

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10913 OF 2014

Jagdish Revansiddha Patil.

Age : Adult, Occu :

R/a : 69, Bhavani Peth,

Tulzapur Ves Chowk,

Solapur, District Solapur.

]
]
]
]
]..Petitioner.

Versus

1] The State of Maharashtra through its
Urban Development Department,
Mantralaya, Mumbai.

]
]
]
]

2] The Divisional Caste Scrutiny
Committee No.1, Soapuar, having its
office at Dr. Babasaheb Amedkar
Bhavan, Opposite Afzalpurkar
Mangal Karyalaya, Satrasta, Solapur

]
]
]
]
]
]

3] Commissioner for Solapur Municipal
Corporation having office at Solapur.

]
]
]

4] Election Commission of State of
Maharashtra.

]
]
]

5] Shri. Anil Sambhaji Gavai, at – 1176,
North kasba Tilak Chowk, Solapur.

]
] ..Respondents.

Mr. Y. S. Jahagirdar, Senior Advocate with Mr. S. S. Kanetkar for
the Petitioner.

Mr. A. A. Kumbhakoni, Senior Advocate with Mr. A. M. Kulkarni i/b
M. R. Deshpande for Respondent No. 5.

Mr. R. S. Alange and Ms. Chaitrali Deshmukh for Respondent No. 3.

Mr. P. G. Kathane, AGP for the State.

Mr. S. B. Shetye, Mrs. D. S. Mondkar, Ms. Shreya Jadhav for Respondent No. 4.

Coram : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

Arguments were heard on : October 14, 2016.

Judgment pronounced on : October 21, 2016.

Oral Judgment (Per Ranjit More, J.):

1. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the judgment and order dated 29th November 2014 passed by the caste scrutiny committee, Solapur, the order dated 2nd December 2014 passed by the Commissioner, Solapur Municipal Corporation and the circular / order dated 17th July 2013 issued by the State Election Commissioner, Maharashtra State.

2. By the order dated 29th November 2014, the caste scrutiny committee invalidated the Petitioner's caste claim that he belongs to "Teli" caste, which is notified as Other Backward Class [for short "OBC"]. On the basis of above order of the caste scrutiny committee, the Commissioner of Solapur Municipal

Corporation passed the order dated 2nd December 2014 thereby declaring that the Petitioner is disqualified and that his seat is deemed to have fallen vacant. By the circular dated 17th July 2013, the State Election Commission has authorised the Commissioners of Municipal Corporations to pass formal order of declaring any councillor as disqualified on account of his caste claim being invalidated by the caste scrutiny committee irrespective of the pendency of any election petition.

3. In order to support his caste claim that he belongs to "Teli" caste, the Petitioner has mainly relied upon the following documents :

- [1] Birth Extract dated 22nd April 1934 of Revansiddha Muttyappa Patil, father of the Petitioner.
- [2] Birth extract dated 25th March 1936 of Apparao Muttyappa Patil, real uncle of the Petitioner.
- [3] Loan receipt dated 21st October 1954 on Six Anna Stamp given by Revansiddha, father of the Petitioner to Fulchand Kashinath Heblekar.
- [4] Loan receipt dated 28th June 1955 on 1½ stamp given by Revansidha Mutyappa Patil to Basappa Satlingappa Aadake.

[5] *Khoti* Receipt dated 13th January 1931 between Mutyappa Apparao Patil and Bhimu Basappa Patil.

4. The caste scrutiny committee called for the report from vigilance cell. The officers of the vigilance cell accordingly examined the original documents from Tahisldar's office as well as from the custody of Petitioner and submitted report to the caste scrutiny committee. So far as the first two documents are concerned, the vigilance cell formed an opinion that entries therein appear to be suspicious. Regarding rest of the three documents, the vigilance cell has not given any adverse remark. So far as first two documents are concerned, the scrutiny committee relied upon report of the vigilance cell. In addition to this, the caste scrutiny committee examined original documents relied upon by Respondent No.5 and concluded that first two documents relied upon by the Petitioner to support his caste claim are bogus and fabricated. As far as document No.3 and 4 namely, loan receipts dated 21st October 1954 and 28th June 1955, are concerned, the caste scrutiny committee held that on these documents there is no signature of Petitioner's father. It was further found that though stamps on which these receipts were

transcribed were purchased by Fulchand Heblekar and Basappa Aadake and executed by them, there is vast difference in their signatures made at the time of purchase of stamp and signatures made at the time of execution of the document. The Caste scrutiny committee therefore concluded that these two receipts are bogus and fabricated. Regarding the last document, namely, *Khoti* receipt, the caste scrutiny committee found that the same is on simple paper and not registered therefore refused to take the same into consideration.

