HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3989 OF 2005

1. Sagiruddin Israiluddin Mistry
   Age about 65 years, Occ: Blacksmith, R/o. Nav Bharat Co-op. Hsg. Soc., Wireless Road, Juhu Lane, Andheri (W) Mumbai 400 058
2. Mrs. Shaheen Ara Salim Baig
   Age about 34 years, Occ: Corporator, R/o. Baig Manzil Gulmohar Road No.7, Opp: Wazida House, Andheri (W), Mumbai 400 058

..Petitioners

versus

1. The State of Maharashtra through its Secretary, Social Justice & Cultural Department, Mantralaya, Mumbai 400 032
2. Divisional Caste Certificate Scrutiny Committee, through its Member Secretary Pune Division, Pune, having its office at Sugandha Chambers, Pangul Lane, Ganesh Peth, Pune
3. Divisional Caste Certificate Scrutiny Committee, Konkan Division, Mumbai, having its office at Konkan Bhavan, 5th floor, C.B.D. Belapur Navi Mumbai
4. Municipal Corporation of Greater Mumbai, through its Commissioner, having its office at Mahapalika Marg, Mumbai 400 001
5. Bharati Balkrishna Dhongade
   Age adult, R/o. Old Ashok Kunj

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V. S. Khandekar Marg,]
Vile Parle(E), Mumbai 400057]
6. Tahasildar & Executive]
Magistrate, North Solapur]
District : Solapur]
7. The Deputy Collector,]
Mumbai Suburban District,]
Bandra (E), Mumbai]..Respondents

Mr. Y. S. Jahagirdar, Sr. Counsel with Mr. R. K. Mendadkar for the Petitioners.

Mr. R. V. Govilkar for the Respondent No.5.

Mr. A. J. Bhor with Ms. N. Dabhade for the Respondent No.4.

CORAM : D. G. DESHPANDE, &
Smt. R. S. DALVI, JJ.

DATE : 15TH DECEMBER, 2006

ORAL JUDGMENT : (Per : D. G. Deshpande, J) :

1. Heard Mr. Mendadkar for the Petitioners. Mr. R. V. Govilkar for the Respondent No.5 - who is main contesting respondent.

2. By this petition, the petitioners have challenged the impugned order dated 10th June 2005 passed by the Respondent No.2 i.e. Divisional Caste Certificate Scrutiny Committee, Pune, Exhibit 'A' to the petition. They have also further prayed to

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prohibit Respondent Nos. 3 and 4 in relying upon the impugned order dated 10th June, 2005 and further claim declaration that the caste certificate dated 20th November, 1991 issued to the Petitioner No.1 by the respondent No. 6 Tahsildar & Executive Magistrate, North Solapur, District Solapur, be declared valid, legal and subsisting.

3. This petition which is filed on 5.6.2005 came for hearing earlier before the Division Bench on 21.6.2005, on that day ad interim stay was granted and it was adjourned to 23.6.2005. Then on 23.6.2005 Rule was issued and hearing was expedited and interim stay in terms of prayers (e) and (f) was granted. Then before the another Division Bench on 16.6.2006 grievance was made that even though the petition is expedited it has not been heard so far, and, therefore, application was taken out by the respondent No.5 for fixing the date of hearing. Division Bench directed that the matter should be placed high on board on 20.11.2006. Matter did not appear on that day, and, therefore, again on 4.12.2006 the respondent No.5 moved this court for fixing the date of hearing because the municipal elections were to be held in the near future.

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Accordingly, we fixed the date of hearing on 7.12.2006 (as the next municipal elections are now declared to be held in the near future i.e. February, 2007). The matter was heard on that day and it was posted on 12.12.2006 for judgment at 3 p.m. Our judgment was ready to be delivered on 12.12.2006 at 3.00 p.m. However, an attempt was made to see that we do not deliver the judgment and the matter is posted for hearing after vacation and if this attempt was successful then the petitioner No.2 would have continued as Corporator of the BMC till the next elections. We have taken note of that development and passed separate order today i.e. on 15.12.2006, before pronouncing this Judgment.

