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**(2008) 06 BOM CK 0083**

**In the Bombay High Court**

**Case No : Writ Petition No. 2131 of 2008**

Rajkumar Mulchandani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 19-06-2008

**Acts Referred:**

**Citation :** (2008) 5 ALLMR 317 : (2008) 6 BomCR 329 : (2008) 6 MhLj 31

**Hon'ble Judges :** D.D. Sinha, J;C.L. Pangarkar, J

**Bench :** Division Bench

**Advocate :** M.G. Bhangde assisted by C.A. Joshi, in Writ Petition Nos. 2131 and 2132 of 2008, for the Appellant; I. Bodade, Assistant Government Pleader for the respondent Nos. 1 and 3, M.B. Nasre, for the respondent No. 2, R.L. Khapre, for the respondent No. 4, P.G. Thombre, for the respondent No. 5 in Writ Petition Nos. 2131 and 2132 of 2008 and N.S. Jog, for the respondent No. 2 in Writ Petition Nos. 2132 and 2132 of 2008, for the Respondent

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## **Judgement**

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of Shri Bhangde, learned Senior Counsel for the petitioners, Mrs. Bodade, learned Assistant Government Pleader for the respondent Nos. 1 and 3, Mrs. Jog and Shri Nasre, learned Counsel for the respondent No. 2, Shri Khapre, learned Counsel for the respondent No. 4, and Shri Thombre, learned Counsel for the respondent No. 5. Since cause of action involved in both the petitions is identical, they are heard together and disposed of by this common judgment.

2. The petitions are directed against the orders dated 18.2.2008 and 9.5.2008 passed by the Caste Scrutiny Committee as well as consequential orders dated 21.5.2008 passed by the Commissioner, Municipal Corporation, Akola.

3. Shri Bhangde, learned Senior Counsel for the petitioners, states that the impugned orders dated 9.5.2008 are passed by the Caste Scrutiny Committee mainly on the basis of report dated 26.4.2007 submitted by the Tahsildar that the caste certificates of the petitioners, which were forwarded for verification by the Caste Scrutiny Committee, were not issued from the office of Tahsildar. The

Caste Scrutiny committee refused to verify caste claims of the petitioners in view of Government Resolution dated 1.1.2001 as well as in view of the fact that the caste certificates were not genuine since they were not issued from the Office of the concerned Tahsildar. It is contended that the petitioners submitted applications dated 10.12.2007 before the Caste Scrutiny Committee seeking permission to cross-examine Tahsildar in order to rebut the said conclusion as well as to extract truth. It is further contended that Section 9 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 stipulates that Caste Scrutiny Committee while holding enquiry under the said Act has all the powers of the Civil Court while trying a suit and in particular in respect of matters, which are as follows:

- (a) summoning and enforcing the attendance of any person and examining him on oath,
- (b) requiring the discovery and production of any document,
- (c) receiving evidence on affidavits,
- (d) requisitioning any public record or copy thereof from any Court or office, and
- (e) issuing Commissions for the examination of witnesses or documents.

4. Learned Senior Counsel Shri Bhangde submits that in view of provisions of Section 9 of the said Act and in the facts and circumstances of the present case, the Caste Scrutiny Committee ought to have allowed the applications dated 10.12.2007 submitted by the petitioners. However, the Caste Scrutiny Committee vide orders dated 18.2.2008 rejected those applications, which are not sustainable in law.

5. It is further contended by the learned Senior Counsel for the petitioners that so far as decision of this Court relied on by the Caste Scrutiny Committee for rejecting the applications of the petitioners is concerned, since facts and circumstances involved in the present case are not similar to one involved in the said case of Pushpa Pathrabe Vs. State of Maharashtra and Others, , the law laid down in the said decision does not further the case of the Caste Scrutiny Committee. It is submitted that this Court considering the identical situation, in para (5) of the judgment dated 21.8.2006 passed in Writ Petition No. 2335/2005 (Ku. Kalpana d/o Govindrao Tapare v. State of Maharashtra and Ors.) has observed thus:

The reasoning given by the Scrutiny Committee for rejecting her claim is totally devoid of substance. On one hand, the Scrutiny Committee has observed that the petitioner has not produced any proof about her claim regarding the entry in the School records and on the other hand, it has rejected such opportunity to produce such proof. The very fact that the petitioner had prayed for opportunity to cross-examine the School authorities discloses that the petitioner wanted to

produce the proof in support of her statement that the School record does not disclose the factual position. The petitioner could have established this fact certainly by cross-examining the School authorities. While denying such opportunity, the Scrutiny Committee could not have at the same breath held that the petitioner has failed to establish her claim.