5. Mr. Jahagirdar, the learned Senior Counsel for the Petitioner submitted that the caste scrutiny committee ought to have called for the original record from the tahsildar's office before arriving at the conclusion in respect of the first two documents. He further submitted that without verifying the same, the conclusion in respect of these documents could not have been arrived at by the committee. He also submitted that the finding of the caste scrutiny committee about the interpolation of words or entireties in the record is not sustainable without calling for the expert opinion or without doing exercise of

comparison between the disputed hand-writing and admitted hand-writing. Regarding the loan receipts, Mr. Jahagirdar relied upon the report of the vigilance cell. In this regard, he submitted that loan receipts were executed in the year 1954-55 and therefore have more probative value and the caste scrutiny committee could not have discarded these receipts. With respect to the last document, Mr. Jahagirdar submitted that merely because document is not registered, the committee could not have refused to take the same into consideration for ascertaining the caste claim of the Petitioner.

6. Mr. Kumbhakoni, the learned Senior Counsel for Respondent no.5, on the contrary, vehemently opposed the submissions advanced by Mr. Jahagirdar and supported the findings recorded by the caste scrutiny committee. Mr. Kumbhakoni submitted that on the face of it, the above documents are bogus and fabricated. He also relied upon other documents relied upon by Respondent No.5 before the caste scrutiny committee to contest the Petitioner's caste claim as belonging to Teli caste.

7. The above documents are in modi script. Translation thereof in Marathi has been placed on record. Original of the first two documents is in the custody of Tahsildar, Akkalkot. We have called the original registers and examined the same. Photocopies of rest of the three documents are annexed to the petition. We have examined originals documents, which were tendered by Mr. Jahagirdar, the learned Senior Counsel for the Petitioner for our examination. We have returned the originals after verifying the same.

8. The first and second documents are birth extract dated 22nd April 1934 and 25th March 1936 respectively of Revansidha and Apparao, father and uncle of the Petitioner. Both these documents indicate "Teli" to be the caste of Petitioner's father and uncle. The said birth extract relate to the village Badhole, Taluka Akkalkot. As stated above, vigilance cell after examining the record opined that these entries appear to be suspicious and this opinion is accepted by the committee.

9. So far as the Birth and Death Register of village Badhole for the year 1934 is concerned, there are total 56 entries of birth and 12 entries of death. There is difference in the font of letter, ink and style of writing between Entry Nos. 1 to 23 and Entry No.24 to 56. We have also perused the Birth and Death Register of village Badhole for the year 1936. There are total 76 entries of birth and 23 entries of death. There is vast difference in the font of letter, ink and style of writing so far as Entry Nos.1 to 38 and Entry Nos. 39 to 72 are concerned. On perusal of Birth and Death Registers of village Badhole for the years 1934 and 1936, we found that names of the fathers in the Birth and Death Register for the year 1934 for birth at entry numbers 24 to 56 and names of fathers in the Birth and Death Register for the year 1936 for birth at entry numbers 39 to 72 are the same. Thus, it shows that the persons who gave birth to the children in the year 1934, the very same persons have again given birth to the children in the year 1936 in the same chronology. The report of vigilance cell also discloses that the enquiry was made in village Badhole in which it was revealed that most of the persons shown in the above entries were not resident of village Badhole.

