

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9437 OF 2018

Bhimrao Yashwant Ambedkar,
aged 56 years, residing at
Rajgriha, 129, Hindu Colony,
Dadar (East), Mumbai 400 014.

Petitioner

Versus

01 State of Maharashtra,
through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya,
Mumbai 400 032.

02 District Caste Certificate
Scrutiny Committee No.3,
Thane, through its
Member Secretary, having its
office at 5th Floor, Konkan
Bhavan Building, Belapur,
Navi Mumbai.

03 Dhanaji Shankar Gurav,
aged: adult, residing at
A-104, Mantri Laxcom,
R.T.O. Office Jawal,
Tawari Pada, Kalyan (W),
District Thane.

Respondents

Mr.R.K.Mendadkar, Advocate for the petitioner.
Mr.Y.S.Kochare, AGP for Respondents No.1 & 2.
Mr.Shrihari Aney, Senior Counsel a/w Mr.Susheel Amahadeshwar,
a/w Ms.Ranjana Todankar, advocates for Respondent No.3.

**CORAM : R.M.BORDE AND
N.J.JAMADAR, JJ.**

**RESERVED ON : 10th July, 2019.
PRONOUNCED ON : 30th July, 2019.**

JUDGMENT : (PER R.M.BORDE, J.)

1 Heard learned Counsel for respective parties.

2 The petitioner is objecting to the order dated 01.01.2016, passed by Respondent No.2 - District Caste Certificate Scrutiny Committee, Thane, issuing caste validity certificate in favour of Respondent No.3, certifying to be belonging to "Gurav", Other Backward Class.

3 Respondent No.3 was appointed as Principal in the educational institution as against a seat earmarked for OBC category candidate. It is the contention of the petitioner that initially the caste certificate was issued to Respondent No.3 on 25.06.1980 by the Executive Magistrate, Kolhapur, which was submitted to the educational institution at the time of securing employment. However, Respondent No.3 obtained another caste certificate on 20.08.2008 from the Sub Divisional Officer, Thane and the same was forwarded for verification to the Scrutiny Committee.

4 According to the petitioner, Respondent No.3 has suppressed basic information such as school record of his father which indicates caste of his father as "Maratha". The petitioner also alleges that in the school record of brother of Respondent No.3, there is an entry in respect of his caste as "Maratha". Respondent No.3's school record issued by Kendrashala Vidyamandir, Perloli, Taluka Ajara, District Kolhapur, also records entry in respect of his caste as "Maratha". It is contended that in the school record of father of Respondent No.3, issued by Vidya

Mandir, Nishnap, Taluka Bhudargad, District Kolhapur, there is entry in respect of his caste as "Maratha".

5 The petitioner, thus, contends that Respondent No.3 has secured validity by withholding material evidence. It is also contended that the Sub Divisional Officer, Thane, has no authority to issue caste certificate since the petitioner was permanent resident of village Perloli, Tq. Ajara, District Kolhapur. The Sub Divisional Officer, Thane, did not have jurisdiction to issue caste certificate to Respondent No.3 and said certificate ought not to have been validated by the Scrutiny Committee. It is further contended that issuance of validity certificate to Respondent No.3, without holding vigilance cell enquiry, is bad in law. It was necessary for the Scrutiny Committee to forward the matter to the vigilance cell enquiry and thereafter only, the Committee could have taken a decision in respect of validity of the caste certificate.

6 An affidavit-in-reply has been tendered by Respondent No.3 wherein it has been contended that the petitioner has no locus to challenge the validity certificate issued to Respondent No.3. It is contended that caste certificate issued to the blood relation of Respondent No.3 i.e. his nephew has been held to be valid by the Scrutiny Committee. Respondent No.3, along with affidavit of genealogy demonstrating the relations with validity holder, produced necessary evidence before the Scrutiny Committee, which was considered and the validity certificate has been issued to him. There is neither any fabrication of record nor Respondent No.3 has misled the Committee in securing the validity certificate. So far as school

record of Respondent No.3 is concerned, it is contended that Respondent No.3 is not guilty of withholding school record of his father as he was not aware as to whether his father was ever admitted to the school. The record produced by the petitioner indicates that father of Respondent No.3 studied up to 2nd standard and left the school on 05.07.1946. It appears that the copy of the school leaving certificate has been issued on 12.08.2017 and Respondent No.3 had never obtained the copy of the said certificate. According to Respondent No.3, his father died within six months of his birth and in that situation, there is no question of suppressing any material record.