It is, therefore, contended that the impugned orders passed by the Caste Scrutiny Committee, in view of the above referred facts and legal position, are liable to be quashed and set aside.

6. Mrs. Jog, learned Counsel for the respondent No. 2 Caste Scrutiny Committee, supports the impugned orders passed by the Caste Scrutiny Committee. It is contended that the report of the Tahsildar clearly demonstrates that the caste certificates submitted by the petitioners for verification before the Caste Scrutiny Committee were never issued from the office of Tahsildar and, therefore, in view of Government Resolution dated 1.1.2001, the decision of the Caste Scrutiny Committee not to verify the caste claims of the petitioners is perfectly justifiable and sustainable in law. It is submitted that the Caste Scrutiny Committee while rejecting applications of the petitioners has taken into consideration decision of this Court in the case of Pushpa wd/o Laxman Pathrabe (cited supra) and, therefore, impugned orders passed by the Caste Scrutiny Committee are sustainable in law.

7. Shri Khapre, learned Counsel for the respondent No. 4, states that since report of the Tahsildar makes it clear that the caste certificates submitted by the petitioners for verification were never issued from the office of the said Tahsildar, in such situation, there was no occasion for the Caste Scrutiny Committee to allow the applications of the petitioners for permission to cross-examine the Tahsildar and the orders passed by the Caste Scrutiny Committee by placing reliance on the said report of the Tahsildar are sustainable in law. However, learned Counsel Shri Khapre does not dispute that in appropriate case, the Caste Scrutiny Committee does have power to permit candidate to cross-examine the witness, if his evidence/cross-examination is necessary for the just decision of the enquiry.

8. We have considered the contentions canvassed by the learned respective Counsel for the parties. The following facts are not in dispute :

(i) The petitioners have contested election for the posts of Corporator from Ward Nos. 46 and 58 of Akola Municipal Corporation, which was held on 2.2.2007.

(ii) The caste claims of the petitioners were referred to the Caste Scrutiny committee for verification.

(iii) The Caste Scrutiny Committee obtained report of the Tahsildar in order to consider whether the caste certificates submitted by the petitioners for verification were issued from the office of the Tahsildar.

(iv) The Tahsildar, Akola submitted report dated 26.4.2007 whereby it was

informed that the caste certificates submitted by the petitioners were not issued from the office of the Tahsildar and, therefore, Caste Scrutiny Committee refused to verify the caste claims of the petitioners on this count.

(v) Both the petitioners approached this Court on earlier occasion, by filing Writ Petition Nos. 2105/2007 and 2106/2007, which were disposed of by common judgment dated 20.9.2007 by observing thus:

1) Rule, returnable forthwith. Heard finally by the consent of the parties.

2) It is obvious from the order impugned that the date of the order is 30.4.2007 where in the order reliance is placed on the report of Tahsildar which is, dt. 26.4.2007, that too without affording an opportunity of hearing to the petitioner. In our opinion, therefore, the following order would meet the ends of justice:

The impugned order dated 30.4.2007 passed by Scrutiny Committee/respondent No. 2 is set aside. The petitioner to appear before the Committee on 8th October 2007. At that time, copy of the report of Tahsildar shall be handed over to the petitioner and thereafter the matter shall be decided in accordance with law by the Committee as expeditiously as possible and in any case, within a period of 12 weeks from 8th October 2007.

Rule made absolute accordingly. No order as to costs.

