the 5th Respondent that a copy of the impugned Caste Validity Certificate was provided to the

Petitioner at the time of scrutiny of nomination papers held on 2nd February 2012. The case made out in the Petition is that the Petitioner obtained a copy of the Caste Validity Certificate on 3rd March 2015 under the Right to Information Act, 2005. Even assuming that there is a delay of three years, what is brought to the notice of the Court is that the 5th Respondent was declared as elected on a reserved seat. The 5th Respondent contested the election on the reserved seat on the basis of the Caste Validity Certificate granted without holding any enquiry and without following the law. Therefore, it is all the more necessary to interfere with the Caste Validity Certificate granted to the 5th Respondent by setting aside the same and by directing the Caste Scrutiny Committee to make a fresh enquiry. As we are remanding the matter to the Caste Scrutiny Committee, it is not necessary for us to go into the legality and validity of the Caste Certificate issued to the 5th Respondent.

11. Hence, we dispose of the Petition by passing the following order:-

- (i) We quash and set aside the Caste Validity Certificate dated 30th September 2005 (Exh.B to the Petition) granted to the 5th Respondent and we remand the case for a fresh consideration of the concerned Caste Scrutiny Committee;
- (ii) We direct the 5th Respondent to appear before the District Caste Scrutiny Committee, Bandra, Mumbai Suburban District on 13th August 2018 at 11.00 a.m. for fixing the schedule of hearing;
- (iii) The Caste Scrutiny Committee shall make a fresh adjudication after calling for a fresh report from the vigilance cell. Appropriate order shall be passed by the said Caste Scrutiny Committee as expeditiously as possible and preferably before 30th November 2018;
- (iv) The Petition is partly allowed on the above

terms;

- (v) All concerned to act upon an authenticated copy of this order.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]