

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 254 OF 2019

Sheshrao Madhavrao Sude .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.

Shri P. G. Borade, A.G.P. for Respondent Nos. 1 and 2.

Shri V. D. Sapkal, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.**

Closed for Orders on : 29.11.2019

Order Pronounced on : 13.12.2019

FINAL ORDER (Per S. V. Gangapurwala, J) :

. The petitioner challenges the validity certificate issued in favour of the respondent No. 3 on 27.10.2006 as belonging to 'Yalam' (Other Backward Class) category.

2. Mr. Thombre, the learned counsel for the petitioner relying on documents produced by the petitioner contends that, the respondent No. 3 has obtained the caste certificate and caste validity certificate on the basis of forged and false documents. The respondent No. 3 is not permanent resident of State of Maharashtra on the deemed date. The respondent No. 3 and his family members are included in the voters list of village Mutkhed, Tq. Aurad, Dist. Bidar in Karnataka state. He could

not have been issued with the validity certificate by the Scrutiny Committee at Aurangabad, nor he is entitled for the caste certificate from the Sub Divisional Officer, Udgir. He could not have contested the election of Municipal Council, Udgir from the seat reserved for O.B.C. category. The petitioner had filed an application/complaint with the Scrutiny Committee along with all the documents, however, the Scrutiny Committee disposed of the application/complaint on the ground that order of the Scrutiny Committee is final and cannot be challenged before any authority or Court except the High Court.

3. According to the learned counsel for the petitioner without conducting vigilance and without recording reasons the validity is issued to the respondent No. 3. The learned counsel for the petitioner relies on the judgment of this Court in a case of Pashamiya Khajamiya Attar Vs. State of Maharashtra and others reported in *2008(3) Mh. L. J. 149*. According to the learned counsel the fraud vitiates every solemn act. The learned counsel submits that, vigilance is mandatory and relies on the judgment of the Apex Court in a case of Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others reported in *(1994) 6 SCC 241*.

4. According to Mr. Sapkal, the learned advocate for the respondent No. 3, the petitioner does not have *locus standi* to maintain the present petition. The petitioner has filed forged documents along with the petition. The 7/12 extracts produced on record are also forged. So also the documents produced by the

petitioner showing that the respondent No. 3 has obtained loan from Prathamika Krushi Patanna Sahkari Sangh, Niyamit Hokarna, Tq. Aurad is also forged. The respondent No. 3 has studied in the school at Udgir. His mother tongue is Marathi. The respondent No. 3 is born and brought up in Udgir. The respondent No. 3 has landed property in the Udgir. He has constructed his house in the year 1974. The respondent No. 3 was a member of Udgir Urban Co-operative Bank Ltd. since its establishment on 01st May, 1999. He is also a director of the said bank from June 2002 to July 2007. The name of the respondent No. 3 is continuously recorded in the voters list of Udgir Legislative Assembly Constituency. In the voters list prepared for Udgir Municipal Council election in the year 1996, the name of the respondent No. 3 is shown in Ward No. 22. The respondent No. 3 has contested the election for Udgir Municipal Council in the year 1991 also. The name of the respondent No. 3 is in the voters list of the 204 Udgir Legislative Assembly Constituency election. The respondent No. 3 has contested election of Udgir Municipal Council again in the year 2006 against the petitioner from the seat reserved for O.B.C. category. He was elected and the petitioner was defeated. At that time also the petitioner did not raise any objection. The petition filed at belated stage cannot be entertained. The benefits to the persons of Yalam community are extended from the year 2002 onwards.

