

(2007) 10 BOM CK 0127

In the Bombay High Court

Case No : Writ Petition No. 8703 of 2005

Shivling Jadhav

APPELLANT

Vs

The State of Maharashtra, Rural Development Department,
The Scheduled Caste, OBC, SPBC, VJNT Certificate
Verification Committee, Aurangabad Division, The Additional
Collector and Ganpat Kamble

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 10, 10(1), 11, 16(1)
Bombay Village Panchayats Act, 1958 — Section 10(4), 14, 16, 16(2), 3
Constitution of India, 1950 — Article 243O, 243ZG

Citation : (2008) 1 ALLMR 538 : (2008) 1 BomCR 622 : (2007) 109 BOMLR
2558 : (2008) 2 MhLj 553

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : A.S. Golegaonkar, for the Appellant; Umakant K. Patil, Assistant
Government Pleader for Respondents Nos. 1, 2 and 3 and V.D. Salunke, for the
Respondent

Judgement

Naresh H. Patil, J.—These two petitions raise identical challenge, therefore, they are being disposed of by a common judgment and order.

2. Rule, made returnable forthwith by consent of the learned Counsel for the parties.

3. The issues raised before us are:

a) Whether the Collector was empowered under the provision of Sections 14 and 16 of the Bombay Village Panchayats Act, 1958 (for short, "the Act, 1958") to disqualify a member of Village Panchayat on the ground that the caste certificate was not issued by the competent issuing authority in favour of such member?; and,

(b) Whether the Scrutiny Committee under the provisions of the Maharashtra

Scheduled Castes, 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 (for short, "the Act 23 of 2001") has jurisdiction to enquire into genuineness of a caste certificate and investigate into the allegation of forged or bogus caste certificate and decide the issue of verification and validity of the caste claim?

4. The petitioners contested the election to the Gram Panchayat Ramteerth, Taluka Biloli, District Nanded held in the month of February 2005 from a ward which was reserved for persons belonging to Other Backward Class category. The petitioners were elected as Members of the Village Panchayat. Respondent No. 4 filed a complaint under Sections 14 and 16 of the Act, 1958 before respondent No. 3 - the Additional Collector Nanded disputing the correctness of the caste certificates of the petitioners. In response to the notice the petitioners appeared before the Additional Collector and disputed the grounds raised by the complainant. They filed reply and contended that they belong to "Kunbi" caste, Other Backward Class. It was submitted that petitioner Shivling Umrao Jadhav was issued a caste certificate by the Tahsildar Biloli on 27-7-1990 and petitioner Sunita Baliram Wadekar was issued a caste certificate by the Sub Divisional Officer Degloor on 5-12-1996. The said caste certificates were produced before the Election Officer at the time of filing of the nomination papers.

5. The Additional Collector perused the replies filed by the parties. In the matter of petitioner Shivling the Additional Collector observed that the Tahsildar Biloli by his communication dated 17-5-2005 informed that there was no record available to show that the caste certificate was issued by the office of the Tahsildar. By a communication dated 13-6-2005 the Assistant Collector Degloor informed that there was no record to show that caste certificate dated 5-12-1996 at Sr. No. 6344 was issued. The Additional Collector based on the said two communications reached conclusion that these caste certificates were not issued by the concerned officers which amounts to violation of the provisions of Section 4(2) of the Act 23 of 2001 and were liable to be confiscated. Accordingly the Additional Collector passed an order on 6-12-2005. This order is impugned in these writ petitions.

6. It would be necessary to refer to the provisions of Section 16 of the Act, 1958:

16. Disability from continuing as members.--(1) If any member of a panchayat,-

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or on an application made to him by any person in that

behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under Sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

7. The Act 23 of 2001 received the assent of His Excellency the President of India and was published in the Maharashtra Government Gazette on 23rd May 2001.

The Act 23 of 2001 provides for the regulation of the issuance and verification of the caste certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward category and for matters connected therewith or incidental thereto. It was thought expedient to provide for the regulation of the issuance and verification of the caste certificates to the persons belonging to the reserved classes. Provisions of Sections 4, 6 and 9 of the Act 23 of 2001, which are relevant for our purposes, are quoted herein below:

4. Caste Certificate to be issued by Competent Authority.

(1) The Competent Authority may, on an application made to it u/s 3, after satisfying itself about the genuineness of the claim and the following the procedure as prescribed, issue a caste certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

(2) A caste certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The caste certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

6. Verification of caste certificate by Scrutiny Committee:

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee (s) for verification of Caste certificates issued by the Competent Authorities under Sub-section (1) of Section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the caste certificate from the competent authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in Section 3 may make an application, well in time, in such form and

in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, cooperative societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the caste certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, cooperative societies or any other Government aided institutions who has not obtained such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste certificates and adhere to the time limit for verification and grant of validity certificate, as prescribed.

9. Civil Courts powers to Competent Authority, Appellate Authority and Scrutiny Committee:

The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely,:

- (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.

