
(2008) 02 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 2721 of 2007 with Civil Application No. 8269 of 2007

Mohd. Hussain

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 ALLMR 754 : (2008) 6 BomCR 238 : (2008) 3 MhLj 138

Hon'ble Judges : S.P. Kukday, J;P.V. Hardas, J

Bench : Division Bench

Advocate : S.B. Talekar, for the Appellant; K.S. Patil, AGP for respondent Nos. 1 and 3 to 6 and B.L. Sagar, for the Respondent

Final Decision : Dismissed

Judgement

1. By this petition, under Article 226 of the Constitution of India, the petitioner prays for quashing and setting aside the order of respondent No. 2-Scrutiny Committee dated 17/27th April, 2007, invalidating the tribe claim of the petitioner as belonging to "Momin". The petitioner, who had contested the election of Municipal Corporation, Mumbai, had submitted certain certificates which came to be referred for verification to the respondent No. 2-Scrutiny Committee. Respondent No. 2-Scrutiny Committee, for the reasons, which are to be found in the impugned order, has invalidated the tribe claim of the petitioner.

2. Mr. S. B. Talekar, learned Counsel appearing on behalf of the petitioner, has urged before us that the documents submitted by the petitioner are enlisted in the order of the Scrutiny Committee in the chart, which forms part of the judgment of the Scrutiny Committee and the respondent-Scrutiny Committee has misappreciated the documents at serial Nos. 11,12,13, 14,18 and 20. Discussion in respect of the aforesaid documents is to be found in the judgment. We are satisfied with the reasons ascribed by respondent-Scrutiny Committee for not placing any reliance whatsoever on the aforesaid documents. Document at Serial No. 11 is an affidavit sworn by one Shaikh Musa Shaikh Yusuf and document at

serial No. 12 is a validity certificate issued to Shaikh Musa Shaikh Yusuf. In the affidavit of Shaikh Musa Shaikh Yusuf he had stated that he was close relative of the petitioner and, therefore, the petitioner banks very heavily on the validity certificate issued to the said relative. Respondent-Scrutiny Committee has observed that though there was similarity of names, no reliance at all could be placed upon the aforesaid validity certificate issued to Shaikh Musa Shaikh Yusuf.

3. According to Shri Talekar, learned Counsel appearing on behalf of the petitioner, the affidavit has been sworn by Shaikh Musa Shaikh Yusuf in which it is stated that the petitioner is cousin of Shaikh Musa Shaikh Yusuf and, therefore, in the absence of any adequate reasons, the said validity certificate ought to have been relied upon by the respondent-Scrutiny Committee and the tribe claim of the petitioner ought to have been validated on its basis. Countering this submission, Mr. B. L. Sagar-Killarikar, learned Counsel appearing on behalf of respondent No. 2 - Scrutiny Committee, has brought to our notice that in the affidavit submitted by Shri Shaikh Musa Shaikh Yusuf, no genealogy had been produced and no genealogy had been proved either by the petitioner or Shaikh Musa Shaikh Yusuf. Mere bald statement or bald assertion by Shaikh Musa Shaikh Yusuf that he was a relative by itself would not be enough to place implicit reliance upon the validity certificate issued in favour of Shaikh Musa Shaikh Yusuf. In order to assure ourselves if the genealogy had been proved or tendered either by the petitioner or Shaikh Musa Shaikh Yusuf, we have perused the affidavits which had been submitted on behalf of Shaikh Yusuf before the respondent-Scrutiny Committee. A copy of the affidavit has also been annexed to the petition. Upon perusal, we find that no genealogy had either been referred to, tendered or proved by Shaikh Yusuf or by the petitioner. 4.

4. Document at Serial No. 13 again is a validity certificate issued to one Shaikh Vilayat Husain and Document at Serial No. 14 is an affidavit of Shaikh Vilayat Husain Shaikh Abdul Raheman. In the said affidavit of Vilayat Hussain Shaikh Raheman, it is stated that the petitioner is close relative of Vilayat 1 Husain. Again we find upon perusal of the affidavit that the genealogy has not been proved, tendered either by the petitioner or by Shaikh Vilayat Husain Abdul Raheman.

Document at Serial No. 18 is the death certificate of grandfather of the petitioner, in which surname of grandfather of the petitioner is referred as "Momin". Respondent-Scrutiny Committee has chosen not to place any reliance on these documents as there was no caste column in the death certificate and consequently the caste/tribe of the grandfather was not denoted in the certificate. Document at Serial No. 20 is a bond in Urdu. The petitioner has provided Marathi as well as English translation of the Urdu contents. It shows that against the name of Shaikh Hussain Moiddin (grandfather of the petitioner) word "Momin" is written. Respondent-Scrutiny Committee has chosen not to place any reliance on the aforesaid document on two grounds, viz. i) original of the said document was not made available to the Scrutiny Committee and ii) it

was not a registered document, which would have sanctity in law.

