

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8845 OF 2019

Daivashala Nagnath Bhalerao,
Age 38 yrs., Occ. Household and Social Work,
R/o Islampura, Kinwat, Tq. Kinwat,
Dist. Nanded.

... Petitioner

... Versus ...

- 1 The State of Maharashtra,
Through Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 32.
- 2 The District Caste Scrutiny Committee,
(SC/ST, Nomadic Tribe)
Through it's President,
Nanded.
- 3 The Chief Officer,
Municipal Council, Kinwat,
Tq. Kinwat, Dist. Nanded.
- 4 Anusaya Bapurao Barkuntiwari,
Age 38 yrs., Occ. Household,
R/o Sathe Nagar, Kinwat,
Tq. Kinwat, Dist. Nanded.

... Respondents

...

Mr. N.L. Jadhav, Advocate for petitioner

Mr. A.S. Shinde, AGP for respondent Nos.1 and 2

Mr. B.A. Darak, Advocate for respondent No.3

Mr. N.B. Garje, Advocate h/f Mr. V.D. Salunke, Advocate for respondent No.4

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

RESERVED ON : 10th OCTOBER, 2022

PRONOUNCED ON : 20th DECEMBER, 2022

ORDER : [PER : SMT. VIBHA KANKANWADI, J.]

1 Petitioner was the unsuccessful candidate in election from Ward No.2-A of Nagar Panchayat, Kinwat, which was reserved for women from Scheduled Caste category. Respondent No.4 is the successful candidate and now by this petition the petitioner is objecting to the caste validity certificate issued in favour of respondent No.4 on 31.03.2018. The petitioner has invoked the constitutional powers of this Court under Article 226 of the Constitution of India to challenge the said order granting validity by respondent No.2 in favour of respondent No.4 and she has also sought declaration about disqualification of respondent No.4 on the post of Councilor of the Nagar Parishad. The petitioner has further sought directions to be issued to respondent No.2 for taking action against respondent No.4 under Section 10 and 11 of the Maharashtra Scheduled Castes, Schedule Tribes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes and Other

Backward Classes and Special Backward Class Category (Regulation of Issuance and Verification) Caste Certificate Act, 2000.

2 Heard learned Advocate Mr. N.L. Jadhav for petitioner, learned AGP Mr. A.S. Shinde for respondent Nos.1 and 2, learned Advocate Mr. B.A. Darak for respondent No.3 and learned Advocate Mr. N.B. Garje holding for learned Advocate Mr. V.D. Salunke for respondent No.4.

3 It has been vehemently submitted on behalf of the petitioner that the petitioner has received validity certificate issued by the competent committee holding that she is member of Scheduled Caste. She has contested the election. Though respondent No.4 was declared as elected, it has been transpired that respondent No.4 has obtained the caste certificate by defrauding the various authorities and producing false documents. Respondent No.4 is falsely contending that she is an illiterate lady. She has also obtained school admission document of her real brother alleging that their caste is 'Matang'. According to the petitioner, respondent No.4 has given wrong genealogy. Though documents, which were filed by respondent No.4 along with her nomination form, are false. In fact, the school admission document of respondent No.4 in Zilla Parishad Primary School, Bellori, Tq. Kinwat, Dist. Nanded shows that her caste is 'Madgi' and the date of birth is

18.08.1971. The proposal submitted by Tahsildar to Caste Scrutiny Committee No.2, Nanded on 16.11.2017 along with other documents of which copies have been given along with the petition would show that they are false. In fact, her caste is 'Madgi', but she has obtained the caste certificate of 'Matang'. The petitioner had submitted her objection on 16.01.2018 to the Caste Scrutiny Committee, Nanded and has also produced documents to support her objection. Sub Divisional Officer, Kinwat had also conducted inquiry about the caste of respondent No.4, however, respondent No.4 had taken a stand that her date of birth is 01.01.1981 and she is illiterate. It was then the Sub Divisional Officer disposed of the complaint on the ground that he has no jurisdiction to decide the same. Before the Caste Scrutiny Committee respondent No.4 has submitted her birth certificate showing her birth date as 01.01.1981 appears to be a false document, in view of the letter given by the Chief Officer, Municipal Council, Kinwat stating that the record itself is not available. The petitioner was a poor lady and though the Caste Scrutiny Committee had passed the order in favour of respondent No.4 on 31.03.2018 she could not approach this Court challenging the said order. In fact, when the caste validity certificate was not submitted within six months, the action ought to have been taken by the respective authorities. During the pendency of the petition the further facts those were revealed were that the Assistant Collector, Kinwat informed the Block Education

Officer, Kinwat on 29.08.2018 that the complaint dated 17.01.2018 submitted by the petitioner has been received by him and, therefore, inquiry should be made. The Block Education Officer has submitted the report on 03.03.2018 to Sub Divisional Officer, which will reveal that the caste of the respondent No.4 is 'Madgi' and the mother tongue is 'Telgu'. The petitioner has then submitted an application on 16.09.2019 to the Headmaster of Zilla Parishad Primary School, Bellori (Kinwat), however, the Headmaster refused to give information. The notice that was filed by respondent No.4 shows that she is illiterate, married and also her father was illiterate, but at the time of affidavit she has made signature. These are the facts which would disclose that the caste certificate was obtained fraudulently and the validity has also been issued on the basis of false documents. Therefore, the petition deserves to be allowed.