8. The learned Counsel appearing for the petitioners Shri. A.S. Golegaonkar submitted that the Collector lacks authority and power to disqualify a member and unseat such member by resorting to the provisions of Sections 14 and 16 of the Act, 1958 concerning the matters of verification of caste claim of a member of the Village Panchayat. The jurisdiction to verify the caste certificate and enquire into the caste claim is conferred on the Scrutiny Committees constituted under the statutory provisions of the Act 23 of 2001.

9. Learned Assistant Government Pleader Shri. Umakant Patil submitted that in view of the provisions of Section 16 of the Act, 1958 the Collector is empowered to take note of disqualification enumerated u/s 14 and if it is noticed that such disqualification has occurred then the Collector is empowered to declare the seat as fallen vacant suo motu or on application made to him by any person in that behalf.

10. Learned Counsel Shri. V.D. Salunke, appearing for respondent No. 4 -

complainant has supported the impugned order passed by the Additional Collector.

11. We have considered the submissions advanced by the learned Counsel appearing for the respective parties. u/s 4 of the Act 23 of 2001 if a person belonging to a reserved class applies in the prescribed manner as provided under the law to the competent authority for issuance of a caste certificate then the competent authority on application made to it after satisfying itself about the genuineness of the claim would issue a certificate or would reject the application for reasons to be recorded in writing. A caste certificate would be valid only subject to the verification and grant of validity certificate by the scrutiny committee. The procedure to verify caste certificate is prescribed u/s 6 of the Act 23 of 2001. The competent authority, appellate authority and scrutiny committee while holding an enquiry under the Act exercise powers of a Civil Court conferred under the CPC 1908 concerning summoning and enforcing the attendance of any person, requiring the discovery and production of any document, receiving evidence on affidavits etc.

12. The conclusion reached by the Collector in this case is based on the communications made by the Tahsildar and the Assistant Collector. Considering the judgment of the Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and the provisions of the Act 23 of 2001 we find that the caste certificate is issued subject to verification and grant of validity certificate by the scrutiny committee. Unless the scrutiny committee verifies the caste claim of a candidate and validity certificate is granted the claim of the candidate based on such certificate would be provisional one. The Act 23 of 2001 is a complete code for the said purposes.

13. Another feature of the case is that the under the provision of Section 16(2) of the Act 1958 the Collector is empowered to declare occurrence of vacancy suo motu or on application made to him by any person in that behalf after deciding the question within stipulated time frame. Section 7 of the Act 23 of 2001 provides that if in the opinion of the Scrutiny Committee a caste certificate was obtained fraudulently, it shall by an order cancel and confiscate the certificate by following the prescribed procedure after giving the person concerned an opportunity of being heard. The scrutiny committee has to conclude the enquiry proceedings even if it is found that the caste certificate was not issued by the concerned authority. Such an approach would be in keeping with the intention of the Legislature in enacting the Act 23 of 2001. It cannot be forgotten that failure to establish the caste claim results in the vacation of the office / post as well as the same incurs criminal prosecution as provided under the provisions of Act 23 of 2001.

14. The learned Counsel appearing for the petitioner in support of his submissions has placed reliance on the following judgments. Dattatraya Ramrao Thorat v. State of Maharashtra 2003 (5) Mh.L.J. 539. In this case, a Division Bench of this Court was considering the case of a Councillor of Aurangabad

Municipal Corporation. While dealing with the provisions of the Act 23 of 2001 and the Bombay Provincial Municipal Corporations Act, 1949 the Division Bench in para 37 observed:

37. Sub-section (4) of Section 10 of the Act is, in fact, nothing short of an additional disqualification provided by the Legislature within the meaning of Section 10(1)(a-ii)(ii) of the Corporations Act so that Section 11 of the Corporations Act operates and the councillor shall cease to hold office automatically. The disqualifications set out u/s 10 and their consequences, as set out u/s 11, are independent of the remedy of election petition u/s 16(1) of the Corporations Act so as to unseat the councillor/corporator....

Sujit Vasant Patil Vs. State of Maharashtra and Others, . This is a Full Bench judgment of the Bombay High Court. Following three questions for consideration of the Full Bench were referred by the Division Bench.

(1) Whether in the matter of scrutiny and verification of the caste certificate and / or the caste claims of candidates elected to the Local Self-Government, the procedure laid down by the Apex Court in Kum. Madhuri Patils case so also the procedure prescribed by the Resolution dated 1st January 1998, 19th April 1999 and 25th January 2000 could have any application even before coming in force of Act No. XXIII of 2001 for the reason that Local Self-Government Acts were holding field and more so in view of the bar contained in Article 243O and 243ZG of the Constitution of India and other statutory provisions contained in the Local Self-Government Act providing for a remedy of an Election Petition?

(2) Whether the provisions contained in Act No. XXIII of 2001 are repugnant to the scheme flowing from the provisions contained in Amending Act No. XI of 2002 and XXIV of 2000 and the other relevant provisions contained in parent Local Self-Government Act?

