

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

WRIT PETITION NO.144 OF 2018

Pankaj Shobhnath Yadav,
Age: 49 years, Occ: Business,
residing at: 301, Sharda Co-operative
Housing Society Limited, Natwar
Nagar, Road No.3, Jogeshwari (E),
Mumbai – 400 060.

.... Petitioner

- Versus -

1. State of Maharashtra
through its Department of Social
Justice & Special Assistance,
Mantralaya, Mumbai-400 032.
2. Municipal Corporation of Greater
Mumbai, Mahanagarpalika Marg,
Mumbai – 400 001.
3. The Municipal Commissioner,
The Municipal Corporation of
Greater Mumbai, having his office
at Mahapalika Marg, Mumbai
Pin: 400 001.
4. The District Caste Certificate Scrutiny
Committee, Mumbai Suburban,
Mumbai.
5. Sou. Shilpa Santosh Salvi,,
residing at: Room No.10,
Joshi Chawl, Veer Nilesh Savant
Marg, Bandrekarwadi,

Jogeshwari (East), Mumbai
Pin: 400 060.

6. Anil Dashrath Mane,
residing at: Room No.5,
Bangar Chawl, Kamgar Kalyan
Bhavan, Gundavali, Andheri (E),
Mumbai – 400 069.

.... Respondents

Mr. Y.S. Jahagirdar, Senior Counsel i/by Mr. Pramod
N. Patil for the Petitioner.

Ms Geeta R. Shastri, Addl. Government Pleader, for
Respondent Nos.1 & 4.

Mr. Sagar Patil for Respondent Nos.2 & 3.

Mr. R.K. Mendadkar with Mr. Kamat Gaikwad for
Respondent No.6.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : MARCH 15, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents waive service through their respective counsel. By consent, rule is made returnable forthwith and the writ petition is taken up for hearing and final disposal.

2. By this petition under Article 226 of the Constitution

of India, the petitioner challenges the order of the District Caste Certificate Scrutiny Committee, Mumbai Suburban, Mumbai, invalidating the claim of the petitioner as belonging to Other Backward Class.

3. The order under challenge, dated 16-8-2017, holds that the petitioner's caste claim, based on the Certificate issued, now cannot be validated. He will, therefore, have to forgo this Caste Certificate issued to him. This Caste Certificate, dated 7-11-2016, certifying him as belonging to Yadav, Other Backward Class is, therefore, cancelled.

4. It is common ground that the petitioner in this petition is a resident of Mumbai and Citizen of India. The respondents to this petition include the State, Municipal Corporation of Greater Mumbai, the Municipal Commissioner, the District Caste Certificate Scrutiny Committee, Mumbai Suburban, Mumbai, and respondent Nos.5 and 6 are the original contestants and to an election. The petitioner in his petition says that he was desirous of availing the benefits meant for the Other

Backward Classes in the State of Maharashtra. The Election Commission declared election programme for the general elections of the Municipal Corporation of Greater Mumbai. There are 227 Wards where the elections were scheduled to be held. The petitioner says that he belongs to Yadav Caste, recognised as Other Backward Class in the State of Maharashtra. The Yadav Caste was included in the category of Other Backward Class in the State of Maharashtra by and under Government Resolution dated 5-10-1979. Initially, two Castes/Classes styled as Other Backward Classes - Yadav and Ahir - were included in the list of Other Backward Class at Serial No.198. The claim of the petitioner is that they were taken as similar or synonymous. Later on, Ahir was deleted from the Other Backward Class and included in the Nomadic Tribe category. Subsequently, by a Government Resolution dated 30-1-2014 Ahir has been included again in the Other Backward Class category at Serial No.198 along with Yadav as similar or synonymous.

5. Relying upon all this, the petitioner claimed a Caste

Certificate. On an application made to the Competent Authority, the Caste Certificate was issued on 7-11-2016, copy of which is at Annexure "C" to the paper-book.