10. Be that as it may, birth extract dated 8th December 1937 of Apparao Mutyappa Patil, i.e., the Petitioner's uncle is issued by Tahsildar, Akkalkot. It relates to village Nanhegaon, Taluka Akkalkot. In this birth extract, the caste of the Petitioner's uncle shown is "Veershaiv Lingayat". Thus, there are two birth extracts of the Petitioner's uncle, one at village Badhole and another one at village Nanhegaon. In former, the caste of the Petitioner's uncle is shown as "Teli". But in the latter, it is shown as Veershaiv Lingayat. In addition to this, vigilance cell also examined the Birth and Death Registers concerning village Nanhegaon for the years 1944-45 and 1967. At serial number 2, in the Birth and Death Register of village Nanhegaon for the year 1944-45, there is entry of birth of Petitioner's aunt-Limbabai. The entry shows that the Petitioner's said aunt was born on 11th June 1944. At serial No.12 in the Birth and Death Register pertaining to village Nanhegaon for the year 1967, death entry of the Petitioner's grand-father - Muthyappa is shown. It shows that the Petitioner's grand-father expired on 31st June 1967. Thus, the entries with regard to the birth and death of Petitioner's uncle,

aunt and grand-father are at village Nanhegaon. The report of the vigilance cell further shows that agricultural properties as well as residential houses of the Petitioner and his forefather are at village Nanhegaon. This fact shows that the Petitioner and his forefather are resident of village Nanhegaon, taluka Akkalkot and there was no reason to record the entries of birth of the Petitioner's father and uncle in the birth and death registers at village Badhole. We therefore agree with the finding of the caste scrutiny committee in respect of these entries.

11. The 3rd document is the loan receipt executed on 6 anna stamp paper. The said stamp paper was purchased by Fulchand Kashinath Heblekar on 20th October 1954 under his own signature. This receipt was executed on 21st October 1954 and at the bottom, it is signed by said Fulchand. Though this receipt is shown to have been executed in favour the Petitioner's father, there is no signature of Petitioner's father on this receipt. The signature of Fulchand on the date of purchase and on the date of execution of this paper, i.e., signatures at the top and bottom of the document are substantially different. This can be easily

discerned, without any external assistance. We therefore agree with the conclusion of the caste scrutiny committee that this document is also bogus and fabricated one.

12. 1½ Anna stamp paper for execution of loan receipt dated 28th June 1955 has been purchased by Basappa Satilingappa Aadake under his own signature. The said loan receipt is stated to have been executed by said Basappa S. Aadake in favour of the Petitioner's father. On this document too, there is no signature of the Petitioner's father. Executant Basappa had signed this document at the time of purchase by putting his signature at the top and he had also signed the said document as executant, at the bottom of the document. On examination, we find that these signatures of Basappa, at the top and bottom of the said document, are substantially different from each other. We are, therefore, of the opinion that this document is also bogus and fabricated one and we agree with the conclusion of the caste scrutiny committee about this document.

13. The last document is *Khoti* receipt. The same is on

plain paper. It is not registered one and therefore we do not find any ground to interfere with the conclusion of the caste scrutiny committee about this document.

14. We do not find merit in the submission of Mr. Jahagirdar that caste scrutiny committee ought to have called for the original record from the Tahsildar's office and verified the same and sent it for verification to the hand-writing expert, inasmuch as we have personally perused the record and arrived at conclusion that the disputed entries are bogus. The record reveals that the Petitioner and his forefather are residents of village Nanhegaon, which fact is fortified by the documentary evidence and therefore there was no reason to make entries of birth of the Petitioner's father and uncle in the Birth and Death Register of village Badhole.

15. The caste scrutiny committee in addition to above, also considered several documents relied upon by Respondent No. 5. A brief reference to those documents at this stage would be necessary. In two school leaving certificates produced by

Respondent No. 5, the caste of the Petitioner is shown as Hindu. The caste of the Petitioner's brothers namely, Sunilkumar and Rajshekhar in their school leaving certificates is shown as Virshaiv Lingayat. The caste of the anut of the Petitioner, namely, Mangla Patil and Limbabai Patil is shown as Hindu Lingayat in their respective school leaving certificates. The caste of both the sons of the Petitioner, namely, Amit and Sumit in their school leaving certificate is also shown as Hindu Lingayat. The caste of cousin brother of the Petitioner, namely, Dajiba is shown as Hindu Lingayat. The caste of the Petitioner's father in his death certificate is shown as Virshiav Lingayat. Thus, except two documents which are relied upon by the Petitioner, in all other documents the caste of the Petitioner and his near relatives is shown either to be Hindu or Lingayat. The committee, in our opinion, considered the claim of the Petitioner from correct perspective and came to the correct conclusion. Having rescrutinised the said documents, we find that first two documents relied upon by the Petitioner are bogus and fabricated.