4 The learned Advocate for the petition has relied on the decision in State of **Maharashtra and others vs. Ravi Prakash Babulalsing Parmar and another**, AIR 2007 SC 295, wherein it has been held that *Caste Scrutiny Committee could go into the validity or otherwise of the certificate granted by the authorities while making an inquiry*. The Hon'ble Supreme Court on the basis of facts and scrutiny of the same held that the *caste certificate issued by Executive Magistrate cannot be taken as evidence to prove the*

caste of the respondent.

5 Per contra, the learned AGP representing respondent Nos.1 and 2, learned Advocate Mr. B.A. Darak for respondent No.3 and learned Advocate Mr. N.B. Garje holding for learned Advocate Mr. V.D. Salunke for respondent No.4 all have strongly opposed the petition. It has been submitted on behalf of respondent Nos.1 and 2 i.e. by learned AGP that the Caste Scrutiny Committee has extensively considered the evidence that was adduced. The original file before the Caste Scrutiny Committee has been produced for the perusal of this Court, which shows that the maiden name of respondent No.4 was Anusaya Bapurao Barkuntiwari, Shrihari Bapurao Barkuntiwari is her brother and the admission document of Shrihari with Cosmopolitan Vidyalaya, Kinwat would show that he had taken admission on 27.06.1991 in 5th standard. His caste is shown as 'Matang'. Even before the admission to this school he had taken admission in the 1st standard with Zilla Parishad School, Bellori (Kinwat). At that time also his caste has been stated as 'Matang'. Caste certificate of her brother shows the same caste. Various affidavits are filed. The genealogy has also been given on oath. It appears that everything is moving around the admission document of Zilla Parishad school, Bellori (Kinwat) in the name of Anusaya Bapurao Barkuntiwari, in which her caste has been shown as 'Madgi'. However, as regards the said

document is concerned, respondent No.4 submits that she never went to school, she can only sign precisely, that is, the affidavit-in-reply that has been given by respondent No.4.

6 Learned Advocate for respondent No.4 has taken us through the affidavit-in-reply, wherein the same facts have been reiterated and the similar documents have been produced. Important point to be noted is that Secretary, Government of Maharashtra has issued letter to all the departments of the Government on 26.09.2008 and in that letter it has been stated that the list of the caste which have been included in Scheduled Caste, Nomadic Tribe etc. have been updated on 25.06.2008 and that list should be perused. In that list at Sr.No.35 for Anusuchit Jati i.e. Scheduled Caste, caste by name Madgi has been included and therefore, the learned Advocate appearing for respondent No.4 submits that even if it is considered that she is Madgi by caste; yet it would come under Scheduled Caste and she was eligible to contest the said election from the reserved post of Scheduled Caste.

7 At the outset, it is to be noted that the Judgment and order has been passed by respondent No.2 on 31.08.2018 and the present petition has been filed on 17.07.2019. Therefore, there is considerable delay and the

petition deserves to be dismissed on the ground of delay and laches. When it comes to challenge to the caste of an elected candidate and some order is passed by a competent authority, then, the unsuccessful candidate cannot afford to sit idle for a long period. Under these circumstances, this will not be the fit case where the constitutional powers of this Court under Article 226 of the Constitution of India should be exercised.

8 For the sake of argument if it is considered that the ground that has been taken in the petition that due to the financial constraints the petitioner could not approach this Court within a reasonable time, then, we will have to consider the other documents. The ratio laid down in the decisions relied by the learned Advocate appearing for the petitioner cannot be denied, however, whether those are applicable to the facts of the case are required to be considered. The document, on the basis of which the petitioner is contending that respondent No.4 is Madgi by caste, shows that her date of birth is 18.08.1978. It is the document of admission in school i.e. Zilla Parishad School (Primary) at Bellori (Kinwat), Tq. Kinwat, Dist. Nanded. However, respondent No.2 has filed birth certificate issued by Kinwat Municipal Council on 23.07.2012 showing that date of birth of respondent No.4 is 01.01.1981. The birth certificate issued under Section 12/17 of the Registration of Birth and Deaths Act, 1969 and Rule 8/13 of the Maharashtra

Registration of Birth and Deaths Rule, 2000 will have to be given more evidentiary value than the admission register maintained at a school. Further, it is to be noted that the date of issuance of the birth certificate is 23.07.2012, when respondent No.4 had not even filed the nomination form. Now, the petitioner is again stating that when she had made inquiry with the Municipal Council on 09.04.2018 and asked for the documents regarding birth certificate of respondent No.4, she has received letter on 24.04.2018 stating that no such record is available. Here, it can be seen that it might not be available on 24.04.2018, but when such certificate has been issued on 23.07.2012 the document was available and, therefore, it has been issued. We cannot go further deep into this aspect, taking into consideration the evidentiary value i.e. attached to the birth certificate.

9 Certainly, respondent No.2, who is having authority to make inquiry and it can be presumed that the said authority has conducted a proper inquiry and has arrived at the conclusion, then, the documents or the material that has been relied by the petitioner cannot be said to be sufficient to discard the claim of respondent No.4. We are only taking note of the fact that even caste Madgi has been recognized in 2008 itself by the Government as a caste under the list of Scheduled Caste and all the concerned departments were directed to take the note of the same.

10 For the above discussion, we do not find any merit in the present petition. It deserves to be rejected. Accordingly, it is rejected.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

agd