

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12122 OF 2017

Neha Khursheed Alam Shaikh	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.R.K.Mendadkar with Mr.C.K.Bhangoji
for the petitioner.

Ms.A.A.Purav-AGP for State.

Mr.Ram S. Apte-Senior Advocate with
Ms.Puja Acharekar for respondent no.3.

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

DATED :- JUNE 12, 2019

P.C. :-

1. The petitioner has filed this petition to challenge the order of the Caste Certificate Scrutiny Committee, Thane validating the claim of the third respondent before us. By the impugned order, the Caste Certificate Scrutiny Committee, Thane has issued the caste validity certificate in favour of applicant-Nazia Bano Abdul Hafiz Ansari.

2. The petitioner says that the election from Ward No.78 in the Mumbai Municipal Corporation [a reserved seat for Backward Class citizen (woman)] was contested by the petitioner as also the

third respondent. The results of this election were declared and the third respondent was declared as elected. The petitioner filed a substantive Election Petition No. 23 of 2017 before the Chief Judge of the Court of Small Causes, Mumbai. The ground on which the election was challenged was improper acceptance of the nomination form of the third respondent as well as on the ground that the third respondent does not belong to Julah caste recognised as Other Backward Class in the State of Maharashtra.

3. This election petition is pending. However, the petitioner says that the election could not have been contested by the third respondent unless she had both, a caste certificate and a caste validity certificate. The petitioner says that a validity certificate was issued, but the issuance was vitiated by fraud. The argument was that the third respondent relied upon a school leaving certificate stated to have been issued by one Nalanda High School, Rajendra Nagar, Borivali (East), Mumbai 400 066. A true copy of this document is annexed as Annexure 'E'. The second document was a power loom certificate for removal of cotton fabrics purchased by one Abdul Hafiz Ansari dated 25th March, 1962, copy of which is at Annexure 'F'. There are several other documents, but the argument before us is that once the school leaving certificate issued to the father is by a non-existent school,

then, the proceedings before the scrutiny committee stand vitiated by a fraud and forgery. There is no other document based on which the claim could have been accepted.

4. The argument of Mr.Mendadkar appearing for the petitioner is that the scrutiny committee should have realised that the complaint of this nature, made by the petitioner, was indeed serious. The scrutiny committee should have realised that the caste validity certificate was applied for on 1st February, 2017. In support of the claim of the third respondent, she relied upon, *inter alia*, this school leaving certificate. She relied upon two other documents, but they are self generated. The petitioner promptly approached the scrutiny committee and filed a written complaint. She says that the caste validity certificate should not have been issued in favour of the third respondent, but her complaint has been disposed of without application of mind and in a perfunctory manner.

5. Mr.Mendadkar would contend that apart from this, there is no other document which could be treated as an admissible evidence in relation to the claim. In other words, the claim of caste or Other Backward Class being based on the certificate issued in favour of the father carrying the entry as Muslim-Julah and that certificate having been omitted from consideration,

there is nothing which can prove the claim of the third respondent. The caste or tribe is derived from the father and if the father has relied upon a bogus document, then, that claim must fail. There is no other document on which the claim could have been granted.

6. In the alternative, Mr.Mendadkar would submit that the third respondent relied upon a document, copy of which is at page 56 of the paper book. That is stated to be a "*Parivar Register*". That is stated to be issued by the village panchayat of Gram Gonde Sadar, District Pratapgad in the State of Uttar Pradesh. However, there also, the entry in relation to religion and caste is tainted and dubious. The word "Julah" appears to have been inserted later on. In fact, what the certificate and at best certifies is the religion and not the caste.

7. Mr.Mendadkar would submit that though the scrutiny committee says this is verified from the original records, yet, on enquiries made from the concerned panchayat, the petitioner was informed that page 56 is not a genuine document. It is tainted and vitiated by overwriting and insertion made later on. It is a forged document.

