IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (O) NO. 1723/2019 (EXH. 8)
IN
ELECTION PETITION NO. 01/2019

Sunil C. Bhalerao
..VS..
Navneet R. Rana

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Shri Pramod N. Patil, Adv a/w Shri R.G. Kavimandan, Adv for petitioner
Shri S.Z. Qazi, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 27/11/2020

1] This application is filed by the respondent (returned candidate) under Order VII Rule 11 of the Code of Civil Procedure contending that the challenge raised by the petitioner to the status of the respondent as a Scheduled Caste candidate cannot be examined in this election petition as the Competent Authority i.e. the Sub-Divisional Officer, Eastern Suburban, Mumbai Suburban District has issued caste certificate dated 30/08/2013 certifying that the respondent belongs to “Mochi” caste which is recognized as “Scheduled Caste” in the State of Maharashtra, and the District Caste Certificate Scrutiny Committee, Mumbai Suburban by the decision dated 03/11/2017 has validated the caste certificate issued in favour of the respondent.

2] Learned advocate for the respondent pointed out that admittedly the decision of the District Caste

Certificate Scrutiny Committee is challenged by the petitioner before the High Court in W.P. No. 3370/2018 which is pending but interim order is not granted in that petition. According to the respondent, as the legality of the caste certificate and validity certificate issued in favour of the respondent by the Competent Authority cannot be the subject matter of challenge in the election petition filed under Section 80 of the Representation of the People Act, 1951 (for short "the Act of 1951"), the petitioner cannot succeed in getting declaration from this Court in terms of the prayer made in the election petition and it being so, there is no need to consider the election petition on merits and it be rejected under Order VII Rule 11 of the Code of Civil Procedure. It is further submitted that the copy of election petition supplied by the petitioner for service on the respondent is not true copy of the election petition and the petitioner has not attested it as true copy of the election petition. In para no. 5 of the application (Exh. 8), it is stated that the respondent is served with only one page of the petition with the endorsement as true copy which is also vague and it does not show that it is true copy of which document / petition. It is alleged that the petitioner has not supplied true copy of the documents filed alongwith the petition and therefore there is non-compliance of Section 81(3) of the Act of 1951. On these grounds, the respondent has prayed that the election petition be rejected under Order VII Rule 11 of the Code of Civil Procedure.

3] Learned advocate for the petitioner submitted that the election petition cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure on the grounds raised

in the application (Exh. 8). Referring to para no. 23 of the election petition, learned advocate for the petitioner submitted that the challenge of the petitioner is that the respondent belongs to “Lubana” caste which is not recognized as “Scheduled Caste” either in the State of Maharashtra or State of Punjab or any other state and therefore the respondent was not qualified to contest on the seat reserved for Scheduled Caste candidate. Learned advocate for the petitioner relied on the provisions of Articles 330 and 84(c) of the Constitution of India, Sections 4(a) and 33(2) of the Act of 1951 and Sections 3 and 6(3) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short "the Maharashtra Act No. 23 of 2001”) and argued that to be the member of Parliament, the candidate should possess such qualifications as may be prescribed in that behalf by or under any law made by Parliament (emphasis supplied) and for the elections held as per / under the Act of 1951, if a candidate contests from a Constituency where the seat is reserved, he shall not be deemed to be qualified to be chosen to fill that seat unless his nomination papers contain a declaration by him / her specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or as the case may be a Scheduled Tribe of the State, and the certificate and validity certificate issued by the Competent Authority / Scrutiny Committee under the Maharashtra Act No. 23 of 2001 is not required for the contestants under the Act of 1951. It is submitted that the certificate and validity certificate issued under the

Maharashtra Act No. 23 of 2001 is required where a candidate claims benefit of reservation either in any public employment, or for admission to any educational institution, or any other benefit under any special provisions made under Article 15(4) of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the Co-operative Societies; or for purchase or transfer of land from a tribal land holder or for any other purposes specified by the Government (emphasis supplied).

4] According to the petitioner, the status claimed by the respondent as a Scheduled Caste candidate can be challenged by the petitioner independently in the election petition and the certificate issued under the Maharashtra Act No. 23 of 2001 cannot be of any help to the respondent to counter the challenge of the petitioner in the election petition.

5] After considering the rival submissions and examining the provisions of the enactments referred above, I am of the view that the election petition cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure only because the respondent is having a certificate issued by the Competent Authority and a validity certificate issued by the Scrutiny Committee upholding her claim that she belongs to "Mochi" caste which is recognized as "Scheduled Caste" in the State of Maharashtra. Of course, the certificate issued by the Competent Authority and the validity certificate issued by the Scrutiny Committee may have persuasive value while dealing with the challenge raised by the petitioner but the petitioner cannot be precluded from raising the challenge as raised by

him in the election petition. In my view, the challenge raised by the petitioner will have to be examined on merits, giving opportunity to the petitioner to prove his case.

6] The learned advocate for the respondent, referred to Article 15(4) of the Constitution of India and Section 3 of the Maharashtra Act No. 23 of 2001 and submitted that the Maharashtra Act No. 23 of 2001 has been enacted by the State Government for advancement of the persons belonging to the Scheduled Castes and therefore the certificate issued by the Competent Authority and the validity certificate issued by the Scrutiny Committee under the provisions of the Maharashtra Act No. 23 of 2001 cannot be the subject matter of scrutiny in the election petition. This submission cannot be accepted as it cannot be said that the Maharashtra Act No. 23 of 2001 has been enacted for the advancement of the citizens belonging to Scheduled Castes. Maharashtra Act No. 23 of 2001 has been enacted to provide for the regulation of the issuance and verification of the caste certificates to the persons belonging to Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category, and the provisions of the Maharashtra Act No. 23 of 2001 does not confer any privileges or benefits as intended by Article 15(4) of the Constitution of India.

7] As far as the contention of the respondent that the copy supplied by the petitioner to be served on the respondent cannot be said to be true copy of the election petition, it is too general to non-suit the petitioner under Order VII Rule 11 of the Code of Civil Procedure. Before

issuing notice of the election petition, by the order dated 24/07/2019, this Court had directed the office of this Court to verify whether the provisions of Sections 81, 82 and 117 of the Act of 1951 were complied with by the petitioner or not. The office submitted its report on 26/07/2019 which shows that there was compliance of the provisions of Section 81, 82 and 117 of the Act of 1951, and then notice of the election petition was issued. Hence, the election petition cannot be rejected summarily for non-compliance of any of the mandatory provisions of Sections 81, 82 and 117 of the Act of 1951.

8] In view of the above, the application (Exh. 8) is **dismissed**. In the circumstances, the parties to bear their own costs.

9] The dismissal of the application (Exh. 8) does not mean that the contentions raised by the respondent in the application are decided. The observations made in the order are only for the purposes of considering the prayer of the respondent to reject the petition under Order VII Rule 11 of the Code of Civil Procedure. The contentions, if raised by the respondent at appropriate stage, would be examined according to law at appropriate stage of the proceedings.

ELECTION PETITION NO. 01/2019

List the election petition for further consideration on 09/12/2020 at 4:15 pm.

JUDGE