

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

WRIT PETITION NO. 484 OF 2015

Ramakant Shantaram Malpekar	]	
Aged 63, residing at	]	
At post. Bazarpet, Rajapur	]	
Tal. Rajapur, Dist. Ratnagiri	]	.. Petitioner

Vs.

1. State of Maharashtra	]	
through its Secretary, Social	]	
Justice and Special Assistance	]	
Department, Mantralaya,	]	
Mumbai-32.	]	
	]	
2. Divisional Caste Certificate	]	
Scrutiny Committee No.3,	]	
Mumbai Suburban through its	]	
Member-Secretary, having its	]	
office at 5 th floor, New Administrative	]	
Bldg., Bandra, Mumbai	]	
	]	
3. Jamir Nizam Khalife	]	
Aged adult, residing at	]	
317, Tal. Rajapur, Dist. Ratnagiri.	]	.. Respondents

Mr.Ramchandra K. Mendadkar a/w. Mr.Chandrakant Bhangoji and
Mr.T.V.Jadhav for petitioner.

Ms.Kavita N. Solunke, AGP for respondent Nos.1 and 2.

Mr.Surel Shah a/w. Mr.Suhail Khan for respondent No.3.

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

DATE : 13TH JUNE 2019

JUDGMENT (Per N.J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.
2. By this petition under Article 226 of the Constitution of India, the petitioner assails the legality, propriety and correctness of the order dated 28th May 2014, whereby the Divisional Caste Scrutiny Committee No.3, Mumbai Sub-urban-respondent No.2 granted caste validity certificate to Jamir Nizam Khalife-respondent No.3 and thereby validated the claim of respondent No.3 that he belongs to 'Muslim-Nhavi', Other Backward Class.
3. The challenge to the caste validity certificate granted to the respondent No.3 arises in the backdrop of the following facts :-

The petitioner is a resident of Rajapur and his name is included in the electoral roll of Ward No.2 of Rajapur Municipal Council. The respondent No.3 contested election for the post of Councilor of Rajapur Municipal Council from Ward No.3, which was then reserved for the backward classes of citizens, on the strength of a certificate issued by the competent authority that the respondent No.3 belongs to 'Muslim-Nhavi, Other Backward Class'. The petitioner claims that the respondent No.3 does not belong to 'Muslim-Nhavi-O.B.C'. The respondent No.3, however, obtained the caste and validity certificates from the concerned competent authority and Caste Scrutiny Committee fraudulently and by suppressing material facts.

The petitioner had initially approached this Court by filing Writ Petition No. 4927 of 2012 challenging the validity certificate granted to the respondent No.3 by the Caste Scrutiny Committee without even calling for a report of the Vigilance Cell. This Court, by order dated 9th May 2013, was persuaded to set aside the validity certificate granted to the respondent No.3 and remit the matter to the Caste Scrutiny Committee for a fresh adjudication of the caste claim of the respondent No.3, in accordance with law, after calling for a report of the Vigilance Cell.

4. In pursuance of the aforesaid direction, the respondent No.2-Committee referred the matter for enquiry by the Vigilance Cell. The respondent No.2-Committee gave an opportunity of hearing to the petitioner as well as the respondent No.3 and after a fresh consideration, post receipt of the Vigilance Cell report, was again persuaded to validate the caste certificate issued by the competent authority to the respondent No.3 and the claim of the respondent No.3 of being a Muslim-Nhavi was upheld by the impugned order dated 28th May 2014. Being again aggrieved by and dissatisfied with the grant of certificate by the respondent No.2-Committee, the petitioner has approached this Court invoking the writ jurisdiction.

5. We have heard Shri Ramchandra Mendadkar, the learned counsel for

the petitioner, Ms.Kavita Solunke, the learned AGP for the State and Mr.Surel Shah, the learned counsel appearing for respondent No.3 at some length.

6. Shri Mendadkar, the learned counsel for the petitioner, strenuously urged that the respondent No.2-Committee committed a manifest error in again validating the claim of the respondent No.3, despite there being incontrovertible material on record to demonstrate that the claim of the petitioner had its genesis in fabrication of documents to suit the said claim. Elaborating the submission, the learned counsel would urge that, the material on record especially the extract of Admission Register of Dawoodhoy Fazalbhoy Secondary School, Pydhonie Road, Khadak, Bombay where the father of the respondent No.3 had his school education, only 'Muslim' religion was mentioned against the column 'Caste and Sub-caste'. Whereas in the School Leaving Certificate issued on 11th May 1971, the words, “(Nhavi)” were suffixed to the word, “Muslim” against the column, “Caste/Sub-caste”. This attempt to demonstrate that in the school record itself the caste of the father of the respondent No.3 was recorded betrays an intent to fabricate the record with a view to gain an undeserved benefit, by practicing fraud.

