

(2013) 04 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3007 of 2013

Mrs. Seema Dattatraya Phuge

APPELLANT

Vs

Municipal Commissioner and others

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Penal Code, 1860 (IPC) — Section 165, 171G, 177, 181, 420

Citation : (2013) 4 ABR 191 : (2013) 5 ALLMR 180 : (2013) 5 MhLj 814

Hon'ble Judges : A.S. Oka, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Tapan Thatte and Dhaval Deshpande, for the Appellant; V.S. Gokhale, AGP. for State and S.P. Thorat, S.B. Shetye, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel appearing for the petitioner. The question before us is whether a litigant who is a party to a fraud can be allowed to invoke extraordinary jurisdiction of this Court. The General Ward Elections of the Municipal Corporation of Pimpri-Chinchwad were declared in December, 2011. The petitioner contested the election from Bhosari Gaothan (Ward No. 35A) constituency which was admittedly reserved for Backward Class of citizens Women. It is not in dispute that the caste certificate and caste validity certificate for showing that she belongs to Backward Class of citizens produced by the petitioner along with nomination form were fabricated and admittedly, the petitioner had neither applied to the Competent Authority for grant of caste certificate nor had applied to any Caste Scrutiny Committee for grant of caste validity certificate. It is not in dispute that as per the provisions of Section 5B of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as "the said Act of 1949") along with the nomination form, a candidate who is contesting the election for a reserved seat is required to file a caste certificate as well as caste validity certificate. In February, 2012, the result of the elections was declared. The petitioner was declared as elected. The challenge in this petition

under Article 226 of the Constitution of India is to the order dated 7th March, 2013 passed by the Commissioner of the said Municipal Corporation which holds that the election of the petitioner is ab initio null and void and the seat occupied by the petitioner reserved for Backward Class of citizens for women shall become vacant.

2. The submission of learned counsel appearing for the petitioner is that apart from the fact that the impugned order passed by the Commissioner is in breach of the principles of natural justice, the Commissioner has no jurisdiction under the said Act of 1949 to adjudicate upon the issue of genuineness of the documents produced by the petitioner as well as the legality and validity of the election. The submission is that the petitioner being a legally elected candidate under a popular mandate could have been unseated only in accordance with law. The submission is that the impugned order is a nullity as the Commissioner lacked the jurisdiction to pass the impugned order.

3. The submission of learned counsel appearing for the petitioner is that in November, 2008 and in particular on 6th November, 2008, the petitioner accompanying with her husband went to the office of the Collector to obtain a caste certificate. He submitted that due to lack of knowledge and red-tapeism, they were unable to obtain the caste certificate and then one Mrs. Seema Waghmare approached them and convinced them that she would be in a position to obtain the caste certificate. Accordingly, on the representation made by the said Mrs. Seema Waghmare, the petitioner entrusted the work of obtaining the caste certificate to her. He pointed out that in the last week of 2008, the petitioner's husband collected the caste certificate from said Mrs. Seema Waghmare. For obtaining the caste validity certificate on the basis of the said caste certificate, the petitioner contacted said Mrs. Seema Waghmare in the first week of December, 2010. On intimation given by the said Mrs. Seema Waghmare, the petitioner collected the caste validity certificate from said Mrs. Seema Waghmare in the last week of December, 2010. He pointed out that after the petitioner realized that she has been cheated by said Mrs. Seema Waghmare, in the last week of May, 2012 the petitioner tried to approach the police station for lodging a First Information Report (for short FIR). As the Police refused to register the FIR, on 1st June, 2012, the petitioner filed a private complaint in the Court of Judicial Magistrate, First Class alleging offences under Sections 420, 467 and 468 of the Indian Penal Code against said Mrs. Seema Waghmare. He pointed out that on 6th June, 2012 the petitioner applied for a caste certificate and ultimately on 14th August, 2012, the petitioner was granted the caste certificate. He submitted that this is a case where the petitioner genuinely believed in said Mrs. Seema Waghmare and was under a bona fide impression that the documents obtained by said Mrs. Seema Waghmare were genuine documents. The submission is that the moment she realized that the said documents were fabricated documents, the petitioner took several steps and in fact at the earliest opportunity attempted to prosecute the said Mrs. Seema Waghmare. He invited attention of the Court to the observations made by this

