

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14695 OF 2019
SHALU VITTHAL GOJEWAD ALIAS SHALUBAI MADHAV GOJEWAD
VERSUS
MEERA PRADIP NAYDNE AND ANOTHER

Mr.V.D.Salunke, Advocate for the petitioner.
Mr.Suresh M.Kulkarni h/f Mr.O.B.Boinwad, Advocate for respondent No.1.
Mr.A.B.Kadethankar, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 06/12/2019

PER COURT :

1. The petitioner is aggrieved by the order dated 03/12/2019, by which the Trial Court has allowed Election Appeal No.5/2019 filed by respondent No.1 and the nomination form of the petitioner has been invalidated on the ground that the Tribe certificate produced by the petitioner has been wrongly validated.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. Issue is as regards the acceptance of the nomination form filed by the petitioner. The Tribe certificate produced by her carries her marital name as Shalubai w/o Madhav Gojewad. The petitioner's

father is “Koli Mahadev”. Co-incidentally, the caste of her husband is also “Koli Mahadev”. It is well settled that an individual would derive a caste only from the father and not from the husband.

3. The by-elections to the Rokada Sawargaon Zilla Parishad Constituency, Tal.Ahmedpur is scheduled on 12/12/2019. The said position is reserved for the Scheduled Tribe Women category. Contention is that the petitioner belongs to “Koli Mahadev” Tribe and is a woman. She derives the said status from her father and co-incidentally the husband’s status is also “Scheduled Tribe” as he belongs to the Koli Mahadev” Tribe.

4. It is undisputed that the petitioner has acquired a tribe certificate in her marital name from Udgir where her husband resides. Her father resides at Shiwankheda, Tal.Ahmedpur, presently in Chakur. The said tribe certificate obtained from Tal. Udgir in the marital name was submitted while filing the nomination form.

5. The objection raised by respondent No.1 was that the petitioner cannot derive her tribe status from the husband. A Tribe certificate obtained from an authority, within whose jurisdiction the husband

resides, would render the certificate unsustainable. Reliance is placed on the order passed by the learned Division Bench dated 23/01/2012 in WP No.642/2012 in the matter of Islambai Mastan Tadavi Vs. The State of Maharashtra and others at Aurangabad, wherein it has been held that a person's caste comes from the father's side. Contention therefore is that though the Tribe Certificate produced by the petitioner has been validated on 08/11/2010, the same is rendered *non-est* as the petitioner had approached the competent S.T. Certificate Scrutiny Committee on the basis of the Tribe Certificate received by her from the place of her husband's residence.

6. The learned Advocate for respondent No.1 points out from the impugned order that the Tribe Certificate issued by the Authority at Udgir was on the basis of the petitioner's marital status and she has not tendered her tribe Certificate on the basis of her father's status.

7. While dealing with this petition, I cannot turn a blind eye to the fact that I am exercising supervisory jurisdiction under Article 227. Such jurisdiction is akin to revisional jurisdiction. This Court would not have the jurisdiction to decide whether the tribe certificate issued at Udgir is invalid on account of lack of jurisdiction of the Udgir

Authority to issue the same or to conclude as to whether the Tribe Scrutiny Committee has committed an illegality in issuing the Tribe Validity Certificate. These issues, not being within the jurisdiction of the Single Judge Bench, cannot be entertained. The grievance of the respondents as against the issuance of the Tribe Certificate to the petitioner or the issuance of the Tribe Validity Certificate, lies elsewhere.

8. It is however evident from the record that the petitioner's claim of belonging to the "Koli Mahadev" Tribe was considered by the Tribe Scrutiny Committee purely on the record from her father's side. The certificate issued by the Tahsildar on 19/05/2010 with regard to the election of Sarpanch to the Gram Panchayat Hadolti, indicates that the petitioner was held eligible as she belonged to the Scheduled Tribe Category and was "Koli Mahadev". The entire documents as well as the Vigilance report indicate that the record pertaining to the claim of the petitioner of belonging to the Koli Mahadev Tribe was scrutinized on the basis of the record from her father's side. It is, therefore, obvious that the claim of the petitioner for validating her Scheduled Tribe Status of "Koli Mahadev", was scrutinized only on the record from her father's side.

9. In the above backdrop, the issue is as to whether the learned District Judge could have gone into the decision of the S.T. Scrutiny Committee to conclude that the Tribe Certificate was illegally issued and the validity should not have been granted by the competent committee. I do not find that this issue was open to the Trial Court to consider in a summary proceeding matter under Rule 20(1) of the Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules, 1962. The learned Court should have kept in mind that the Validation Committee had put in a long exercise of scrutinizing the claim of the petitioner of belonging to “Koli Mahadev” Tribe and while doing so, the record from her father’s side was considered. The Committee, therefore, dealt with her claim as if she had sought validation of her Scheduled Tribe status on the basis of the record from the father’s side.

10. Considering the above, I find that the Trial Court has exercised jurisdiction not vested in it by Law. In matters of scrutinizing the validity of nomination forms, it would be overstepping the jurisdiction of the Court in declaring that the Tribe Validity Certificate was *non-est*. It is settled Law that such validation Scrutiny Committee can even deal with a fraud with regard to the acquiring of a caste certificate and this would not be within the realm of the Trial Court

under Rule 20(1) of the 1962 Rules. These disputed aspects have to be left open to be dealt with by a Court or Authority having competent jurisdiction and cannot be dealt with in summary proceedings.

11. In view of the above, the impugned judgment dated 03/12/2019 is quashed and set aside and Election Appeal No.5/2019 stands dismissed. Consequentially, the decision of the Returning Officer stands sustained.

12. Needless to state, respondent No.1/Objector would be at liberty to avail of a proceeding as may be permissible in law with regard to the challenge to the issuance of the tribe certificate of the petitioner at Udgir or her Tribe Validation. The observations made by this Court in this order are restricted to the cause of action under Rule 20(1) of the 1962 Rules.

13. Since this order is dictated in the open Court, the parties need not wait for a certified copy of this order. So also, they can act upon a print out of this order obtained from the official website of the Bombay High Court.

(Ravindra V.Ghuge, J.)