

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3558/2017

(MOHAMMAD KAMIL ANSARI MOHAMMAD HASAN VERSUS THE STATE OF MAHARASHTRA &
 OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri N.C. Phadnis, counsel for the petitioner.
 Ms Shamsi Haidar, A.G.P. for the R-1, 2, 5 to 7.
 Shri V.Dahat, Advocate h/f Shri J.B. Kasat, counsel for the R-3 & 4.
 Shri F.T. Mirza, counsel for the R-9.

**CORAM : SMT. VASANTI A NAIK AND
A.D. UPADHYE, JJ.**

DATE : JANUARY 16, 2018.

By this writ petition, the petitioner seeks a declaration that the caste validity certificate issued in favour of the respondent no.9 dated 25.10.2011 declaring that the respondent no.9 belongs to Julaha caste which falls in the Other Backward Classes is void and is obtained by the respondent no.9 by playing fraud on the committee. An ancillary direction is sought for a declaration that the seat on which the respondent no.9 was elected as a Municipal Counsellor falls vacant due to the setting aside of the caste validity certificate, dated 25.10.2011.

Inter alia, it is submitted on behalf of the petitioner, who had contested the elections against the respondent no.9 for the office of a Municipal Counsellor, that the respondent no.9 has obtained the caste validity certificate dated 25.10.2011 by playing fraud on the committee and by producing fraudulent documents. It is submitted that a vigilance enquiry was not conducted in the caste claim of the respondent no.9 though it was mandatory for the scrutiny committee to conduct a vigilance enquiry in view of the provisions of the rules.

Ms Haidar, the learned Assistant Government Pleader appearing for the scrutiny committee, admits by referring to the affidavit-in-reply filed on behalf of the committee that a vigilance enquiry was not conducted in the caste claim of the respondent no.9 and without conducting the enquiry, the caste validity certificate dated 25.10.2011 was issued.

Since the vigilance enquiry was not conducted in the caste claim of the respondent no.9 to ensure whether the documents tendered by the respondent no.9 before the scrutiny committee were genuine or not, it would be necessary to quash and set aside the caste validity certificate dated 25.10.2011 and remand the matter to the scrutiny committee for deciding the caste claim of the respondent no.9, afresh on merits in accordance with law. Though the caste validity certificate of the respondent no.9 would be invalidated, since the judgment in the case of *Anant Ulhalkar* is stayed by the Hon'ble Supreme Court, the seat on which the respondent no.9 is elected would not become automatically vacant and the respondent no.9 may be entitled to hold the post till his caste claim is decided and/or the Hon'ble Supreme Court decides the petition against the judgment in the case of *Anant Ulhalkar*.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The caste validity certificate, dated 25.10.2011 is hereby quashed and set aside. The matter is remanded to the respondent no.5 scrutiny committee for deciding the caste claim of the respondent no.9 in accordance with law. The parties undertake to appear before the scrutiny committee on the 5th of February, 2018, so that the issuance of notice to the petitioner and the respondent no.9 could be dispensed with. The scrutiny committee is directed to decide the caste claim of the respondent no.9 as early as possible and positively within nine months. It is needless to mention that the office of the

respondent no.9 shall stand protected till the scrutiny committee decides his caste claim or the Hon'ble Supreme Court decides the petition in the case of *Anant Ulhalkar*.

Order accordingly. No costs.

JUDGE

JUDGE

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