7 So far as caste certificate issued to Respondent No.3 on 25.06.1980 is concerned, it is contended that at the time of securing employment, the said certificate was tendered to the employer. The Secretary of Education Society pointed out to Respondent No.3 that the certificate tendered by him was frayed and worn out and as such, he should obtain duplicate certificate. Respondent No.3 approached the Executive Magistrate, Ajara, District Kolhapur, for issuance of duplicate caste certificate. However, he was told that duplicate caste certificate cannot be issued and he can obtain caste certificate from the competent authority at the place where he was residing for more than fifteen years. Respondent No.3, in view of the corrigendum issued on 11.07.1996 to the Government Resolution dated 03.06.1996, which provides that any person can apply for the caste certificate to the competent authority at the place where the person is residing for more than fifteen years, tendered an application to the Sub Divisional Officer, Thane and secured a fresh caste certificate in the year 2008 and the same was

submitted for verification to the Scrutiny Committee.

8 According to Respondent No.3, during the period 1991 to 2004, he was residing at Shivale, Taluka Murbad, District Thane. Respondent No.3 tendered necessary evidence in the form of Ration Card and the proof of his residence and on the basis of the aforesaid record, the Tahsildar, Murbad, certified that during the period 1991 to 2004, Respondent No.3 was residing at Shivale, Tq. Murbad, District Thane. Respondent No.3, thus, obtained the caste certificate from the Sub Divisional Officer, Thane and the same was submitted for verification. Respondent No.3 contends that there is no infirmity in securing the certificate and there is no suppression of earlier caste certificate, as contended by the petitioner.

9 Respondent No.3, relying upon the judgment in the matter of **Mukesh Pandurang Bastav and another vs. State of Maharashtra and others**, 2018(1) All MR 357 as well as in the matter of **Apoorva d/o Vinay Nichale Vs. Divisional Caste Certificate Scrutiny committee and others**, 2010(6) Mh.L.J. 401; contends that where close blood relations from the paternal side have been issued validity certificate, the claim of the caste certificate holder, who approaches the Scrutiny Committee, should be upheld unless it has been demonstrated that the blood relation of the caste certificate holder has obtained validity certificate by fraud or fabrication.

10 It is also contended that in view of Rule 17 of the Maharashtra Scheduled Caste, De-notified Tribes (Vimukta Jatis) , Nomadic Tribes, Other Backward Classes and Special Backward

Categories (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (hereinafter referred to as 'Rules of 2012'), since the Committee was satisfied as regards genuineness of the evidence produced by Respondent no. 3, it was mandatorily required for the Committee to refer the matter for Vigilance Cell enquiry.

11 There is a distinction between the procedure to be adopted while issuing validity certificate in respect of individuals belonging to tribal community and individuals belonging to Other Backward Class category. It is contended that the petitioner does not have any locus to challenge the caste validity certificate issued to Respondent no. 3. The petition is presented with malafide intention and therefore, deserves to be rejected.

12 The petitioner, relying upon the judgment of the Full Bench in the matter of **Rajendra Shivram Thakur Vs. State of Maharashtra** (Writ Petition No. 4918/2012, decided at Aurangabad Bench on 5th July, 2019), contends that the candidate desirous of seeking a tribe certificate shall have to apply to the competent authority having jurisdiction over the area or the place where he/she or his/her father originally belongs to or he/she ordinarily resides or native of that place, except in cases where such applicants shall produce the tribe certificate issued in favour of their father or grand father by the competent authority of their original place of residence on the date of Presidential Order of their tribe.

13 In the instant matter, firstly, the question in respect of verification of the certificate issued to Respondent no. 3 is in

relation to OBC category and Respondent no. 3 does not claim to belong to a tribal community. There is a distinction between the rules governing issuance of certificate to a tribal candidate and the OBC category candidate. In the instant matter, Respondent no. 3 was issued caste certificate by the Executive Magistrate, Ajara, Dist. Kolhapur on 25.06.1980 however, since the certificate was frayed and worn out, he was advised to take out a original caste certificate and relying upon the corrigendum dated 11.07.1996 to Government Resolution dated 03.06.1996, Respondent no. 3 applied for issuance of caste certificate to Sub-Divisional Officer at Thane, which was issued to him. Respondent no. 3 was residing for a period more than fifteen years within the jurisdiction of Sub-Divisional Officer, Thane and, in view of the Government policy in respect of issuance of caste certificates, the same was issued to him, which was forwarded for verification to the Scrutiny Committee and the Scrutiny Committee has considered the same and issued the validity certificate.