7. The learned counsel for the petitioner drew our attention to the

report submitted by the Vigilance Cell on 22nd October 2013, wherein it was specifically observed that in the School Leaving Certificate of the father of the respondent No.3 the word, “Nhavi” appeared to have been added afterwards and the said School Leaving Certificate thus appeared to be a false document. Even in the report of the Vigilance Cell, dated 30th January 2014, it was mentioned that in the Admission Register, only the religion, “Muslim” was entered against the name of the father of the respondent No.3 and the word, 'Nhavi' was conspicuous by its absence therein. In the face of such unimpeachable record unmistakably pointing to the fabrication of documents at the instance of the respondent No.3, according to the learned counsel for the petitioner, the respondent No.2-Committee could not have lightly brushed aside the said material which revealed a fraud, at the behest of the respondent No.3.

8. Shri Surel Shah, the learned counsel for the respondent No.3 joined the issue by putting forth a submission that the petitioner is a busybody and has been challenging the legitimate claim of the respondent No.3 to wreck vengeance. The petitioner does not claim to belong to Muslim-Nhavi caste or for that matter or any other backward class. The petitioner has no direct interest in the matter. Nor constitutional or legal right of the petitioner is affected. Therefore, the petition deserves to be dismissed on the count of the locus of the petitioner itself, urged the learned counsel for

the respondent No.3.

9. On the merits of the claim of the respondent No.3, it was submitted on behalf of the respondent No.3 that the theory of fraud sought to be urged on behalf of the petitioner has no semblance of credibility. It was submitted that the mere fact that the word, “Nhavi” does not find mention against the caste of father of the respondent No.3, in the original Admission Register, does not by itself justify an inference that the claim of the petitioner is false. On the contrary, according to the learned counsel for the respondent No.3, there is ample material on record to demonstrate that much before the petitioner laid a claim to belong to Muslim-Nhavi-OBC, the grandfather of the petitioner had submitted an application to the authorities of the School and had requested for correction not only in the caste/sub-caste of the father of the respondent No.3 but the place of birth and name also.

10. To bolster up the submission that the petitioner has no *locus* to challenge the validity certificate granted to the respondent No.3, a strong reliance was placed on the judgment of the Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.***¹, wherein in the context of challenge to the grant of caste validity certificate, by the respondent No.5 therein, who did not belong of scheduled tribe, the

1 2013(4) Mh.L.J. 561

Supreme Court had enunciated the legal position as under :-

“15 In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

.....

22. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo-motu, in such respect.”

(Emphasis supplied)

11. The aforesaid pronouncement of the Supreme Court makes it abundantly clear that an aggrieved person can assail the grant of the validity certificate. The expression, “aggrieved person” has a definite juristic connotation and, ordinarily, means a person whose right or interest has been prejudicially affected on account of the impugned action. Unless, the case comes within the exceptions, so carved out in paragraph 22, in which case, the Court is persuaded to hear the person who espouses a genuine cause, a person who intermeddles cannot be permitted to assail the order granting the validity certificate.

12. In the instant case, though we find that there is material to indicate that the petitioner has been pursuing actions against the respondent No.3 out of a personal rivalry, apparently arising out of political affiliations, to which the respondent No.2-Committee has specifically adverted to in the impugned order, we are not inclined to non-suit the petitioner on said count alone. We are of the view that since in the first round of litigation, this Court had remitted the matter to the respondent No.2-Committee for a fresh adjudication, it may not be now open for the respondent No.3 to challenge the locus of the petitioner. We also find that the petitioner cannot be said to be total stranger as the petitioner claims to be a voter, whose name is entered in the electoral roll of the Ward of Rajapur Municipal Council, wherefrom the respondent No.3 came to be elected. In the circumstances, it cannot be said that the petitioner's legal right is not at all affected by the election of a candidate from the Ward (of which petitioner is a voter), which is reserved for the backward class of citizens, where it is alleged that the said candidate does not belong to the said class.

13. Having dealt with the preliminary challenge to the tenability of the petition, we proceed to deal with the merits of the matter. As observed earlier, the thrust of the submission of the learned counsel for the petitioner is that the respondent No.3's claim is fraudulent. The discrepancy in the entry regarding the religion/caste, "in the admission

register” and “the School Leaving Certificate” of the father of the respondent No.3, is the substratum on which the edifice of submission of fraud is rested.