6. The petitioner contested the elections from Ward No.72 (K-East). He relied upon his Caste Certificate. He submitted his application/nomination on 27-1-2017 in the prescribed Form. After his Nomination was accepted, the elections followed, in the sense the Nomination was treated as valid till the date of the poll. After the polling, the results were declared and the petitioner was declared elected, he having secured the highest number of votes amongst the contesting candidates.

7. Then, the petitioner was required to obtain a Caste Validity Certificate in terms of the legislation, namely, the Mumbai Municipal Corporation Act, 1888 but amended later on. Hence, the Certificate on the strength of which the election was contested by the petitioner and won, came to be forwarded for scrutiny and verification by the Competent Scrutiny Committee.

8. The petitioner, as is the demand of that law, was obliged to prove and substantiate his caste claim. He filed number of documents, including a Caste Certificate dated 20-3-1980, issued by the Tahsildar, Madiyahu, Jaunpur, Uttar Pradesh. That Certificate, according to the petitioner, certifies that his father Shobhnath Rupnath Yadav belongs to Ahir (Yadav) Caste. Meaning thereby, this was treated as synonymous to Yadav in the State of Uttar Pradesh at the relevant time. The petitioner also relied upon a Caste Certificate dated 25-7-1986, issued by the Tahsildar and Executive Magistrate, Andheri, Mumbai certifying that the petitioner's father belongs to Yadav Caste. He also relied upon a Kisan Book dated 28-9-1995, issued by the Revenue Department, Government of Uttar Pradesh, Janpad Jaunpur. The documents and the records were forwarded to a Vigilance Cell. There are extensive arguments canvassed before us by Mr. Jahagirdar, learned Senior Counsel, with regard to the constitution of this Vigilance Cell. He would submit that the Vigilance Cell must necessarily comprise of a District Superintendent of Police or an

equivalent level official and who is not expected to merely append his signature on the report of the Vigilance Cell. He is not supposed to be leaving the whole inquiry to a Constable or an Inspector level official. It may be that visits to native places or villages or remote areas, Schools, Colleges and other places therein are by the Police Constable or an Inspector level official. However, their findings are then compiled in a report of the Vigilance Cell. The Vigilance Cell is comprising of this Deputy Superintendent of Police or an equivalent level official. He is expected to verify these findings independently and then append his signature. He is placed in the Cell not because of his rank but also because he has the power to supervise and monitor the working of these officials. Hence, his presence is vital and crucial. In the instant case, the Vigilance Cell report does not indicate that it is bearing his signature and with the required endorsement. Therefore, this report could not have been relied upon.

9. The findings therein may not be conclusive and binding on the Committee but surely the Committee cannot call

upon a Cell like the instant one to hold an inquiry. That is not an empty formality in the scheme of law. Relying upon the language of Rule 12 of the Maharashtra Scheduled Castes, De-notified Tribes (*Vimukta Jatis*), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012, Mr. Jahagirdar would submit that, that is indicative of the legislative intent. We cannot ignore the plain words of this Rule or the statutory prescription and then proceed to accept such report. In the circumstances, we would be called upon in each of the matters which are placed today on our board, to decide the legality and validity of such reports.

10. We at once clarify that this aspect of the matter need not be gone into in the facts and circumstances of the present case for Mr. Jahagirdar is on a sound footing as far as the merits are concerned.

11. Mr. Jahagirdar's criticism in this case is that the order of the Committee is not a speaking order. There are no

reasons assigned as to why the Certificates, issued to the father of the petitioner way back in the year 1980 and 1986, certifying him as Ahir Yadav, have to be discarded. If they with their contents have to disbelieved, then, it was incumbent upon the Committee to have assigned independent, satisfactory and cogent reasons. Inviting our attention to the order passed in the instant case, it is urged by Mr. Jahagirdar that in one paragraph the whole exercise is concluded. A copy of this order is at page 95 of the paper-book, and with his assistance we have perused it. On pages 96 & 97 are the opening paragraphs. From page 97 onwards till page 102, only pleadings of the parties and particularly the complainants Shilpa Santosh Salvi and Anil Dashrath Mane are reproduced. Thus, their grievances are referred extensively by reproducing the pleadings and what we find at the end of all this, according to Shri Jahagirdar, are unnumbered paragraphs where the issues are framed. There is no finding issue wise but if point or issue Nos.1 & 2 are taken, according to the Senior Counsel, they do not mean that the Caste Certificate of the petitioner has been discarded. In the