Court while granting anticipatory bail to the petitioner. He submitted that specific observation of the Court is that there is nothing on record to show that the petitioner had assigned the work to Mrs. Seema Waghmare with the knowledge or instructions of securing a bogus or forged caste validity certificate. He, therefore, urged that the conduct of the petitioner is honest and bona fide and there was never any intention to secure a bogus caste certificate and caste validity certificate. He submitted that when the documents were produced along with her nomination form, the petitioner was not even aware that the documents were fabricated. He urged that in any event, the subsequent caste certificate obtained by the petitioner shows that the petitioner belongs to Backward Class of citizens category and could have always contested the election on a reserved seat. He submitted that the requirement of Section 5B of the said Act of 1949 is merely a procedural requirement and the petitioner cannot be unseated on the ground of failure to comply with the procedural requirement. Lastly, he urged that even an opportunity of being heard was not granted by the Municipal Commissioner to the petitioner before passing the impugned order. The submission is that the order being without jurisdiction and illegal, the Writ Court must interfere.

4. Learned counsel appearing for the Municipal Corporation justified the action of passing the impugned order by relying upon a circular issued on 31st January, 2013 by the State Election Commission. Learned counsel appearing for the Municipal Corporation submits that at the instance of the petitioner, interference in the petition under Article 226 of the Constitution of India is not called for.

5. We have carefully considered the submissions. It will be necessary to make a reference to the material averments made in the petition. In sub-clause 1 to 4 of paragraph No. 4, the petitioner has stated thus:

(See Table below)

(Contd. on Coll)

6. We must note here that it is not even the petitioner's case that she had submitted an application for grant caste certificate in the prescribed form in the office of the competent authority. If at all what is stated by the petitioner is true, she could have made grievance to any higher authority regarding redtapeism involved in the matter of granting caste certificate. In fact, only once i.e. on 6th November, 2008 the petitioner along with her husband visited the Office of the Collector of Pune and on the very day, the petitioner entrusted the work of obtaining caste certificate to said Mrs. Seema Waghmare. It is not the case of the petitioner that the application for obtaining caste certificate in the prescribed format was signed by her and was handed over by her to the said Mrs. Seema Waghmare. Going by the case of the petitioner, in November, 2008 itself, the petitioner's husband collected the caste certificate. It is pertinent to note that after obtaining the caste certificate, it is not the case of the petitioner that any attempt was made by the petitioner till December, 2010 even to apply to the

Caste Scrutiny Committee for grant of validity certificate. Going by the assertions in the petition, suddenly in December, 2010 the petitioner again got in touch with the said Mrs. Seema Waghmare and instructed her to obtain a caste validity certificate. Here, we may note that even an attempt was not made by the petitioner to file any application before the Caste Scrutiny Committee for validating her caste claim. Thus, taking the averments made in the petition as it is, when in November, 2008 the petitioner obtained the caste certificate, she was fully aware that she had not even applied to the Competent Authority for grant of caste certificate. In the last week of December, 2010 when the petitioner procured the caste validity certificate from Mrs. Seema Waghmare, she was fully aware that she had not even applied to the Caste Scrutiny Committee for grant of caste validity certificate. Thus, even in December, 2010 the petitioner was fully aware that she has procured the caste certificate as well as the caste validity certificate even without making application/s to the concerned authorities.

7. By taking the averments in the petition as it is, it is impossible to accept the contention that at the relevant time, the petitioner was not aware that the documents were not genuine. In any case, it is not disputed by the petitioner that both the documents were not genuine. These two documents were produced by the petitioner alongwith her nomination form. When a specific query was made by this Court to the learned counsel appearing for the petitioner as to whether the petitioner could have contested the election on the basis of the said two documents, he candidly stated on instructions that the petitioner could not have contested the election.

8. Thus, the factual scenario which emerges from the admitted facts is that the petitioner could not have filled in the nomination form as on the last date fixed for filing nomination form, she was not possessing a genuine caste certificate as well as a genuine caste validity certificate. Thus, it becomes obvious that by filing nomination in such a manner, the petitioner prevented one candidate belonging to the reserved category who was possessing genuine documents, from getting elected from the said reserved post. Such conduct defeats the very object of providing the reservation.

