
(2023) 08 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 1289 Of 2018, Civil Application No. 221 Of 2019

Poojakaur Shamsing Labana

APPELLANT

Vs

District Caste Certificate Scrutiny Committee And Others

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Maharashtra Municipal Corporations Act, 1949 — Section 10 (1c)

Citation : (2023) 08 BOM CK 0063

Hon'ble Judges : Sunil B. Shukre, J;Rajesh S. Patil, J

Bench : Division Bench

Advocate : Surel Shah, Manoj P. Patil, S. L. Babar, Abhijit Patil, Vijay Patil, R. k. Mendadkar, Savita Umesh Ramaj (Kabade)

Final Decision : Dismissed/Disposed Of

Judgement

Rajesh S. Patil, J

1. This Writ petition is filed under Article 226 of the Constitution of India challenging the impugned judgment and order dated 28th November, 2017 passed by the District Caste Certificate Scrutiny Committee, Thane. By the impugned judgment and order, the Petitioner's Caste Certificate dated 1 March, 2007 issued by the SDO, Ulhasnagar, Division Thane, was invalidated and the SDO was directed to confiscate the Caste Certificate of the petitioner.

2. By an order dated 7 February, 2018 this Court issued 'Rule' in the Writ Petition however, no Ad-interim Relief was granted.

3. The parties have moved this matter for urgent hearing. Accordingly, by consent of the parties, the present Writ Petition is taken up for final hearing.

FACTS

4. The Petitioner had applied for issuance of caste certificate with the office of Sub Divisional Officer, Ulhasnagar Division, Thane District. The SDO, Ulhasnagar

Division, District-Thane issued Caste Certificate dated 1 March, 2007 to the Petitioner, stating therein that the Petitioner belongs to 'Laban' Caste at Serial No.7, which is recognized as Vimukta Jati.

5. The Petitioner contested the election of Municipal Corporation from Ward No.17-B being a reserved category ward, as a candidate of Nationalist Congress Party (NCP). The Respondent No.3 also contested from the same ward, i.e., Ward No.17-B. On 25th January, 2017, the Petitioner submitted her Caste Certificate to the Office of Respondent No.1/District Caste Certificate Scrutiny Committee, Thane, for getting Caste Validity Certificate.

6. The general election of the Municipal Corporation took place on 21 February, 2017, which was for the duration of 2017 to 2022. In the said election the Petitioner was declared as elected candidate from the said ward No.17-B (reserved category ward).

7. On 14 March 2017, the Respondent No.3 thereafter filed a complaint against the petitioner before the Respondent No.1/ District Caste Certificate Scrutiny Committee, Thane. The Respondent No.1-District Caste Certificate Scrutiny Committee, Thane, took cognizance of the Complainant and accordingly proceedings were conducted. Both the parties in support of their contentions produced documents. Petitioner filed affidavit along with the list of documents to support her claim, that she belongs to 'Laban' Caste.

8. The Petitioner thereafter filed Writ Petition bearing No.8075 of 2017 before this Court since the Petitioner's Caste Certificate was under challenge and the proceedings were moving at a slow pace. The said Writ Petition No. 8075 of 2017 was disposed of by an order dated 19 July, 2017. The said order dated 19 July, 2017 reads as under :-

"1. The learned AGP states that a vigilance report is called for but the same is not yet received.

2. Considering the fact that there is a huge pendency of cases before the District Caste Scrutiny Committee, Konkan Bhavan, Belapur, Navi Mumbai, a direction as sought to decide the caste claim of the Petitioner within a period of four weeks cannot be granted.

3. Learned counsel appearing for the Petitioner states that he is not pressing prayer clause (c). Hence, we dispose of the Petition by passing the following order:

(a) The Caste Scrutiny Committee shall issue necessary direction to the Vigilance Cell to submit a report at the earliest;

(b) The Caste Scrutiny Committee shall give necessary priority to the disposal of the caste claim of the Petitioner;

(c) The caste claim of the Petitioner shall be disposed of as expeditiously as possible and in any event within a period of three weeks from today.

(d) The Petition is disposed of on above terms;

(e) All concerned to act upon an authenticated copy of this order.”