5. Mr. Talekar, learned Counsel appearing on behalf of the petitioner has placed reliance on unreported judgment of the Supreme Court in Vasant Pandurang Narwade @ Narvde v. Suhash and Ors. rendered in Civil Appeal Nos. 4409-4410 of 2001, dated 20th July, 2001. In the aforesaid judgment, the Supreme Court had remitted the matter back to the High Court for a decision afresh as the respondent-Scrutiny Committee on noticing that the certificate issued to the appellant therein had not been issued by the Competent Authority and, therefore, on that score alone had not verified the other certificate. The Supreme Court, therefore, remitted the matter back to the High Court directing it to decide the social status of the appellant before it keeping in mind of the fact that the certificate, which had been issued to the appellant before it, had not been issued by the Competent Authority.

6. In the present case, the certificate which was referred to the Scrutiny Committee is dated 17-1-1994. The aforesaid certificate was referred by the respondent for verification as the same is alleged to have been tendered by the petitioner at the time of submission of his nomination form. According to the petitioner, his rival candidate had substituted this certificate in place of the original certificate which is dated 4-9-1993 and which had been issued by Executive Magistrate, Jalna. The Scrutiny Committee on efforts being taken to solicit information from the competent authority has found that the aforesaid certificate is obviously a forged or bogus document and the same had not been issued from the office of Sub Divisional Officer, Jalna. On plain reading of the aforesaid certificate, it would be apparent that the certificate is dated 17-1-1994 and the certificate refers to the Government Resolution dated 22-6-1994 and also to 5th June, 1997. This certificate, on its plain reading, therefore, would clearly reveal that it was not issued on the date on which it is claimed to have been issued. Apart from it, the material before the respondent-Scrutiny Committee indicated that the office of Sub Divisional Officer, Jalna had not issued the aforesaid certificate. Despite the fact that the certificate was found to be false, fabricated or bogus document, the respondent-Scrutiny Committee has examined the various documents submitted by the petitioner to ascertain as to whether the petitioner really belongs to "Momin".

7. We have perused the reasons given by the respondent-Scrutiny Committee for invalidating the tribe claim of the petitioner. During the pendency of this petition, the petitioner has amended the petition and has produced various other supporting documents to show that he belongs to "Momin" caste. The petitioner was served with a notice dated 30/31st March, 2007 calling upon the petitioner to remain present for personal hearing before the Scrutiny Committee on 3rd of April, 2007. The petitioner has amended the petition to raise a challenge to the fact that this communication was received by the petitioner giving him apparently a day to submit additional document or his reply to the report of the Vigilance Cell and consequently there has been failure on the part of the

committee to provide adequate opportunity to the petitioner to meet the report of the Vigilance Cell as well as to tender additional documents. Mr. B. L. Sagar, learned Counsel appearing on behalf of respondent No. 2-Scrutiny Committee, has produced the original record and proceedings of the respondent-Scrutiny Committee. The petitioner had appeared before the Scrutiny Committee on 3rd of April, 2007 when his statement came to be recorded. The aforesaid statement had been recorded without demur from the petitioner. The petitioner had asked for additional time, which the respondent-Scrutiny Committee had granted of two days. The petitioner had not made any grievance before the Scrutiny Committee of granting additional time for producing certain other documents. Even when the petition has been amended to include other documents, which were not part of the documents before the Scrutiny Committee, we do not find any reason as to why the petitioner could not produce the documents within time before the Scrutiny Committee within the time specified by the committee. The petitioner was aware about the proceedings, which had initiated in respect of the verification of his tribe claim. It was the responsibility of the petitioner to place the material before the Scrutiny Committee in order to justify his stand that he belongs to "Momin" tribe. In any event, we do not find that there has been any breach of principles of natural justice or that adequate opportunity had not been provided to the petitioner for leading any evidence. The validity certificates in respect of close relative of the petitioner have rightly not been taken into consideration by the respondent-Scrutiny Committee as no genealogy had been produced either by the petitioner or by his relative and unless the relationship with the petitioner was firmly established, the Scrutiny Committee could not have relied upon the validity certificates issued in favour of so-called close relatives.

8. With the assistance of learned Counsel for the parties, we have perused the findings recorded by the respondent-Scrutiny Committee. We do not notice any perversity in the reasoning of the respondent-Scrutiny Committee to warrant any interference in this petition. We also do not find that there has been any breach of the procedure entitling this Court to re-examine the findings recorded by the respondent-Scrutiny Committee. It was for the petitioner to have established that his rival candidate, who had lost the election, had surreptitiously substituted the bogus or forged certificate. Such disputed questions cannot be examined in this Court in exercise of writ jurisdiction. The petitioner had utterly failed to establish before the respondent-Scrutiny Committee that the rival candidate had surreptitiously substituted a false or bogus certificate. In the light of what has been held hereinabove, we do not find this to be a fit case to interfere and consequently the writ petition is summarily dismissed with no order as to costs.

9. At this stage, Shri Talekar, learned Counsel appearing on behalf of the petitioner, states that the interim relief which was operating be continued for a period of four weeks to enable the petitioner to file appropriate proceedings before the Supreme Court. The Interim relief to continue only for a period of four weeks. In the light of dismissal of the writ petition, CA No. 8269/2007 also

stands dismissed.