9. It will be necessary to make a reference to letter dated 9th May, 2012 admittedly received by the petitioner from the Assistant Commissioner of Municipal Corporation. The petitioner claims that the letter was replied by her in mid of May. In the said letter, the Assistant Commissioner specifically informed the petitioner that the Caste Scrutiny Committee has informed the Municipal Corporation that the caste validity certificate No. 032517 dated 24th December, 2010 produced by the petitioner was not issued by the Caste Scrutiny Committee. It will be very interesting to make a reference to the reply sent by the petitioner to the said letter. The reply is dated 18th May, 2012. On the plain reading of the said reply, in our view, it completely defeats the argument of bona fide conduct on the part of the petitioner. In the first paragraph of the reply, the petitioner has stated that she had received the caste validity certificate from the

Divisional Caste Scrutiny Committee, Pune which she has produced along with her nomination form. In the second paragraph, she has stated that she has contacted the office of the Caste Scrutiny Committee No. 3 and as the caste validity certificate is of the year 2010, the record is being searched in the said office. She has stated that as several members of the staff in the office of the Caste Scrutiny Committee have been transferred, there is a delay in finding out the record. She has stated that after receiving necessary documents from the Caste Scrutiny Committee, she would produce the same. When this letter was addressed by the petitioner on 18th May, 2012, she was fully aware that she had never applied for grant of any caste certificate or caste validity certificate. In fact, this was the first opportunity for the petitioner to come clean and state that by appointing an agent (Smt. Seema Waghmare), the petitioner had procured the caste certificate and the caste validity certificate. However not only that the petitioner has not stated so, she claimed that she has received the caste validity certificate from a particular Scrutiny Committee. There is one more letter dated 25th May, 2012 (Exhibit-D to the Petition) addressed by the petitioner to the Assistant Commissioner of the Municipal Corporation. In paragraph-1 of the said letter, she has referred to the caste validity certificate No. 032517 dated 24th December, 2010 and has stated that the said caste validity certificate has been issued by the office of the Additional Commissioner (Revenue), Pune Division, Pune and, therefore, there is no question of the said caste validity certificate being issued by the Divisional Caste Scrutiny Committee No. 3, Pune Division, Pune. In fact, in the earlier letter dated 18th May, 2012 the petitioner has specifically stated that she had received the caste validity certificate from the Divisional Caste Scrutiny Committee, Pune. Thus, in the letter dated 25th May, 2012 the petitioner came out with a patently false case that the caste validity certificate was issued by the office of the Additional Commissioner (Revenue), Pune Division, Pune. The caste validity certificate produced by the petitioner is purportedly issued by the Caste Certificate Scrutiny Committee, office of the Divisional Social Welfare Officer, Pune. In paragraph 2 of the said letter, the petitioner has criticized the manner in which the caste scrutiny committee is functioning. Paragraph 3 of the said letter shows that a caste certificate bearing the number on her caste certificate was issued by the Competent Authority to some one else. Thus, not only that the petitioner made a false statement in letter dated 25th May, 2012 but an attempt was made by the petitioner to mislead the authorities by contending that the caste validity certificate was not issued by the caste scrutiny committee but was issued by the office of the Divisional Commissioner who is a revenue officer under the Maharashtra Land Revenue Code, 1966; Even in this letter dated 25th May, 2012, the petitioner has not at all stated that she procured both the certificates from Smt. Seema Waghmare.

10. It will be interesting to note that in the private complaint filed by the petitioner, the petitioner has come up with a case that due to lack of knowledge of the procedure, she and her husband were unable to apply for the desired certificate. In the complaint filed by her on 1st June, 2012, she come out with

the case that she procured the certificates through Mrs. Waghmare who is named therein as an accused.

11. Thus, at the time of filling of the nomination form, the petitioner was aware that the caste certificate and the caste validity certificate produced by her were not genuine. She was aware that she had not applied to any authority for grant of caste certificate as well as caste validity certificate.

