

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 1 OF 2020

Vijendra Kumar Rai

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr. Vijendra Kumar Rai, petitioner-in-person.

Ms. P. H. Kantharia, Government Pleader with Mr. Milind More, Additional Government Pleader for respondent nos. 1 and 3/State.

Ms. K. H. Mastakar for MCGM.

Mr. Pramod N. Patil with Mr. Shyamsunder Solanke and Ms. Komal Mistry i/by PNP & Associates for respondent nos. 6 & 7.

Mr. Pralhad Paranjape with Mr. Manish Kelkar and Ms. Druti Datar for respondent no. 8.

Mr. Pramod Kathane for respondent no. 12.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: APRIL 4, 2022

P.C.:

1. In this public interest litigation dated 19th August 2019, the petitioner, an advocate practicing in this Court and a social activist working independently for the social upliftment of the society (as claimed in paragraph 1) seeks the following relief:

“(a) This Hon’ble Court be pleased to issue a writ of Mandamus and/or other writ, Order or direction in the nature of Mandamus directing investigation of the case by Respondent No. 3 in the supervision of this Hon’ble Court for the entire amount taken by Respondent No. 6 to 12 from MCGM and a FIR may be registered accordingly;”

2. The cause of action for instituting this public interest litigation, as per the pleaded case, is that the respondent nos. 6 to 12 were elected as councilors of the Municipal Corporation for Greater Mumbai from reserved seats; however, after such election, the candidates whom the respondent nos. 6 to 12 had defeated, lodged objections before the Scrutiny Committee seeking invalidation of the caste certificates. According to the petitioner, the Scrutiny Committee has invalidated the caste certificates issued in favour of the respondent nos. 6 to 12 pursuant where to they have stepped down as councilors.

3. Referring to 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, (hereafter "the Act", for short), Mr. Rai contends that the respondent nos. 6 to 12 have committed offences which are punishable in terms of sub-section (1) of section 11 and that since the Scrutiny Committee has not yet lodged any FIR before the concerned police station, this Court ought to direct the police to register a crime against the respondent nos. 6 to 12. It is also his prayer that whatever monies have been received by the respondent nos. 6 to 12 during the period they acted as councilors of the Corporation should be directed to be refunded.

4. Sub-section (2) of section 11 of the Act ordains that no Court shall take cognizance of an offence punishable under sub-section (1) thereof, except upon a complaint, in writing,

made by the Scrutiny Committee or by any officer duly authorized by the Scrutiny Committee for such purpose.

5. It does not appear from the writ petition that prior to the institution of this public interest litigation, the petitioner had approached the Scrutiny Committee with a request to it to lodge a complaint against the respondent nos. 6 to 12 for having furnished false information or filing false statements or documents or for resorting to any other fraudulent means while obtaining caste certificates. In the absence of any such request to the Scrutiny Committee, we are loath to interfere at this stage having regard to what we have held in our order dated 21st February 2022 passed in Public Interest Litigation (L) No. 1553 of 2022, where Mr. Rai himself was the petitioner. We had noted in such order a salutary principle which is a pre-condition for issuance of a writ of mandamus, as discussed in at least 3 (three) decisions of the Supreme Court, and held that such principle applies to public interest litigation as well. Since the pre-condition for issuance of mandamus had not been satisfied, relief was declined to Mr. Rai in that case.

6. We place on record the submissions made on behalf of the respondent nos. 8 and 12 by Mr. Paranjape and Mr. Kathane, learned advocates, respectively, that the decision of the Scrutiny Committee upon being challenged by them before this Court, orders invalidating the caste claim made by the Scrutiny Committee have been struck down and as such, the caste status of the said respondents have been restored pursuant where to they have been serving as councilors till

now.

7. Since the petitioner has not approached the Scrutiny Committee with a request to lodge a complaint, we decline interference. This writ petition, accordingly, stands disposed of with liberty to the petitioner to take steps in accordance with law. No costs.

8. All contentions are left open.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

SALUNKE
J V

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by SALUNKE J V
Date: 2022.04.19
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The record of appearance is modified as per order dated 11th April 2022.