(vi) After the matters were remanded back to the Caste Scrutiny Committee for reconsideration of the caste claims of the petitioners, the petitioners submitted applications dated 10.12.2007 before the Caste Scrutiny Committee whereby the Caste Scrutiny Committee was requested to permit the petitioners to cross-examine the Tahsildar since Caste Scrutiny Committee, on the earlier occasion, took the decision not to verify caste claims of the petitioners on the basis of report of the Tahsildar.

(vii) The Caste Scrutiny Committee on 18.2.2008 rejected the applications dated 10.12.2007 submitted by the petitioners in view of decision of this Court in the case of Pushpa w/o Laxman Pathrabe (cited supra).

(viii) The Caste Scrutiny Committee thereafter on 4.3.2008 referred the caste claim of the petitioners to the Vigilance Cell for conducting home enquiry and for submission of the reports thereof.

(ix) The Vigilance Cell submitted reports on 2.5.2008.

(x) The petitioners on 2.5.2008 submitted applications to the Caste Scrutiny Committee for supplying copies of the said reports to them.

(xi) The Caste Scrutiny committee did not furnish copies of the Vigilance Cell's reports to the petitioners.

(xii) On 9.5.2008 the Caste Scrutiny Committee passed the impugned orders whereby Caste Scrutiny Committee in view of Government Resolution dated 1.1.2001 once again concluded that it shall not do verification of the caste claims

of the petitioners since caste certificates submitted by the petitioners for verification were not issued by the Office of the Tahsildar and, therefore, same were not genuine.

(xiii) After the orders dated 9.5.2008 were passed by the Caste Scrutiny Committee, the Municipal Commissioner vide impugned orders dated 21.5.2008 disqualified the petitioners as Corporators for a period of six years.

9. The above referred facts are not in dispute and, therefore, short question which falls for our consideration is whether in the facts and circumstances of the present case, the orders of the Caste Scrutiny Committee dated 18.2.2008 whereby applications of the petitioners dated 10.12.2007 came to be rejected as well as impugned orders dated 9.5.2008 passed by the Caste Scrutiny Committee are sustainable in law in view of provisions of Section 9 of the said Act as well as decision cited and relied on by the Caste Scrutiny Committee. Perusal of the orders dated 18.2.2008 passed by the Caste Scrutiny Committee shows that the Caste Scrutiny Committee rejected the applications of the petitioners mainly in view of the following observations made by this Court in para (32) in the case of Pushpa w/o Laxman Pathrabe (cited supra):

As regards the demand to cross-examine Officer of Vigilance Cell, it may be sufficient to observe that in no proceeding to which CPC applies can a person be cross-examined if he has not first been examined by the party calling such person. Since Vigilance Cell is an arm of the Committee itself, there is no question of Officers of such cell being examined before the Committee. In any case, Vigilance Cell merely collects evidence, steps taken in collecting evidence could be equated to evidence of facts in issue.

Perusal of the above referred observations make it evident that they were made in the context of the peculiar facts and circumstances of that case and the Court was called upon to decide whether cross-examination of the Officer of the Vigilance Cell can be permitted in the facts of that case since job of the Vigilance Cell is to collect evidence. However, the provisions of Section 9 of the said Act contemplate that the Caste Scrutiny Committee while holding an enquiry under this Act, shall have all the powers of the Civil Court while trying a suit under the Code of Civil Procedure. It is, therefore, evident that the Caste Scrutiny Committee enjoys all the powers under the Code of Civil Procedure. Some of them are illustrated in Section 9 itself.

10. The observations made by this Court in paras (5), (6) and (7) of the judgment dated 21.8.2006 in the case of Ku. Kalpana d/o Govindrao Tapare (cited supra) are relevant, which read thus:

(5) The reasoning given by the Scrutiny Committee for rejecting her claim is totally devoid of substance. On one hand, the Scrutiny Committee has observed that the petitioner has not produced any proof about her claim regarding the entry in the School records and on the other hand, it has rejected such opportunity to produce such proof. The very fact that the petitioner had prayed

for opportunity to cross-examine the School authorities discloses that the petitioner wanted to produce the proof in support of her statement that the School record does not disclose the factual position. The petitioner could have established this fact certainly by cross-examining the School authorities. While denying such opportunity, the Scrutiny Committee could not have at the same breath held that the petitioner has failed to establish her claim.

