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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2613 OF 2019**

Farha Ashfaqali Shaha

...Petitioner

Versus

The Member Secretary & Research Officer, Caste
Certificate Scrutiny Committee

...Respondent

Mr SG Kudle, *for the Petitioner.*

Mr BV Samant, *AGP, for Respondents Nos. 1 & 2.*

Mr Tejesh Dande, *with Bharat Gadhavi, i/b Tejesh Dande &
Associates, for Respondent No. 3.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 16th August 2019

PC:-

1. When this matter was placed for passing final orders, Mr Dande appears and says that he is representing the 3rd respondent. He is filing his vakalatnama on her behalf. There is no doubt in our mind that this respondent is duly served.

2. There is a report of the bailiff attached to the competent Court. When the notice issued by this Court was despatched to the competent Court that Court assigned the task to the bailiff attached to that Court to go and effect service of this Court's notice. The bailiff has not only visited the residential premises but has endorsed

at the back of this Court's notice that he personally visited the site. When he visited and identified himself, the 3rd respondent was present in the house. She has not only accepted notice but endorsed her signature on the same. The acknowledgement is also hers and we have satisfied ourselves from the original record that this service is indeed in accordance with law.

3. Mr Dande, therefore, could not have been instructed to say that the 3rd respondent is not served and that he has been informed on telephone by her that she came to know from the opponent/petitioner before us about the pendency of this petition and that it is placed today. Further we find that the petitioner has also served this 3rd respondent independently. The packet was delivered by speed post. The endorsement on the on-line tracking report of the Postal and Telegraph Department that this item/packet is delivered.

4. We are, therefore, not adjourning the matter. We refuse the request for adjournment. We have heard both sides.

5. The writ petition is disposed of finally by this order.

6. The petitioner before us is an Indian citizen and residing at the address mentioned in the cause title whereas the 1st respondent is Caste Certificate Scrutiny Committee, Nashik Division, Nashik. The 2nd respondent is the State through the Urban Development Department and the 3rd respondent before us is equally an Indian citizen. She is a candidate from Ward No. 30A. She has been successful at the Ward Election. The petitioner is her opponent.

7. The elections were held in the year 2014-2015 but later on the petitioner discovered that the 3rd respondent could never have contested the reserved seat. She has procured the caste certificate by misrepresentation. The glaring defects in the application made and the certificate granted are pointed out from paragraphs 3 to 9 of this writ petition. It is stated that there was a re-enquiry. But the re-enquiry report of 6th March 2018 submitted on 9th March 2018 before the Committee was sought to be contested by the petitioner. The petitioner/complainant points out that written arguments were filed to show that the re-enquiry report is also unsatisfactory. The petitioner pointed out that there are few entries of ancestors in the genealogy but they were also not correct. The vigilance cell has made vigilance enquiry but the petitioner challenged the same by pointing out that the father of respondent No. 3 is stated to be one Abdul Aziz Nazir Ahmad. The age of the father is shown 60 years. The age of the sister of respondent No. 3 is 47 years and the age of respondent No. 3 is 45 years. The person shown as father cannot be the father of respondent No. 3 as the age difference between them is only 15 years and the age difference between the sister of the petitioner and her father is 13 years. It is in these circumstances that Mr Kudle would submit that uncontroverted factual position denotes that the certificate of validity was obtained on a bogus and false caste certificate. The caste certificate could not have been issued at all once there is no preliminary satisfaction. Apart therefrom the scrutiny and verification by the Committee is superficial and perfunctory. The Committee has never delved deep into the matter by examining whether the details pertaining to the members of the family are either vitiated by misrepresentation or there is a systematic attempt to project some people as family

members though these are not. They could not have been and logically the father or parent of the 3rd respondent is the argument of Mr Kudle.

8. We have found that the 1st respondent-Committee has been duly served and equally the State. There is no denial of the assertions in the writ petition. Even the 3rd respondent has not, despite receipt of the notice from this Court, taken steps to controvert the factual allegations.

9. If the Scrutiny Committee is indeed misled in to issuing the Caste Validity Certificate enabling the respondent No. 3 to contest the municipal elections form Ward No. 30A of the Thane Municipal Corporation, then, this is a very serious matter. None can be a beneficiary of fraud or intentional misrepresentation of facts. A product of such fraud stands vitiated from inception. Then the election would have to go.

10. Under these circumstances, we direct the Scrutiny Committee to enquire into the serious allegations of fraud and misrepresentation of facts by the 3rd respondent. The Scrutiny Committee shall give an opportunity to both the petitioner as also the 3rd respondent and pass appropriate orders in accordance with law.

11. It is no good saying that the Scrutiny Committee cannot review its order. This is not a case of review but a request to recall an order which is a product of fraud or misrepresentation of facts.

Surely such a power is inherent in the power to decide or adjudicate a dispute and pass an order. If the initial order is a product of fraud, then, equally there is a power to recall such order. Therefore, the Scrutiny Committee shall not allow the parties to raise any technical issues on its competence and jurisdiction to verify the complaint and pass an order.

12. The Committee while passing a fresh order, in pursuance of our directions, should not be influenced by any findings and observations in the impugned order.

13. We clarify that we have not expressed any opinion on the rival contentions.

14. The Committee shall carry out the above exercise within a period of three months from the date the parties first appear before it.

15. The writ petition is allowed in these terms.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)