16. Mr. Jahagirdar, the learned Senior Counsel for the Petitioner also submitted that the Commissioner of Solapur Municipal Corporation has no role or authority to pass order regarding disqualification of the councillor and therefore, order passed by him on 2nd December 2014 is without jurisdiction. In this regard, Mr. Jahagirdar relied upon various decisions, namely, *Noor Jahan M. Aslam Ansari v. State of Maharashtra* [2004 (2) BomC.R.468], *Madhukar Patil v. State of Maharashtra* [2004(6) Bom.C.R. 659], *Sajeda Nihal Ahmed v. Malegaon Municipal Corporation* [2005(1) BomC.R.142], and *Surjitsing Girniwale v. Commissioner, Nanded Waghala Municipal Corporation* [2007(2) Bom.C.R. 617].

17. We do not find merit in this submission in the light of decision of the Apex Court in *Kalpna Dilip Bahirat v. Pune Municipal Corporation* [2014 (15) SCC 654]. In this case, the Appellant contested election to the Pune Municipal Corporation from a seat reserved for Other Backward Class and filed as proof of her caste, a caste certificate and caste validity certificate. The Commissioner of Pune Municipal Corporation on receiving

information that the caste certificate on the basis of which the Appellant contested the election was never actually issued by the concerned caste scrutiny committee, passed an order holding that the Appellant had not submitted genuine caste certificate and hence her election was held to be ab-initio null and void and declared that the seat of Pune Municipal Corporation had become vacant retrospectively. The Appellant challenged this order before the Bombay High Court by filing a writ petition, mainly on the ground that commissioner has no jurisdiction. The High Court refused to entertain the challenge. The appellant approached the Apex Court by way of special leave petition. The Apex Court considered the provisions of sub-section (4) of section 10 of the Maharashtra Schedule Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 [for short "**the 2000 Act**"] and held that election of a person who has contested on a seat reserved for the any caste / tribe / category on false caste certificate as belonging to such caste, tribe or class shall be deemed to have been terminated retrospectively. The deeming provision in sub-section

(4) of section 10 of the 2000 Act is a statutory fiction which has to be given effect to and the Commissioner of Municipal Corporation has given effect to the deeming provision and has thus acted in accordance with law. In the light of these observations of the Apex Court we do not find merit in Mr. Jahagirdar's contention that municipal commissioner has no jurisdiction.

18. Mr. Jahagirdar, learned senior counsel then submitted that for holding that a person has obtained caste certificate on the basis of false or fraudulent claim, there has to be finding recorded by the Committee on the basis of evidence to substantiate such finding. He also submitted that mere invalidation of caste claim by caste scrutiny committee will not result in automatic disqualification and retrospective termination of election of a candidate.

19. As far as first submission is concerned, the same is without any substance inasmuch as the caste scrutiny committee in the impugned order has recorded the finding that the

documents on the basis of which the petitioner has obtained the caste certificate or the documents which were relied upon by the petitioner to substantiate his caste that he belongs to Teli (OBC) caste are bogus and fabricated. After scrutiny of these documents afresh, we have upheld the finding of the caste scrutiny committee.

. So far as the second submission of Mr. Jahagirdar is concerned, viz. the invalidation of the caste claim will not result in automatic disqualification and retrospective termination of election of a candidate, we find no merit in the same. Mr. Jahagirdar in order to support his submission relied upon the decision of the Division Bench in *Mohan P. Goswami V. Committee of Scrutiny of Caste* [2003(5) Mh.L.J. 707]. He submitted that this decision is followed by another Division Bench of this Court in *[Surendra Gandam V. State of Maharashtra* [2006(1) Mh.L.J. 308]. He also submitted that though two Full Benches in *Sujit Vasant Patil v. State of Maharashtra* [2004(3) Mh.L.J.1109] and *Ramesh Suresh Kamble v. State of Maharashtra* [2006(6) Bom.C.R.820] overruled the decision of this Court in *Mohan's case* and *Surendra Gandam's case (supra)*, another Full