9. Before the District Caste Certificate Scrutiny Committee, thereafter vigilance cell report was submitted on 30 August, 2017. The District Caste Certificate Scrutiny Committee consisting of three members thereafter heard both the parties. However, there was differences in opinion amongst the members of District Caste Certificate Scrutiny Committee. The bench consisting of the President of the District Caste Certificate Scrutiny Committee and one more Member, (in Majority) by their judgment and order dated 28 November, 2017 recorded a finding against the Petitioner and invalidated the caste claim of the Petitioner of the Laban Caste. However, one of the member in minority of the said District Caste Certificate Scrutiny Committee recorded a finding in favour of the Petitioner.

10. Feeling aggrieved by the passing of the judgment and order dated 28 November, 2017 by the majority members of the District Caste Scrutiny Committee, Thane, the Petitioner has preferred this Petition.

SUBMISSION OF THE PARTIES:

11. Mr. Surel Shah on behalf of the Petitioner submitted that the President of Caste Scrutiny Committee along with one member in majority recorded the finding in favour of the Petitioner on the ground of residence and the revenue record but, even then concluded against the Petitioner. The President of the Caste Scrutiny Committee even though observed that the Complainant failed to prove the documents of the Petitioner of Rajasthan Government Authorities as false; even then the committee recorded the findings in the impugned judgment and order against the Petitioner. The President of the Caste Scrutiny Committee though considered the documents of the Petitioner but erroneously recorded the findings by holding that the record of the Petitioner shows caste as 'Laban' and not 'Labana'. Mr. Shah further submitted that the minority judgment of the Member, B.A. Solanki of the Caste Scrutiny Committee in fact based on legal footing and supported by consideration of documentary proof of the Petitioner in support of her claim. Therefore, the judgment of minority member needs to be confirmed and the Caste Certificate of the Petitioner should have been validated. Mr. Shah further submitted that the Petitioner is elected corporator of the Municipal Corporation, however, due to the differences of opinion and judgments of the Caste Scrutiny Committee dated 28 November, 2017, the Petitioner will face serious consequences. Therefore, the order dated 28 November, 2017 passed by the Caste Scrutiny Committee and further order of disqualification dated 2 January, 2018 need to be quashed and set aside.

12. Mr. Shah also relied upon two judgments in support of his arguments:

(i) State of Orissa v/s. Dasarathi Meher, reported in (2018) 18 SCC 176.

(ii) Revenue Officer and Ors., V/s. Prafulla kumar Pati and Ors, reported in

(1990) 2 SCC 162.

13. Mr. Mendadkar, learned counsel for the Respondent made submission that the majority judgment of the Caste Scrutiny Committee is based on legal findings and the same should not be disturbed by this Hon'ble Court. Mr. Mendadkar further submitted that while admitting the Writ Petition, the parties were heard at length and 'Rule' was issued on 7 February, 2018. However, no ad-interim relief was granted in favour of the Petitioner. He further submitted that the impugned order dated 28 November, 2017 passed by the Caste Scrutiny Committee is already been implemented by the Municipal Corporation, by disqualifying the Petitioner under Section 10 (1-c) of the Maharashtra Municipal Corporation Act, by its order dated 2 January, 2018. The term of the Corporation of 5 years period is already over. Now, the Petition is argued only for the academic purpose and for no other reason, therefore, the said Writ Petition should be dismissed. with costs.

14. Mr. Mendadkar referred to two judgments to buttress his submission :

(i) The State of Maharashtra and Ors v/s. Mana Adim Jamat Mandal, reported in (2006) 4 SCC 98

(ii) Bharati Balkrishna Dhongade v/s. State of Maharashtra & Ors, reported in (2012) 3 Mh.LJ 745.

15. Mr. S. L. Babar, AGP for the State/Respondent No.1 supported the submission made by the Mr. R. K. Mendadkar for the Respondent No.3. Mr. Babar submitted that the impugned order is passed on 28 November, 2017 around six years back, by a well reasoned order and the same need not be disturbed by this Hon'ble Court. While admitting the Petition ad-interim relief were refused to the Petitioner.

