

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

VAISHALI
ANIL
TIKAM

WRIT PETITION No.2328 OF 2019

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Mohammed Ghouse Shaikh S/o.)
Shahabuddin Shaikh)
Age 52 years,)
Occupation Business,)
Resident of Flat No. A-13, Paramount)
Municipal Employees Co-operative Housing)
Society Ltd., Near Star Glass Factory,)
Kurla- Andheri Road,)
Kajupada, Kurla (West), Mumbai- 400 070).... Petitioner

Versus

1. District Caste Certificate Scrutiny)
Committee, Pune)
Jail Road, Behind Commerce IT Park,)
Yerwada, Pune- 411 006.)
2. Sub-Divisional Officer,)
Bhor Division, and the)
Competent Authority)
Bhor, Pune.)
3. State of Maharashtra,)
Through Principal Secretary,)
Social Justice Department,)
Government of Maharashtra,)
Mumbai – 400 032.)
4. Municipal Corporation of Greater)
Mumbai,)
Through its Municipal Commissioner,)
MCGM, Head Office, Mahapalika Marg,)
Mumbai CST, Mumbai - 400 001.)

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5. Dilip Bhausahab Lande)
Resident at Aadesh Sandesh Bhavan,)
Shivaji Maidan, Kajupada,)
Kurla (West), Mumbai – 400 070)....Respondents

Mr. Altaf Khan a/w. Bhushra Sayed i/b. V. Shukla & Associates for the
Petitioner.

Mr. Kedar Dighe, AGP for the State

Mr. R.K. Mendadkar for the Respondent No.5

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.**

DATED : 5 July, 2023

JUDGMENT (PER RAJESH S. PATIL, J.):

1. Rule. Rule is made returnable forthwith. By consent of parties taken up for final hearing.

2. This Writ Petition is filed under Article 226 of the Constitution of India challenging the impugned order dated 31 January, 2019 passed by the District Caste Certificate Scrutiny Committee, Pune and order dated 12 December, 2018 passed by the Secretary Caste Certificate Scrutiny Committee, Pune, thereby holding the validity certificate dated 10 August, 2016 issued by the Divisional Officer, Bhore, Sub-Division, Bhore, Pune in name of Mr. Dilip Bhausahab Lande (Respondent No.5) as 'Hindu Kunbi' (OBC).

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3. The Petitioner further states that the Respondent No.5 filed Application before the Competent Authority viz. Sub-Divisional Officer, Bhore, Pune for obtaining copy of the caste certificate on 28 December, 2015.

4. The Competent Authority issued caste certificate on 10 August, 2016 in the name of the Respondent No.5 certifying Respondent No.5's caste as (Kunbi), which belongs to Other Backward Class (OBC) at serial No. 83 in Government Resolution No.EBN-SW department CBC146M dated 13 October, 2016.

5. The Petitioner further states that on 2 February, 2017, the Respondent No.5 filed nomination form enclosing his caste certificate from Ward No. 163 reserved for OBC category.

6. The Petitioner contested election of councilor of Municipal Corporation of Greater Mumbai on 21 February, 2017 from Ward No. 163 on the candidature of Indian National Congress (INC) and secured next highest number of valid votes 6234 of after the Respondent No.5 (Dilip Bhausaheb Lande).

7. The Respondent No.5 (Dilip Bhausaheb Lande) contested election on candidature of political party Maharashtra Navnirman Sena (MNS) and secured 8009 votes and was declared as Councilor from Ward No.163 thereby defeating Petitioner. The Petitioner thereafter filed the Election Petition No.85 of 2017 before the Small Causes Court at Bombay for setting aside the election of the

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Respondent No.5, as void. The Petitioner states that the said Election Petition is pending before the Small Causes Court, at Mumbai.

8. The Petitioner thereafter filed objection before the Caste Certificate Scrutiny Committee at Pune, raising objection for granting Validity Certificate in favour of the Respondent No.5. On 8 May, 2017, the Police Vigilance Squad submitted report before the Caste Certificate Scrutiny Committee. The Police Vigilance Squad recorded that the documents submitted by the Respondent No. 5 in the name of Bhau Bandu Manaji Lande were based on manipulated record in which caste Kunbi was recorded. District Caste Scrutiny Committee, Pune issued Show Cause Notice on 16 May, 2017.

