

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15295 OF 2019

Vijay s/o Vitthalrao Shetkar,
Age : 33 years, Occu. Social Worker,
R/o At Post Sawargaon (Nasrat),
Taluka Loha, District Nanded

PETITIONER
(Orig. Appellant)

VERSUS

1. The State of Maharashtra through
the Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
2. The Caste Certificate Scrutiny Committee
or Regional Commissioner,
Social Welfare Officer, Yawatmaal,
Tq. and District Yawatmaal
3. The Chief Executive Officer,
Zilla Parishad, Nanded,
Station Road, Nanded
4. Ankita Kailash Deshmukh,
Age : 32 years, Occu. Politician,
R/o c/o Kailash Deshmukh,
Near Bus Stand, Sonkhed,
Tq. Loha, District Nanded

RESPONDENTS
(Orig. Respondents)

Mr. P.R. Katneshwarkar, Advocate holding for Mr. Ganesh Gadhe,
Advocate for the petitioner
Mrs. D.S. Jape, A.G.P. for respondent Nos.1 and 2
Mrs. Yogita Kshirsagar, Advocate for respondent No.3
Mr. Rajendra S. Deshmukh, Senior Advocate instructed by
Mr. A.D. Hande, Advocate for respondent No.4

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 22.12.2020
JUDGMENT PRONOUNCED ON : 04.01.2021

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.G.P and the learned Advocates for the respective respondents waive service. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. By way of this petition under Article 227 of the Constitution of India, the petitioner is challenging the order of respondent No.1 – Divisional Commissioner, dated 15.11.2019, whereby application preferred by him under Section 40 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (“the Act”, for short), seeking disqualification of respondent No.4 for filing a false and bogus caste validity certificate while filing nomination form for election to a Panchayat during the election in the year 2012 wherein she was elected from O.B.C. category, has been rejected.

4. Mr. P.R. Katneshwarkar, the learned Advocate for the petitioner would submit that the caste validity certificate tendered by respondent No.4 as Maratha Kunbi, which falls under the O.B.C. category, while filing the nomination form, was false and bogus. The concerned Caste Scrutiny Committees at Yeotmal as well as Amravati, constituted under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward

Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as “the Act of 2000”), had flatly denied to have issued the caste validity certificate. Based on such a report, even this Court in Criminal Writ Petition No.418/2019, by the order dated 09.04.2019, had directed to register an offence against respondent No.4 for filing such a false and bogus caste validity certificate.

. The learned Advocate would submit that since it is a matter of submission of a false and bogus caste validity certificate, there is no need to approach the Caste Scrutiny Committee constituted under the Act of 2000 and respondent No.1 – the Commissioner could have validly declared respondent No.4 to be disqualified. He would submit that the issue is no more *res integra*. In the case of ***Kalpana Dilip Bahirat Vs. Pune Municipal Corporation & ors.; Civil Appeal No.4805 of 2013 arising out of Special Leave Petition (C) No.19296 of 2013***, by the judgment and order dated 27.06.2013, the Supreme Court has made it quite clear that in case of false and bogus caste validity certificate, it was not necessary to approach the Caste Scrutiny Committees and the Commissioner could disqualify a candidate. The facts in the matter in hand being exactly similar to the one obtaining before the Supreme Court, it is rather an open and shut case for respondent No.4 to be disqualified. Though the decision of the Supreme Court was cited before respondent No.1, he has refused to exercise the jurisdiction vested in him on unsustainable grounds. He has taken a view

which is clearly contrary to the mandate of law as laid down by the Supreme Court and therefore, the impugned order being perverse, arbitrary and capricious, needs to be interfered with by this Court.

5. Mr. R.S. Deshmukh, learned Senior Advocate for respondent No.4, by referring to her affidavit-in-reply, would submit that she, in fact, belongs to O.B.C. category. She had obtained the caste certificate validly issued by the concerned Sub-Divisional Officer. The testimony of concerned Naib-Tahsildar was also recorded in the Election Petition initiated by a third person. Since the Election Petition was subsequently withdrawn, the objection did not sustain. He would then advert to Section 10 of the Act of 2000. He would submit that even if the caste validity certificate is questioned, so long as the Caste Scrutiny Committee does not declare it to be invalid or void, it has to be accepted to be genuine one. In fact, respondent No.1 – the Commissioner does not have any power and jurisdiction under Section 40 of the Act to undertake any exercise pursuant to the objection to a caste validity certificate. He would, therefore, submit that admittedly, the Caste Scrutiny Committee at Yeotmal having not declared the caste validity certificate of respondent No.4 to be invalid, her election cannot be questioned.