14 The rules relating to issuance of caste certificates have been framed on 1st September, 2012, whereas in the instant matter, the caste certificate has been issued to Respondent no. 3 in the year 2008 which was submitted for verification to the Scrutiny Committee. The issuance of caste certificate to Respondent no. 3, at the relevant time, was in accordance with the Government policy and rules prevailing at the relevant time and there does not appear to be any error committed by the competent authority nor any ill intention can be attributed to Respondent no. 3 in securing caste certificate from the Sub-Divisional Officer, Thane.

15 Another objection raised by the petitioner is in relation to securing the report from vigilance cell. Rule 17(6) of the Rules of 2012, provides that if the Scrutiny Committee is satisfied on the basis of evidence in the form of affidavits and other documents tendered by the applicant, then case is made out for issuance of validity and the Committee shall forthwith issue Validity Certificate in Form No.20 without enquiry by vigilance cell. In view of Rule 17(6) of the Rules of 2012, it is not mandatorily required for the Scrutiny Committee to forward the matter for securing report of vigilance cell.

16 The petitioner, relying on the judgment in the matter of **Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others**, (1994) 6 SCC 241; contends that it was mandatorily required for the Scrutiny Committee to secure report of vigilance cell and thereafter to proceed to examine the matter. Reliance is also placed on the judgment in the matter of **Dayaram Vs. Sudhir Batham and others**, (2012) 1 SCC 333.

17 In the instant matter, firstly, the claim raised by Respondent No.3 is in respect of verification of his caste certificate as belonging to OBC category; and the Rules, framed by the State in the year 2012, do provide a procedure different than the procedure in respect of issuance of certificates in the case of tribal candidates. Rule 17(6) of the Rules of 2012 specifically empowers the Committee to issue validity certificate without referring the matter to the Vigilance Cell in respect of OBC category. The directives issued in the matter of **Kum.**

Madhuri Patil (*supra*), are in the nature of directions applicable until the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, is enacted and Rules are framed by the State, which are in the nature of instructions to fill in the gap. The procedure provided under the Rules of 2012 governs the field and as such, the contention of the petitioner does not deserve any consideration. Respondent No.3 is justified in contending that since the blood relation of Respondent No.3 has been issued the validity certificate, in view of the law laid down by this Court in the matters of **Mukesh** and **Apoorva Nichale** (*supra*), the Committee was justified in directing issuance of validity certificate to Respondent No.3.

18 So far as locus of the petitioner to raise challenge to the caste validity certificate issued to Respondent No.3 is concerned, it is strenuously contended by Respondent No.3 that in view of the judgment of the Hon'ble Supreme Court in the matter of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & others**, AIR 2013 SC 58, it shall be concluded that the petitioner does not have any locus and the writ petition shall be rejected summarily.

19 The petitioner, on the contrary, relied on the judgment of this Court in the matter of Maharashtra **Adiwasi Mana Jamat Mitra Mandal, Nagpur and another Vs. State of Maharashtra & others**, 2017 (1) Mh.L.J. 227, and contends that the petitioner has a *locus standi* to raise challenge to the validity certificate issued in favour of Respondent No.3.

Respondent No.3 seriously disputes the status of the petitioner as Secretary of the Institution. There is nothing placed on record by the petitioner to claim that he is the office bearer of Education Society and has locus to challenge the validity certificate issued to Respondent No.3. In paragraph no.7 of the judgment in the matter of **Ayaaubkhan Noorkhan Pathan** (*supra*), it is observed thus:

“7 It is a settled legal proposition that a stranger cannot be meddle in any proceeding, unless he satisfies the Authority/ Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is restored to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the

right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736 : (1996 AIR SCW3424); and Tamil Nadu Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors., (2009)2 SCC 784)."

20 Apart from the locus of the petitioner, even if merit of the claim raised by petitioner is considered, we do not find any reason to cause interference in the order passed by the Scrutiny Committee. It does not appear that Respondent No.3 has placed reliance upon any fabricated record or misled the Scrutiny Committee in securing the validity certificate. The Scrutiny Committee was justified, in view of the judgments in the matter of **Mukesh** and **Apoorva Nichale** (*supra*), to issue validity certificate in favour of Respondent No.3.

21 In exercise of extraordinary jurisdiction, conferred upon this Court under Article 226 of the Constitution of India, no interference is called for.

22 Petition is devoid of substance and stands rejected accordingly.

(N.J.JAMADAR, J.)

(R.M.BORDE, J.)