9. On 29 June, 2017, Respondent No.5 filed his reply to the Show Cause Notice dated 16 May, 2017. The Respondent No.5 disagreed with the Police Vigilance Report. On 10 July, 2017 the Petitioner filed reply in the proceedings of the Show Cause Notice issued by the Caste Certificate Scrutiny Committee.

10. The Caste Certificate Scrutiny Committee, Pune by its order dated 17 July, 2017, Validated Caste Certificate of the Respondent No.5 dated 10 August, 2016 issued by the Sub-Divisional Officer, Bhore, Pune and accordingly issued Caste Validity Certificate to the Respondent No.5.

11. Petitioner challenged the Caste Validity Certificate dated 17 July, 2017 by way of the Writ Petition No. 2945 of 2018 before this
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Court. The said Writ Petition was disposed of by judgment dated 31 October, 2018, by setting aside the Caste Validity Certificate and remanding the matter back to the Caste Certificate Scrutiny Committee, Pune.

12. The District Caste Certificate Scrutiny Committee, Pune Division thereafter heard the parties and considering the documents on record passed an order on 31 January, 2019, granting Caste Validity Certificate to the Respondent No.5.

13. The Petitioner being dissatisfied by order dated 31 January, 2019, has challenged the Caste Validity Certificate issued to the Respondent No.5, by filing the present Writ Petition.

14. By order dated 12 June, 2023, this Petition was fixed for final hearing at admission stage.

15. Mr. Altaf Khan, learned counsel made submissions on behalf of the Petitioner. He submitted that the earlier impugned order dated 12 December, 2018 was not passed by all three members, but only by the Secretary of the Committee, therefore, it was found to be null and void and by judgment dated 31 October, 2018, the Division Bench of this Court directed to carry out fresh scrutiny and verification of the claim of the Respondent No.5, that he belonged to Kunbi OBC Caste. He further submits that the Caste Certificate Scrutiny Committee did not consider the documents on record in its true and correct form namely genealogy and family tree and that the Division Bench had

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never directed to carry out a fresh vigilance even then the fresh Vigilance enquiry was conducted in respect of documents form No. 6D. He also submits that the details of form 6D are not on record that the documents produced by the Respondent No.5 of birth and death certificate create doubt, and that the 7/12 extract and form No.8A do not disclose the caste Kunbi of the father and grand mother of the Respondent No.5.

16. Mr. Altaf Khan, learned counsel for the Petitioner relies upon three judgments passed by this Court viz.

- i) *Dattatray V/s. The State of Maharashtra (Manu/MH/1892/2002)*
- ii) *Yogesh Shinde V/s. State of Maharashtra (Manu/MH/1060/2017)*
- iii) *Jagannath Hole V/s. State of Maharashtra (2006(1) AIR (Bom) R.365.*

17. Mr. Mendadkar, learned counsel for the Respondent No.5 has made submissions opposing the present Petition. Mr. Mendadkar, learned counsel for the Respondent No.5 submits that this is a second round of litigation. The Petitioner was even earlier granted validity certificate which was set aside and now again the validity certificate is challenged on the same ground. The present Writ Petition is pending from 16 February, 2019 and same has no merits and is pursued only for purpose which is academic. He submits that the Petitioner is a political rival of the Respondent No.5, that the Respondent No.5 has defeated the Petitioner in the Municipal Corporation election held in the year 2017, and that the term of Petitioner as elected member of

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councilor from Ward No.163 is already over and hence, this Petition has no merits. He also submits that the Caste Scrutiny Committee by two vigilance reports has granted the Caste Validity Certificate to the Petitioner and the Petitioner has now challenged the carrying out of the vigilance enquiry but this Petition has no merit and should be dismissed with costs.

18. Mr. Kedar Dighe AGP appeared for the State and supported arguments of Mr. Mendadkar, learned counsel for the Respondent No.5.