6. I have carefully perused the papers. As has been rightly submitted by the learned Advocate for the petitioner, the issue as regards declaration of an elected candidate to be disqualified for submitting false and

bogus caste validity certificate even without there being any finding of the Caste Scrutiny Committee, is no more *res integra*. In the matter of ***Kalpana Dilip Bahirat*** (supra), the Supreme Court has considered all the aspects, including the provision of Section 10 of the Act of 2000 and has upheld the judgment and order of the High Court refusing to intervene when the Commissioner of the Municipal Corporation had declared the elected candidate to be disqualified for submitting a false and bogus caste validity certificate. Conspicuously, even it has been held that there was no necessity to question the election by filing an Election Petition under Section 16 of the Bombay Provincial Municipal Corporations Act, 1949. It has further been held that even there was no necessity to approach the Caste Scrutiny Committee under Section 10 of the Act of 2000. It was a matter regarding election of a councillor under the Bombay Provincial Municipal Corporations Act, 1949. The following observations of the Supreme Court from paragraph Nos.7 and 8 are decisive :-

“7. We have considered the submissions of the learned senior counsel for the parties and we find that Section 5B of the 1949 Act provides as follows :

5B. Person contesting election for reserved seat to submit Caste Certificate and Validity Certificate.

Every person desirous of contesting election to a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of citizens, shall be required to submit, along with the nomination papers, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions 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.”

The language of the aforesaid provision makes it clear that the nomination paper of a candidate contesting from a seat reserved for Scheduled Castes, Scheduled Tribes or Backward Class citizens has to be accompanied by a Caste Certificate issued by a competent authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the 2000 Act. In this case, the nomination of the appellant was accompanied by a caste validity certificate purported to have been issued by the Scrutiny Committee constituted under the 2000 Act and admittedly Scrutiny Committee has not issued the caste validity certificate which accompanied the nomination paper. In other words, admittedly, the certificate which accompanied the nomination of the appellant was a false certificate and was not required to be cancelled by the Caste Scrutiny Committee.

8. *We have perused sub-section (1) of Section 10 of the 2000 Act and we find that it applies to admission to reserved seat in an educational institution and to appointment to a reserved post in the Government, local authorities, Government Corporations, Government aided institutions or co-operative societies and will not be attracted to the facts of the case. Instead, the consequences as provided in sub-section (4) of Section 10 of the 2000 Act will follow. Sub-Section (4) of Section 10 reads :*

“Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false caste certificate as belonging to such caste, tribe or class on such false caste certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person

shall be deemed to have been terminated retrospectively.”

The consequence is that the election of a person who has contested on a seat reserved for the aforementioned categories on false caste certificate as belonging to such caste, tribe or class “shall be deemed to have been terminated retrospectively”. The deeming provision in sub-section (4) of Section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of the Municipal Corporation has given effect to the deeming provision and has thus acted in accordance with law.”

The observations clearly set at naught the debate as to if it is necessary to seek declaration from the concerned Caste Scrutiny Committee as contemplated under Section 10 of the Act of 2000 before disqualifying an elected candidate, in case where the caste validity certificate is found to be false and bogus.

7. Pertinently, even the question as to if election of a person could be questioned except by way of Election Petition in view of the provision of Article 243ZG of the Constitution of India has also been answered by the Supreme Court in paragraph No.9 in following words:

“9. Mr. Mohta is right that in view of the provisions of Article 243ZG of the Constitution, the election of a person elected to the Municipality can only be called in question by an Election Petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of the State and Section 16 of the 1949 Act provides for the manner in which election to any municipality can be called in question, but the opening words of sub-section (4) of Section 10 of the 2000 Act, provide that “notwithstanding anything contained in any law for the time being in force”, which obviously will also

include Section 16 of the 1949 Act, the deeming provision in sub-section (4) of Section 10 of the 2000 Act will have to be given effect to and will not await the outcome of an election petition. We, therefore, maintain the order passed by the High Court for the reasons indicated in this judgment.”