16. Mr. Abhijit Patil, appearing for the Respondent No.2-Corporation submitted that the Corporation have acted by complying with the order passed by the Caste Scrutiny Committee. He further submitted that the Corporation has disqualified the Petitioner by its order dated 2 January, 2018, as per mandate of Section 10 (1-c) of the Maharashtra Municipal Corporation Act. Therefore, the Petitioner is no more a corporator of the Ulhasnagar Municipal Corporation, so also the term of the election is already been over and the present Writ Petition is nothing but argued for academic purpose. Therefore, he prays the present Writ Petition be dismissed.

ANALYSIS AND CONCLUSION :

17. We have heard both the sides at length and have gone through documents on record and the judgments referred by the parties.

18. The School leaving certificate of the Petitioner dated 26 June, 2006 records the petitioner's name and in the column of caste and sub caste it records only the word 'Hindu'. Further the school leaving certificate of the father of the Petitioner records the name of the father of the Petitioner and in the column of

caste and sub caste only the word 'Hindu (Sikh)' is written. Further, the school leaving certificate of the grandfather of the petitioner records the name of the grandfather of the Petitioner and further in the column of religion and caste only the word 'Sikh' is written. The Petitioner has also produced photocopies of the documents of the great grandfather of the Petitioner. The document is titled as "Parcha Lagan Rajasthan". The said document records as in the column of Caste, the words 'Labana Sikh'. However, the said document does not bear any date on it.

19. It is the case of the Petitioner that the Petitioner's forefather were earlier staying in Pakistan and during partition in 1947 had left that place and shifted to Rajasthan and from Rajasthan they have shifted to Ulhasnagar, Maharashtra.

20. It is the case of the Petitioner that she belongs to the sub caste labana, and sub-caste 'Labana' and 'Laban' are synonymous and there is no such caste called as laban, the caste labana is falls under Vimukta Jati (VJ). The Petitioner submitted that the Petitioner's great grandfather's caste is recorded as 'Labana'. Therefore, the Petitioner has enough material to show that she belongs to Vimukta Jati and should be granted the caste validity certificate.

21. In the Judgment of Supreme Court in Dasarathi Meher (Supra) referred by the Petitioner, the issue was whether Tribe 'Kulis' will include 'Kuli' community. The Supreme Court held that there was absence of evidence to prove that there was any separate community known as Kulis. Therefore, the facts were quite different in this case, the same doesn't support the Petitioner's claim in the present proceedings.

22. The second judgment referred by the Petitioner of Supreme Court in Prafulla Patil (Supra), wherein the issue was of transfer of land by member of SC/ST to non member without permission of Revenue Officer. Considering the record of rights and certificates issued by revenue authorities hold irresistible conclusion that transferors belonged to 'Dhoba' community even though they mentioned their caste in Sale Deed as 'Rajaka'. There is no such caste 'Rajaka' mentioned in the Constitution (Scheduled Castes) Order 1950. Even this judgment doesn't support the claim of the Petitioner.

23. The Caste Scrutiny Committee relied upon the judgment passed by the Division Bench of this Court in Smt. Bhagibai Hotusingh Gulwan Vs. State of Maharashtra, Writ Petition No. 6799 of 2013, wherein the Division Bench rejected the petition, refusing to interfere in the writ jurisdiction, thereby upholding the order passed by the Caste Scrutiny Committee where the claim of the Petitioner that she belongs to caste 'Laban' had been rejected. The said order was confirmed by the Supreme Court.

24. Even in the present proceedings the Petitioner was not able to prove that she belongs to caste 'Laban'. As per Rule No. 14 of the Caste Certificate Rules, 2012, for Election purposes, Form No. 20 along with No.21 are to be filled up and filed before the Caste Scrutiny Committee. The said Form also contains Important

Instructions at the bottom which states that for Vimukta Jati and Nomadic Tribes, Caste Evidence should be of prior to 21 November, 1961. The Petitioner has not produced any evidence prior to the Deemed Date i.e. 21 November, 1961 to prove that she belongs to community 'Laban' (VJ- 7). No case is made out to interfere with the findings recorded by Caste Scrutiny Committee. The burden was on the Petitioner to establish her caste claim. The Petitioner has miserably failed to discharge the burden. This court cannot amend the entry in the list. The Vigilance Cell Report does not help the Petitioner in her claim. The Petitioner is not able to prove that she belongs to Vimukta Jati.

Accordingly, the Writ Petition is dismissed. No costs. Civil Application is disposed of in terms of the final order.