14. Shri Mendadkar, further submitted that once there is material to indicate that the impugned order is obtained by practicing fraud, then the respondent No.2-Committee could not have lent its approval to such conduct on the part of the respondent No.3 and the order is thus vitiated in its entirety. A strong reliance was placed on the observations of the Supreme Court in the case of **A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors.**², wherein, after adverting to the numerous authorities on vitiating effects of fraud on the judicial proceedings, the following observations were made :-

“22 It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

15. It is indubitable that fraud vitiates every act. However, the material on record does not indicate that the aforesaid proposition would govern the facts of the instant case with equal force. In the impugned order, the respondent No.2-Committee has considered the challenge based on the

2 (2007) 4 SCC 221

allegations of fraud in the context of discrepancy in the “admission register” and “school leaving certificate”. The Committee found that during the course of vigilance enquiry, the vigilance officer recorded the statement of one Mr.Arif Merchant, the chairman of Dawoodbhoy Fazalbhoy Education Trust to the effect that the grandfather of the respondent No.3 had made an application subsequently to correct the entries in the school register and on the basis of the said application, the school leaving certificate came to be issued. However, the original application was untraceable. It is pertinent to note that the school leaving certificate of the father of the respondent No.3 came to be issued in the year 1971. The respondent No.3 was born in 1981 and the aforesaid school leaving certificate was sought to be used by the respondent No.3 in 1999. In the circumstances, in the opinion of the Committee, no fraud can be attributed to the act and conduct of the respondent No.3.

16. The aforesaid approach of the respondent No.2-Committee appears justifiable. It is not the case that the respondent No.3 in the wake of the controversy subsequently got the entries in the school leaving certificate corrected. The application was made in the year 1971 and the school leaving certificate came to be issued thereafter. The respondent No.3 was born in 1981. It might not have been even in the contemplation of the grandfather of the respondent No.3 that the said entry would enure for the

benefit of the respondent No.3.

17. Even otherwise, we are of the view that, even if we eschew the said entry in the school leaving certificate of Muslim-Nhavi, entered against the name of the father of the respondent No.3, from consideration, there is adequate material to justify the claim of the respondent No.3 that he is a Muslim-Nhavi. In the detail vigilance enquiry, the vigilance cell found that the grandfather of the petitioner used to work as a Barber at Paramount Hair Dressing Hall, Raheman Building, Fort, Mumbai-1 from 1959 to 1961. A statement of the owner of the said saloon came to be recorded. During the enquiry, the vigilance officer had also recorded statements of number of persons who have asserted that the respondent No.3 is a member of Muslim-Nhavi caste. It is not the case that there are no persons who pursue occupation of barber in Muslim religion.

18. We are impelled to record that the respondent No.2-Committee was also justified in placing reliance upon, and giving weightage to, the report of the vigilance cell in the backdrop of a judicially recognized fact that in the case of the Muslims, the caste and sub-caste is generally not mentioned in the birth certificate and other school records. In this context, a profitable reference can be made to a judgment of this Court in the case of *Shri Imram A. Ajij Shaikh Vs. State of Maharashtra & Ors.*³, wherein the

3 2015(4) Mh.L.J. 901

following observations were made :-

“5 In the present case, after hearing both the parties even considering the impugned order, we have noted that the Respondent-Committee failed to consider the facts and circumstances of the present case specifically when it refers to matters that the Petitioner belongs to “Muslim Julaha” caste. The requirement of documents of the community in question as insisted, in our view, is uncalled for. The very Vigilance Cell report, so prepared based on the material collected by the concerned Officer, at the relevant time, by recording reasons and/or statements of the people of the locality as well as community, unless a case of fraud and/or mis-representation is made out, can only be required to be interfered with. There is no such reason and/or justification given. The justification given is by overlooking the findings of the Committee's report as recorded above. It is quite settled in Madhuri Patil's case (supra) that once the report is in favour of candidate found to be genuine and true, no further action needs be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained or serious doubts are raised.

6. There is nothing on record to show any contra material and/or any objection by any one on record. The inquiry report itself supports the case of the Petitioner based on all the traits, traditions, characteristics and customs of his caste. There is nothing to disbelieve the inquiry conducted by the Vigilance Cell. Respondent no.2 wrongly rejected the documents placed by the Petitioner as caste is mentioned only as Musalman. In the Muslim community, there are few cases in which the caste is recorded regularly and/or properly in any Government record. Therefore, the Committee ought to have considered the Vigilance Cell report instead of relying solely upon the documents placed on record by treating it to be unreliable. The Committee must consider in such situation that unless contrary material is placed on record and other documents are not clear as not available in the particular community, the Vigilance Cell report needs to be respected. There is no question of discarding the Vigilance Cell report, the purpose for which is well reconsidered and even recorded by the Apex Court in Madhuri Patil's case and Dayaram 's case (supra).”

(Emphasis supplied)

19. In the light of the aforesaid legal position, and the facts of the case at hand, in our view, the respondent No.2-Committee was within its rights in granting caste validity certificate to the respondent No.3. The circumstances of the case do not warrant exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India to interfere with the findings of fact recorded by the respondent No.2-Committee, which cannot be said to be either perverse or unreasonable. For the foregoing reasons, the petition deserves to be dismissed.

20. The petition, thus, stands dismissed. However, there shall be no order as to costs.

21. Rule stands discharged.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]