5. If is further contended by the learned advocate for respondent No. 3 that, for the first time in the year 2002, the

Yalam caste is recognized as O.B.C. in the State of Maharashtra. The Committee has issued the certificate by following due procedure. The vigilance is not necessary. It is upto the satisfaction of the Committee. Mr. Sapkal, the learned counsel relying on the judgment of the Division Bench of this Court in a case of Sadhana Dayalu Rathod Vs. State of Maharashtra and others reported in *2019(1) Mh.L.J. 382* submits that, if Committee is satisfied with the genuineness of the claim, it has to forthwith issue validity certificate in Form No. 20 without enquiry by the Vigilance Cell. Sub Rule 7 of Rule 17 applied when the Scrutiny Committee is not so satisfied. In that event the caste claim is referred to vigilance cell for carrying out suitable enquiry as deemed fit. Then the Committee has to issue validity certificate in Form No. 24.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The validity certificate has been issued by the Competent Scrutiny Committee in favour of the respondent No. 3 on 27.10.2006 as belonging to Yalam caste (Other Backward Class) category. It also appears that, in the year 2006, the petitioner and respondent No. 3 had contested election of Municipal Council, Udgir against each other and the respondent No. 3 was elected. The petitioner was defeated. The said election was contested from O.B.C. category. The petitioner has challenged the validity certificate belatedly, though was having the knowledge in the year 2006 of the respondent No. 3 claiming as

belonging to Yalam (O.B.C.) category.

8. The Scrutiny Committee does not have inherent powers of review. It is also true that fraud vitiates every solemn act, order or decree of the Court.

9. The petitioner and the respondent No. 3 are relying upon various documents and labeling the documents produced by each other to be forged and fabricated.

10. This Court in its writ jurisdiction under Article 226 of the Constitution of India would not embark upon the investigation of facts. The Committee has disposed of the complaint filed by the petitioner on the ground that, the Committee does not have power of review, however, if, it is brought to the notice of the Committee that the validity is obtained by fraud, then it can consider the application. The Committee will have to be *prima facie* satisfied in that regard.

11. The Division Bench of this Court in Writ Petition No. 3129 of 2009 under its order dated 22.09.2009 in para Nos. 10 and 11 of the said order observed thus :

"10. Considering the rival submissions across the bar we are of the opinion that once the complaint is lodged before the Scheduled Tribe Caste Scrutiny Committee, then it is for the Divisional Scrutiny Committee to look into the matter whether the caste validity certificate is obtained by practicing fraud on the Scrutiny Committee.

11. In the premise, without touching to the merits of the matter, we hereby quash and set aside the communication dated 13/03/2009 and remit the matter back to the Scrutiny Committee to hear all the parties concerned in accordance with Law in the matter of Complaint lodged by the petitioner about issuance of caste validity certificate to respondent No.4. For the expedite hearing, we hereby direct the petitioner, the 4th respondent and 5th respondent to appear before the Scrutiny Committee on 06/10/2009, and the Scrutiny Committee to decide the claim or allegation in the complaint of the parties within 6 months thereafter. It is hereby made clear that the order passed in the present writ petition is passed without touching the merits of the matter and all the points are kept open to be raised before the Scrutiny Committee."

12. In the present matter, one additional factor is delay in making complaint. The petitioner was having knowledge of the validity certificate in favour of the respondent No. 3 and had contested the election against the respondent No. 3 from reserved category in the year 2006. The said factor also can be gone into by the Scrutiny Committee.

13. The Committee will have to look into the documents filed by the petitioner along with the complaint, form a reasonable opinion and, if it is of the *prima facie* opinion about the fraud is played while obtaining validity certificate, then it has to issue show cause notice to the respondent No. 3 before reopening the proceedings. The respondent No. 3 has to be given an opportunity to put forth his stand along with the documents, then only the decision can be taken by the Scrutiny Committee whether to reopen the proceeding or not and pass an order for

reopening the proceeding considering the merits of the matter. It is also trite that, it is only if the Committee comes to conclusion that the validity certificate is obtained by fraud, then only the Committee can reopen the proceedings. It shall also bear in mind the delay caused in filing the complaint.

14. With the aforesaid observations, we dispose of the writ petition and direct the Scrutiny Committee to consider the application/complaint filed by the petitioner by following the procedure as detailed above. In that event communication impugned in the present writ petition would not be an impediment. No costs.

[AVINASH G. GHAROTE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec. 19