(6) Undoubtedly, the Scrutiny Committee has proceeded to analyse the records. However, perusal of the entire order of the Scrutiny Committee discloses that the Scrutiny Committee was very much impressed by the sole entry in the school records and in respect of the same entry, there was no opportunity to the petitioner to prove that the record in that regard does not depict the factual situation. Being so, the entire order of the Scrutiny Committee cannot be sustained and is quashed and set aside and the matter is remanded to the Scrutiny Committee to give the proper opportunity including the opportunity to cross-examine the School authorities and thereafter to pass appropriate order on proper analysis of the entire material on record.

(7) The petition therefore succeeds. The impugned order passed by the Caste Scrutiny Committee is quashed and set aside and the matter is remanded to the Scrutiny Committee for reconsideration of the claim of the petitioner in accordance with the provisions of law and bearing in mind the observations made hereinabove. The petitioner to appear before the Scrutiny Committee on 11.7.2006 at 11.00 a.m. for further proceedings before the Caste Scrutiny Committee. Rule is made absolute in above terms. No costs.

The plain reading of the above referred observations shows that permission to cross-examine was sought by the petitioner in the said case in order to produce proof in support of her statement that the School record did not disclose the factual position, however, the Caste Scrutiny Committee rejected the application to cross-examine the School Authorities. This Court set aside the order passed by the Caste Scrutiny Committee and the caste claim of the petitioner in the said case was remanded to the Caste Scrutiny Committee for re-consideration.

11. In the instant case, it is not in dispute that the impugned orders of the Caste Scrutiny Committee are based primarily on the report of the Tahsildar dated 26.4.2007. It is also evident that the Caste Scrutiny Committee has not considered any other evidence and rejected the applications dated 10.12.2007 of the petitioners only on the basis of report of the Tahsildar. When the basis of the impugned orders of the Caste Scrutiny Committee was the report of the Tahsildar and the petitioners disputed the contents thereof and wanted opportunity to cross-examine the Tahsildar to rebut the statement made by him in the report, we see no legal impediment why such opportunity cannot be granted to the petitioners in view of scheme of Section 9 of the Act. We concur with the view expressed by the Division Bench of this Court in the case of Ku. Kalpana d/o Govindrao Tapare (cited supra).

12. It is no doubt true that provisions of Section 9 of the Act empowers the Caste Scrutiny Committee to exercise all the powers of the Civil Court while holding enquiry under this Act and is also entitled to follow the procedure stipulated under the Code of Civil Procedure, 1908. However, these powers are required to be exercised by the Caste Scrutiny Committee as and when it is necessary to do so and it is not mandatory for the Caste Scrutiny Committee to strictly follow the procedure stipulated under the Code of Civil Procedure, 1908 as applicable to the trial of the suit while conducting caste verification proceedings. At the same time, there is no bar or prohibition for making application to the Caste Scrutiny Committee by the candidate whose caste claim is under verification, for necessary orders in view of provisions of Section 9 of the Act. However, it is open for the Caste Scrutiny Committee to reject such application, if it is frivolous, not relevant for the issue in question, not bonafide, made only to delay the proceedings of enquiry or for any other reason, by passing speaking order.

13. For the reasons stated hereinabove, the impugned orders dated 18.2.2008 and 9.5.2008 passed by the Caste Scrutiny Committee as well as impugned orders dated 21.5.2008 passed by the Municipal Commissioner are quashed and set aside. The matters are remanded back to the Caste Scrutiny Committee with a direction to permit the petitioners to cross-examine the Tahsildar and thereafter proceed in the matter according to law.

We expect the Caste Scrutiny Committee to complete entire exercise within a period of three months from the date of receipt of this judgment. The petitioners undertake to appear before the Caste Scrutiny Committee on 1st July 2008, hence, no further notice will be issued to the petitioners in this regard.

14. The rule is made absolute in the above terms. No order as to costs.