8. Mr.Apte learned senior counsel appearing for respondent no.3 would submit that insofar as the first document is concerned, namely, the school leaving certificate, the third respondent accepts now the position that there was no school by name Nalanda High School. The school was named as Nalanda English School. The school leaving certificate which was produced and stated to be issued from this school was not a genuine and valid document. It has no legal sanctity and it may be omitted from consideration. However, Mr.Apte would submit that there are other documents, based on which the claim can be established and proved. He submitted that the petitioner may claim to have displaced the document at page 56 of the paper book, but what is material to note is that the petitioner had approached on 3rd October, 2017 by way of an application to the Block Development Officer (BDO), Pratapgad, Uttar Pradesh. He submitted that the certificate issued by Gram Gonde Sadar, District Pratapgad styled as *Parivar Register* (Family Register) says that the BDO must give information in relation to such register or extracts thereof from any year. In any event, the application says that the information in relation to such register, but pertaining to the year 2005 be provided. It is stated in that application itself that *Gram Panchayat Gonde ka Parivar Register lagbhag 1998 me navin bana tha*. That is how the BDO certifies that the information

sought is whether that register has been prepared in the year 1998. Mr.Apte would submit that this would not falsify any of the entries which are relied upon from page 56 of the paper book. Apart therefrom, it is stated by Mr.Apte that there are other documents referred in the impugned order. An opportunity, therefore, be granted to the third respondent to establish and prove her claim.

9. We have perused the writ petition and all the annexures thereto. In all five documents were relied upon by the third respondent in support of her claim. The document at serial number 3 is the extract of the school leaving certificate issued by Nalanda High School. Mr.Apte does not dispute that it is not a genuine, but a tainted and bogus document. We can, therefore, safely omit it from consideration. The rest of the documents which are referred in the impugned order are pertaining to the residence of the third respondent in the State of Maharashtra prior to 13th October, 1967. Now, this is the crucial date for on this date the said Muslim-Julah was declared as Other Backward Class by a notification issued by the Government of Maharashtra. Then, it is stated that Abdul Hafiz Salim Ansari is the father of the third respondent and he applied for power loom certificate for removal of cotton fabrics. He made application to the Central Excise

authorities. We say nothing about this for it is evident that this document cannot carry the claim of the third respondent as belonging to Muslim-Julah - Other Backward Class, any further. At best it may indicate the traditional occupation of the Muslim-Julah community. We do not have any document other than an agreement for sale. That agreement for sale is also referred in the impugned order. That at best may mention the caste, but beyond that, it cannot carry the case of the third respondent any further. Then, what we have is the school leaving certificate of the third respondent's father. Once that is omitted from consideration, then, the other document that we have is the certificate from the village Gram Gonde Sadar, District Pratapgad in the State of Uttar Pradesh. That is styled as a Family Register (*Parivar Register*). In that at serial number 161, the name of the petitioner's grandfather Mohd. Salim is written. As against column pertaining to religion and caste, it is stated that he is a Muslim Julah.

10. Now, we do not have anything such as family tree and genealogy on record and whether this gentleman Mohd. Salim was the father of one Abdul Hafiz Ansari. How the applicant-third respondent claims that this gentleman is her grandfather has not been clarified to us at all.

11. We grant her an opportunity to produce the family tree and genealogy which could establish the relationship. If her grandfather had resided in village Gonde, District Pratapgad and was indeed possessing a property or carrying on the traditional occupation of Muslim-Julah community and that is how the family register of that village was prepared, then, we grant an opportunity to the third respondent to prove her claim by relying upon not only the document, but the material relied upon to support the entry therein. The third respondent will have to establish not only her relationship with the person whose name is entered in the family register, but she would also have to establish that her grandfather has a son by name of her father and that he resided in that village and carried on the traditional occupation and that thereafter, they shifted in the State of Maharashtra. If the family had shifted, then, there are other documents as well which would establish and prove the claim. The third respondent will have to establish and prove her claim independent of the school leaving certificate of her father and for that purpose, we accede to the request of Mr.Apte. We in fact grant this relief only because presently we cannot demolish the contents of page 56 of the paper book and accept the entries at page 97A of the paper book. That is a matter which should be investigated by the scrutiny committee. We do not express any opinion nor we

endorse the submission of Mr.Apte that the document at page 56 of the paper book is a valid, legal and genuine so also authenticated or otherwise, as contended by Mr.Mendadkar.

12. The impugned order is quashed and set aside. The matter is remanded back to the Caste Certificate Scrutiny Committee, Thane. It shall pass a fresh order in accordance with law after hearing both sides as expeditiously as possible. It shall pass the fresh order latest by 31st August, 2019. No extension of time will be granted.

13. The writ petition is disposed of in these terms. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)