sense it is stated that it is issued by a Competent Authority. Secondly, it is held that Yadav is an Other Backward Class, as notified in the Notification in the State of Maharashtra pertaining to the Other Backward Classes. On issue or point No.3, the finding in one paragraph is that the petitioner may say he is a Yadav and he is indeed but that he is Yadav is not established by him by showing any School records or Revenue entries. The Revenue entries relied upon by the petitioner are of the State of Uttar Pradesh and in that the caste is mentioned as Ahir. Hence, Yadav and Ahir cannot be taken as one and the same. Therefore, the claim is rejected.

12. It is such an exercise which is under scrutiny before us.

13. Mr. Mendadkar, appearing on behalf of respondent No.6 sought to support this conclusion in the order. With all his persuasive abilities he could not satisfy us that this is a speaking order. Far from elaborating any conclusion, there are no reasons and he conceded this position.

14. The learned Additional GP tried to support this finding by submitting that the Scrutiny Committee has carried out its exercise in accordance with law, namely, Maharashtra Act 23 of 2001 and the Rules framed thereunder. Merely because this Court holds another view is no ground for interference with the impugned order.

15. For more reasons than one, we are unable to agree with Ms Shastri and Mr. Mendadkar. After the Maharashtra Act 23 of 2001 is perused, its substantive provisions indicate that the law is meant for issuance of Caste Certificate and when the Caste Certificate is to be issued by the Competent Authority, it has to satisfy itself, before issuing it, about the genuineness of the claim and follow the procedure which is prescribed in the Rules.

16. There is an appellate power conferred in the Scrutiny Committee in the event Caste Certificate is refused. The term “Other Backward Classes” is defined in Section 2, Clause (h) 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, 2000 and to carry the same meaning as is constitutionally accepted, namely, any Socially and Educationally Backward Classes of citizens as declared by Government and includes Other Backward Classes declared by Government of India in relation to the State of Maharashtra. The word “prescribed” {Section 2(i)} means prescribed by the Rules. The verification of Caste Certificate by the Scrutiny Committee is postulated by Section 6 under which, when a person, in whose favour the Certificate is issued, desires to avail of educational or employment opportunities or is desirous of contesting elections to the local bodies, may make an application to the concerned Scrutiny Committee for verification of Caste Certificate and issuance of a Validity Certificate. It is in these circumstances that the petitioner's claim was forwarded for scrutiny. The Scrutiny Committee had to, therefore, record that the petitioner before us has raised a false claim or that the Caste Certificate issued to him is bogus. True it is that by Section 8 the

burden of proof is on the petitioner/applicant but here he was issued a Caste Certificate, the genuineness of which was questioned by the complainants. The Competent Authority, the Appellate Authority and the Scrutiny Committee while holding an inquiry have all the powers of a Civil Court while trying a Suit, and no Suit can be brought in terms of this law in any Civil Court. It is in these circumstances and the consequences of cancellation of the Certificate being grave and serious, visiting him with penalty of forfeiture of the Certificate or any entitlement in terms thereof and face criminal prosecution, it was expected of the Committee, in this case, to have assigned cogent and satisfactory reasons. All the more, when the Vigilance Cell report was on record. Some of the contents of the Vigilance Cell report were brought to our notice in addition to the Certificates issued to the petitioner's father and an attempt was made to indicate that Ahirs are not Yadavs and Yadavs are not Ahirs. Both may be rearing up cattle but Yadavs are stated to be those who rear-up cows, buffaloes and therefore deal in milk products. As far as Ahirs are concerned, they can be equated