12. On 2nd August, 2012 the FIR was registered against the petitioner for the offences punishable under Sections 165, 468, 471, 420, 171G, 177, 181 of the Indian Penal Code. The petitioner has relied upon the observations made by the learned single Judge of this Court while granting anticipatory bail to the petitioner. The said observations are made for limited purpose of considering the prayer for grant of anticipatory bail. In the present case, what we have noticed is the admitted conduct of the petitioner reflected from the averments made by her in this petition and in the letters addressed by her.

13. It is well settled that a remedy by way of a petition under Article 226 of the Constitution of India is a prerogative remedy. It is an extraordinary remedy which can never be invoked as a matter of course. On this aspect, it will be necessary to make a reference to the decision of the Apex Court in the case of M.P. Mittal Vs. State of Haryana and Others, and in particular paragraph 5 thereof, which reads thus:

The appeal arises out of a writ petition; and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.

(Underline supplied)

14. On this aspect, it will be also necessary to make a reference to another decision of the Apex Court in the case of Prestige Lights Ltd. Vs. State Bank of India, and in particular paragraph 35 (para 34 of AIR SCW) thereof, which reads thus:

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the

very functioning of the writ Courts would become impossible.

(Underline added)

15. It is necessary to consider another decision of the Apex Court in the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, and in particular paragraphs 34 and 36 (para 24 of 26 of AIR) thereof, which read thus:

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done". The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

(Underline added)

16. Thus the settled law is that merely because there is a wide powers conferred on this Court under Article 226 of the Constitution of India, no one can invoke the jurisdiction of this Court as a matter of right. The power is certainly there to interfere with the impugned order. But the exercise of the power is purely discretionary which will be governed solely by the dictates of the judicial conscience of the Court as held by the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, .

17. We are conscious of the fact that in identical matter, even the counsel for the State Election Commissioner stated before this Court that the Commissioner of the Municipal Corporation could not have passed an order which he has passed in the present case. However, in the case in hand, the petitioner procured the certificates by illegal means. She produced the caste certificate and the caste validity certificates along with nomination form knowing fully well that the said documents were not genuine inasmuch as the petitioner was aware that she had not even applied to the Caste Scrutiny Committee or for that matter to the competent authority and the petitioner has procured the said documents allegedly through an agent Mrs. Seema Waghmare. We have already made a detailed reference to the letters dated 18th May, 2012 and 25th May, 2012 of the

petitioner which were earliest in point of time. The statements made in the letter were false to the knowledge of the petitioner. In the first communication, the petitioner tried to mislead the officer of the Municipal Corporation by stating that she has got the caste validity certificate from the Divisional Caste Scrutiny Committee, Pune and the record of the case in the said office is being searched. In the second letter she stated that the caste validity certificate was not at all issued by the Caste Scrutiny Committee, Pune but it was issued by the office of the Additional Commissioner (Revenue), Pune Division.

18. The subsequent conduct of prosecuting the agent and obtaining a caste certificate from the competent authority, is irrelevant. In any event, the caste certificate subsequently obtained by her will be at highest prima facie evidence of her caste as even the said caste certificate has not been validated by the Scrutiny Committee.

19. The petitioner claims to be a popularly elected Municipal Councilor. Admittedly, the petitioner could not have contested the election as she was not possessing requisite documents till the last date fixed for filing of the nomination papers. She produced fabricated caste certificate and caste validity certificate along with nomination form. This conduct of the petitioner is such that she cannot be permitted to invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner prevented a candidate who was possessing a lawful caste validity certificate, from getting elected. It is true that the contention of the learned counsel appearing for the petitioner is that a legally elected candidate like the petitioner, cannot be thrown out without taking recourse to the remedy of election petition. But in the present case, we are testing the conduct of the petitioner who is seeking to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Court is not open for such a litigant who has no regard for the truth. If a writ as sought by the petitioner is issued, the petitioner will get to dishonest advantage on the basis of the fabricated and got up certificates.

20. Hence, we reject the petition. However, this is a fit Case where the petitioner should be saddled with exemplary costs. We quantify the costs at Rs. 25,000/- which shall be payable to the Maharashtra State Election Commissioner within a period of six weeks from today. We make it clear that we have not made any adjudication on the issue of the power of the Commissioner of the Municipal Corporation to pass the impugned order.