8. In spite of such emphatic verdict of the Supreme Court, respondent No.1 – the Commissioner was bold enough to observe that it was not proper for him to interfere so long as the caste validity certificate of respondent No.4 was not declared to be invalid by the concerned Caste Scrutiny Committee. His such observations clearly run counter to the principles laid down by the Supreme Court in the case of ***Kalpana Dilip Bahirat*** (supra). Alarming, the decision of the Supreme Court was also cited before him and still he could make these observations, which clearly shows utter lack of application of mind by a person holding such a high post. Therefore, his such stand not to invoke the powers for want of any declaration by the Caste Scrutiny Committee is nothing but refusal to exercise the jurisdiction.

9. Be that as it may, the other reason assigned by the learned Commissioner – respondent No.1 in the impugned judgment and order for not to interfere is that there was no emphatic reply from the concerned Caste Scrutiny Committee about having not issued the caste validity certificate to respondent No.4. He has observed that failure to find out the record is not the same thing and sufficient to jump to a conclusion that the caste validity certificate was never issued. Obviously, one cannot expect and draw

inference based on surmises and conjectures. If the caste validity certificate of respondent No.4 apparently shows that it was issued by Yeotmal Caste Scrutiny Committee, it was for the Committee to emphatically respond either in the affirmative or in the negative in response to the query as to if the certificate was issued by it.

10. Except the observations of the Division Bench of this Court in the order passed in Criminal Writ Petition No.418 of 2019, directing a crime to be registered by observing that Amravati and Yeotmal Caste Scrutiny Committees having denied to have issued the validity certificate, there is absolutely no other material to conclusively say that the caste validity certificate produced by respondent No.4 is false and bogus.

11. Obviously, if such a reply is received from these Committees, respondent No.1 – the Commissioner would be duty-bound to invoke the powers vested in him under Section 40 of the Act and need not wait for any enquiry to be conducted by the Caste Scrutiny Committee into validity of that certificate. However, since no such reply of those Committees is available to be seen and were apparently not produced before respondent No.1 – the Commissioner, he would be justified in refusing to draw an inference that the caste validity certificate of respondent No.4 is false and bogus.

12. Conspicuously, as can be seen from the concluding observations

in the impugned order, respondent No.1 – the Commissioner was expecting the concerned Collector to conduct an enquiry and to submit a report. Though the observations are not very clear, in all probability he was expecting the concerned Collector to find out as to if the caste validity certificate tendered by respondent No.4 was, in fact, issued by the concerned Caste Scrutiny Committee. The observations clearly show that for the reasons unknown the concerned Collector, Nanded did not respond and therefore, respondent No.1 – the Commissioner concluded that for want of such a report, he was unable to declare respondent No.4 to be disqualified. It is indeed shocking that the concerned Collector, Nanded failed to respond to a query being put by his superior – the Divisional Commissioner. The latter seems to be helpless. For whatever reason, he has been unable to draw any inference for want of sufficient material to conclude that the caste validity certificate of respondent No. 4 was false and bogus.

13. It is in view of such peculiar state of circumstances, it would be just and proper and in accordance with the observations of the Supreme Court in the case of ***Ravi Yashwant Bhoir vs. The Collector, District Raigad & Ors.; (2012)4 SCC 407***, to quash and set aside the impugned order of the Divisional Commissioner and remit the matter back to him to ascertain as to if the caste validity certificate of respondent No.4 was issued by the concerned Caste Scrutiny Committee and if not, to exercise the powers under Section 40 of the Act, as laid down by the Supreme Court in the case of

Kalpana Dilip Bahirat (supra).

14. The Writ Petition is partly allowed. The impugned order of respondent No.1 – the Divisional Commissioner is quashed and set aside. The matter is remitted back to him for decision afresh by making an endeavour to ascertain if the caste validity certificate of respondent No.4 has indeed been issued by the concerned Caste Scrutiny Committee and to take appropriate decision in accordance with the observations made hereinabove. Considering the exigency, it is expected that he would complete the exercise as expeditiously as possible and in any case within a period of three months. The Rule is made absolute accordingly.

[MANGESH S. PATIL]
JUDGE