with Dhangars or Mendhpals, that means those rearing up sheep and goat. These are not, therefore, same classes. However, when the home inquiry was made in the case of the present petitioner, several details were obtained therein by the Vigilance Cell. It is in these circumstances that we are unable to agree with Ms Shastri and Mr. Mendadkar that the Committee has performed its statutory duties and functions in accordance with the Rules and Law. On the other hand, we hold that it has miserably failed to perform its duty. One paragraph reasoning is no reasoning in the eyes of law.

17. We, therefore, proceed to quash and set aside the order under challenge. It is accordingly quashed. We remand the proceedings back to the Scrutiny Committee for a scrutiny afresh on merits and in accordance with law, uninfluenced by any earlier findings and conclusions. We keep open all contentions of all parties to these proceedings to be raised before the Committee.

18. A faint attempt is made by Mr. Mendadkar to then

urge that although such an order of the Scrutiny Committee challenged in writ jurisdiction is quashed and set aside by us, the effect of the law cannot be wiped out. In the sense, an elected representative was obliged to produce the Caste Validity Certificate from the Competent Scrutiny Committee as he was contesting a election against the reserved seat. Having failed to produce the certificate of validity, he must suffer the consequences. Mr. Mendadkar's argument is that for all this a time frame is prescribed in law. If within that time frame he fails to obtain such certificate, his election is quashed and he must vacate the office.

19. We do not see how we can hold the petitioner responsible for he forwarded a Caste Certificate within the time prescribed by law to the Competent Scrutiny Committee and that Committee had before it the Certificate as also the complaint of the complainants. It was expected to hold an inquiry in accordance with law, namely, Maharashtra Act 23 of 2001 as also the Rules framed thereunder. It failed to carry out its duty and perform its function in law. It passed an order

which is wholly unsustainable as it fails to comply with the mandate of law and the principles of natural justice. If such an order which is *ex facie* illegal is impugned by the petitioner, he has not committed any crime. The petitioner was not responsible for an erroneous order passed by the Committee. The order which we have quashed and set aside means that there was no scrutiny at all. If there was no scrutiny at all, there could not have been Caste Validity Certificate issued or the claim invalidated. It is in these peculiar circumstances that we are unable to agree with Mr. Mendadkar that the petitioner must vacate his office and this should be taken as a failure to produce the Caste Validity Certificate within the prescribed period. The cases relied upon and equally the language of the Municipal Act applies in distinct circumstances. There the Certificate of validity was not produced and the argument was that the scrutiny is pending and the candidate is not responsible for the proceedings before the Committee not concluding expeditiously and that he has no control over it. The answer to this was that there should be a clear stipulation in the statute protecting the office of the

elected representatives in the event the scrutiny is pending or is not concluded within the prescribed period and the Certificate is not produced. The language, as it stands, admits of no exception and is mandatory. That is how the candidate suffers the consequence for not producing the Certificate of validity in time. We are unable to agree with Mr. Mendadkar that the instant case is on par with those cases. Hence, the petitioner has vacated the office, is not a declaration which we can issue. More so, when by an interim order passed in this petition, the implementation and execution of the impugned order was stayed. In this petition, the petitioner's challenge is to the order of the Scrutiny Committee on merits.

20. As a result of the above discussion, Rule is made absolute in the above terms.

21. The proceedings before the Scrutiny Committee are expedited. The Committee should endeavour and dispose them of as expeditiously as possible and in any event by 31-7-2018.

22. Mr. Jahagirdar tenders an affidavit which and

annexes therewith additional documents to buttress and prove the claim of the petitioner. We do not take that on record but we permit the petitioner to rely upon these materials before the Scrutiny Committee in the inquiry by the Scrutiny Committee which we have directed as above. Any contrary material can equally be produced by the complainants. Liberty on these lines is granted.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)