19. We have heard counsel for both the parties and have gone through the records.

20. Respondent No.5 had submitted before the committee the following documents:

- i. Respondent No.5's Caste Certificate dated 10 August, 2016, issued by SDO, Bhore, Pune.
- ii. Birth Certificate dated 5 May, 1942, of father of Petitioner.
- iii. Birth entry dated 2 June, 1922 of cousin grandfather of the Petitioner.
- iv. Birth entry dated 10 January, 1928 of the Petitioner's grandfather's sister.

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- v. Death Certificate dated 2 September, 1929 of Petitioner's cousin cousin grandfather.
- vi. Death Certificate dated 15 March, 1940 of Petitioner's cousin cousin grandfather's sister.
- vii. Death Certificate dated 20 November, 1940, of Petitioner's cousin cousin grandfather grandfather.

All the above documents has mentioned of "Kunbi" caste. Six documents from out of the above are from pre-constitutional period. The Caste Scrutiny Committee, has gone through these documents and has believed these documents, to grant Respondent No.5, the validity certificate. We find nothing wrong in this approach of the Scrutiny Committee as all these entries of pre-constitutional period are not of doubtful origin and have great probative value. In one of the entries the Grandfather of Applicant, is shown as son of Tulsiram and his death extract shows his caste as "Kunbi". This document is of pre-constitutional period, which is relied upon by the Scrutiny Committee. The Vigilance Report placed on record before the Scrutiny Committee, supports the case of Petitioner that he belongs to Kunbi Caste. This entry also strongly supports the claim of the Petitioner that he is of Kunbi Caste, which is of OBC category.

22. Enough opportunities were given to the parties to prove their claim. The Respondent No.5, we must say, has discharged his burden of proof, which burden had then shifted to the Petitioner and it

became the duty of the Petitioner to prove his complaint. However, the Petitioner did not file any affidavit nor produce on record any documents to invalidate the certificate issued to the Respondent No.5. This is thus a case where there are pre-constitutional documents on record to prove the caste claim of the Respondent No.5 and no material on record to contradict the caste claim of the Respondent No.5.

23. The witness of Respondent No.5, Mr. Narayan Babu Lande and Anil Dattatray Lande have stated that they are relatives of Applicant, and that they are 'Kunbi' by caste. The Petitioner was not able to discredit the evidence given by Respondent No.5's witness.

24. In this case the Police Vigilance Squad had twice conducted enquiry. The Respondent No.5 has produced genealogy and family tree. The Respondent No.5 has produced genealogy and family tree. The Respondent No.5 has also filed affidavit. However, the Petitioner has not countered the same by filing any affidavit. The Respondent No.5 has proved his case which has been rightly accepted as correct by the Committee and we find there is no infirmity in the impugned order dated 31 January, 2019 passed by the Caste Certificate Scrutiny Committee.

25. We are of the view that the guidelines given in the Judgment of *Kumari Madhuri Patil Vs. Additional Commissioner Tribal Development Thane* reported in (1995) 5 SCC 437, was followed by

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the Committee while deciding the Impugned Order.

26.1. The Petitioner relied upon Judgment of *Dattatraya (supra)* which had held that the claimant has to stand on his own feet and establish his case by submitting evidence. In our view, the proposition of law held in this Judgment does not help the Petitioner in the present proceedings as the Respondent No.5 had established his claim by leading evidence and producing documents, mostly of pre-constitutional period.

26.2. The Judgment of *Yogesh Shinde (supra)* which held that the documents relied upon by the Petitioners were found to be tampered and over-written, therefore, Caste claim was rejected. In our view, this Judgment also does not help the Petitioner as around six documents of pre-constitutional period were produced by the Respondent No.5 in the present proceedings, which were not found to be tampered with.

26.3. The Judgment of *Jagannath Hole (supra)* also does not help the Petitioner in the present proceedings since, in the said case, only a single document was produced to prove that the applicant belonged to 'Kunbi' (OBC). Therefore, in the said case, the claim for validating the Caste Claim was rejected. Even this Judgment does not help the Petitioner, as in the present proceedings, the Applicant had produced documents of pre-constitutional period and had also led evidence to that effect.

27. Hence, according to us the Caste Certificate Scrutiny Committee

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was correct in issuance of validity certificate to the Respondent No.5 based on documentary evidence.

28. We, therefore, conclude that the present Writ Petition is devoid of any merit and hence, the same is dismissed. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)