(3) Whether the provisions contained in Act No. XXIII of 2001 are in conflict with the constitutional mandate contained in Article 243O and 243ZG(b) of the Constitution of India?

In Ramesh Suresh Kamble Vs. State of Maharashtra and Others, the Full Bench of the Bombay High Court observed in para 26:

26. A candidate who sets up a claim as belonging to a particular caste by making an application to the Competent Authority and obtains the Caste Certificate based on such claim and information and contests the election of the Councillor from the reserved seat and gets elected and if, ultimately, the Scrutiny Committee upon inquiring into the correctness of such certificate declares such certificate invalid and cancels the same, it is obvious that such Caste Certificate has been obtained by that person on the basis of the declaration or information or claim which was not correct or true and upon invalidation and cancellation of the Caste Certificate by the Scrutiny Committee, such person incurs disqualification automatically. There is no escape from it.

15. The learned Counsel Shri. A.S. Golegaonkar in support of his contention has placed reliance on a judgment delivered by a Division Bench of this Court on dated 15th September 2003 (Coram: B.H. Marlapalle & A.S. Bagga, JJ.) in *Musa s/o Ibrahim v. The State of Maharashtra*) Writ Petition No. 1947 of 2003 with Writ Petition No. 3195 of 2003.

16. Learned Counsel Shri. V.D. Salunke appearing for respondent No. 4 placed reliance on the judgment delivered by the learned Single Judge in *Ramsingh Hiralal Sulane Vs. State of Maharashtra*, . In this case, the Government of Maharashtra entertained certain doubts about the order passed by the Divisional Commissioner, Aurangabad and sought suo motu to revise the order passed by the Divisional Commissioner who as the Appellate Authority had allowed the appeal of a person claiming to be belonging to Rajput Bhamta. The Government's order was impugned in the petition. The writ petition was allowed on the ground that the Government had no power of review on 8th September 1987 when it revised the order of the Additional Commissioner.

17. In a reported case in *Annaji Maroti Raut v. Scheduled Caste, Scheduled Tribe, Vimukta Tribes Committee* 2003 (3) M.L.J. 612 a Division Bench of this Court (Coram: A.P. Shah & R.K. Batta, JJ.) in the facts of the case observed in para 9:

9. It is not disputed before us that the District Magistrate conducted the enquiry without notice to the petitioner. It is seen from the report of the District Magistrate that the certificate issued in favour of the petitioner was duly entered into the revenue register and is in the prescribed proforma. However, relying upon the statement of N.A. Nagarale Dy. Collector (retired) where he has disowned his signature on the certificate, the District Magistrate has concluded that, "Therefore, even though the above certificate is given on official registration paper stationery, still according to the statement of Shri. N.A. Nagarale, Dy. Collector (retired) he having denied his signature on the said certificate, it becomes bogus and invalid." In our opinion, it was the duty of the Scrutiny Committee to conduct independent enquiry into the question of genuineness of the caste certificate and the Committee has committed error in relying upon the report of the District Magistrate which was prepared and submitted without notice to the petitioner.

18. The learned Counsel appearing for the respondents raised one more objection that the petitioners could file appeal against the order of the Collector.

19. In the light of apparent and manifest error on the face of the impugned order we find that the grievances of the petitioners deserve to be considered in exercise of writ jurisdiction of this Court. We, therefore, reject the submissions advanced by the learned Counsel appearing for the respondents.

20. We are supported in our view by the reported judgments cited (*supra*) by the learned Counsel for the petitioner. We are therefore convinced that the Caste Scrutiny Committee is empowered to enquire into the genuineness of the caste certificates. At the same time the Collector is not empowered and entitled under

the provisions of Sections 14 and 16 of the Act, 1958 to disqualify an elected candidate and unseat him by declaring his seat as fallen vacant on the ground that the caste certificate was not issued by the competent authority or the caste certificate was a forged and bogus one.

21. For the reasons stated above we hold that in the matter of verification of caste claims the Scrutiny Committee has jurisdiction to enquire into the genuineness of the caste certificates and after holding investigation and enquiry into the allegation of forged and/or bogus caste certificates the Committee is empowered to decide the caste claim.

22. The Collector is not empowered to exercise powers u/s 16 of the Act, 1958 to decide the verification of the caste certificate and disqualify an elected person on the ground that the caste certificates were forged and bogus or on the ground of invalidity of the caste claim. Therefore, both these writ petitions deserve to be allowed.

23. The impugned order dated 6-12-2005 passed by the Additional Collector Nanded is quashed and set aside. We direct the Collector Nanded to refer the caste certificates of both the petitioners to the concerned Caste Certificates Scrutiny Committee for verification of the caste certificates and for enquiry into the validity of the caste claims of the petitioners. The Collector shall forward the caste certificates to the Scrutiny Committee within four weeks from the date of receipt of writ of this Court. The Scrutiny Committee is further directed to finally decide the caste claims of both the petitioners on its own merits and in accordance with law within six months from the date of receipt of reference from the Collector Nanded.

24. Rule is made absolute in the above terms with no order as to costs.