Bench in *Arun Vishwanath Sonone v. State of Maharashtra and others* [2015(1), Mh.L.J.457] held that the Full Benches' decisions in *Sujit's case* and *Ramesh's case* (*supra*) stand impliedly overruled. Thus, Mr. Jahagirdar in order to substantiate his submission heavily relied upon the latest decision of the Full Bench in *Arun's case* (*supra*). In this case, the Full Bench was called upon to decide the question whether relief of protection of service after invalidation of the caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in the case of *Kavita Solunke v. State of Maharashtra* [2012 (5) Mh.L.J. (S.C.) 921]. The Full Bench considered several judgments and came to the following conclusions which are recorded in paragraph 75 :

- (i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from the employment or cancellation of appointments that have become final prior to the decision in *Milind's case* on 28-11-2000,
- (ii) upon invalidation of the caste claim by the Scrutiny Committee, the benefits obtained or appointments secured from 28-11-2000 upto 18-10-2001 can be withdrawn or cancelled, depending upon the terms of the employment, if any, in writing,
- (iii) the benefits obtained or appointments secured after coming into force of the said Act on 18-10-2001 can be withdrawn or cancelled immediately upon invalidation of the caste claim by the Scrutiny Committee,

- (iv) *the benefit of protection in service upon invalidation of the caste claim is available not only to the persons belonging to "Koshti" and "Halba Koshti", but it is also available to the persons belonging to Special Backward Class category on the same terms as is available to "Koshti" and "Halba Koshti", and*
- (v) *the claim of the persons belonging to Nomadic Tribes, Vimukta Jatis and Other Backward Class category shall be decided on the lines of the decision of the Apex Court in the case of R. Unnikrishnan and another v. V. K. Mahanudevan and others, reported in 2014(4) Mh.L.J. (S.C.)1= 2014(4) SCC 434."*

Perusal of the above conclusions unequivocally makes it clear that the Full Bench judgment in *Arun's case (supra)* will not come to the petitioner's rescue in the light of conclusion (iii) of the above conclusions. Under clause (iii), the benefits obtained after coming into force of the Act of 2000 on 18th October, 2001, can be withdrawn or cancelled immediately upon invalidation of the caste claim by the scrutiny committee. In the present case, the petitioner obtained the caste certificate that he belongs to "Teli" caste in the year 2010. This caste certificate is invalidated by the impugned order passed on 29th November, 2014. Thus, the caste certificate was obtained and the same was invalidated subsequent to the coming into force of the Act of 2000. The submission, therefore, cannot be accepted.

20. Mr. Jahagirdar also challenged the Circular/Order dated 17th July, 2013, issued by the State Election Commission of Maharashtra. By this Circular, the Municipal Commissioner is authorized to pass a formal order declaring any Councilor as disqualified on account of his caste claim being invalidated by the caste scrutiny committee irrespective of pendency of election petition in any competent Court. We are not inclined to entertain the petitioner's challenge to the said Circular in the light of the decision of the Apex Court in *Kalpana's case (supra)*. In terms of this judgment, the Commissioner of Municipal Corporation can give effect to the order passed by the caste scrutiny committee irrespective of the said circular issued by the State Election Commission. That apart, we are also not inclined to entertain the challenge to this Circular at the instance of the petitioner who could not have contested the election of Solapur Municipal Corporation on the basis of caste certificate which was obtained by relying upon bogus and fabricated documents. It is settled law that wide powers conferred upon the High Court under Article 226 of the Constitution of India, cannot be invoked as a matter of

right. The conduct of the petitioner in the present case is such that he cannot be permitted to invoke the discretionary jurisdiction under Article 226 of the Constitution of India so as to challenge the said Circular. Taking the totality of the facts and circumstances of the case, we find no merit in the petition. The petition is, accordingly, dismissed.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]

. Mr. Kanetkar, learned Counsel appearing for the Petitioner at this stage prays for continuation of the interim protection. Prayer is opposed by Mr. Kulkarni, the learned Counsel appearing for the Respondent No.5. Since the caste certificate was obtained by the Petitioner on bogus and fabricated documents, we are not inclined to continue the stay. Request for continuation of interim relief is, therefore, rejected.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]