4. There are two petitioners in this petition. Petitioner No.2 is the daughter of petitioner No.1. Petitioner No. 2 is declared as an elected member / Corporater from the Constituency reserved for Ward No. 108 of BMC. It was the Ward reserved for OBC ladies for the general election of BMC. Petitioner No.2 filed a nomination under the reserved category of OBC ladies. Two other ladies Smt. Smt. Geeta Laxman Gore, not a party to this petition and Respondent No.5 - Bharati Dhongade filed nomination

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from the said Ward under the reserved category of OBC. During the election Smt. Geeta Laxman Gore was elected from that Ward. Petitioner No.2 has the second highest vote and respondent No.5 had the third highest vote. Petitioner No.2 filed Election Petition before the Small Causes Court, Mumbai, challenging the election of Smt. Geeta Gore. In the meantime the respondent No.2 had invalidated the caste certificate issued to Smt. Geeta Gore. She therefore approached this Court but this Court declined to interfere with the order passed by the Respondent No.3 against the said Smt. Geeta Gore. Then, petitioner No.2 took out application for declaration that she be declared as an elected candidate from Ward No. 108 under the provisions of the Mumbai Municipal Corporation Act.

5. In the meantime, on 28.10.2002 respondent No. 5 made complaint to respondent No.2 about the caste certificate dated 28.12.2001 issued to Petitioner No.2 on the basis of the caste certificate issued to the petitioner No.1 on 20.11.1991. Therefore, respondent No. 2 issued letters to the petitioners to submit applications and documents for verification of caste certificate.

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Petitioners accordingly submitted number of documents to the respondent No.2. Enquiry was made by the respondent No.2.

6. On 8.3.2004 Respondent No.2 passed an order invalidating the caste certificate of the petitioner No.1. Petitioners thereafter filed Writ Petition No. 3505 of 2004 before this Court and the Division Bench remanded the matter back to the respondent No.2. The petitioners appeared before the Committee again submitted documents, made submissions. Vigilance cell submitted his written enquiry report dated 14.7.2003. The respondent No.2 then passed an order on 6.12.2004 against the petitioners, which was received by the petitioners by post on 9.12.2004.

7. Thereafter, the petitioners again challenged the said order dated 6.12.2004 by filing Writ Petition No. 9984 of 2004 and the Division Bench on 3.3.2005 remanded the matter with the following observations:

"3. It may be pertinent to mention that the

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vigilance report was earlier submitted by one Mr. Mahesh M. Joshi. In that report, he has not examined the Tahsildar, North Solapur, P. T. Bhandari.

"4. In our considered opinion, it would be appropriate to examine both the Tahsildars referred to in the original report, reconsider the entire case and submit the report to this court as expeditiously as possible, and in any event, within two months from the date of receipt of this order. The concerned parties are directed to appear before the Committee on 14th March, 2005 at 11 a.m."

8. Thereafter, the petitioners appeared before the Committee. The Tahsildar was examined and cross-examined and then the committee passed its order on 10.6.2005. It is this order dated 10.6.2005 which has been challenged in this petition and prayers of the petitioners are in respect of that order only. The said order dated 10.6.2005 is at Exhibit 'A' of the petition.

9. Counsel for the petitioners contended that the petitioners had submitted number of documents in support of their contentions that they belong to Lohar Caste Community coming under the category of OBC but they were not considered by the committee in the impugned order. The documents so relied upon by

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the petitioners are :

1. School leaving Certificate dated 4.1.2003.

2. Caste Certificate dated 20.11.1991 issued by the Tahsildar, North Solapur.

3. Certificate of Talathi dated 18.12.2001.

4. Certificate dated 16.11.2001 issued by All India Muslim Organisation.

5. Certificate dated 15.11.2001 issued by the Solapur City and District Lohar Ghisadi Multipurpose Social Service, Solapur.

6. Application dated 21.6.1974 made by the Petitioner No.1 to the Ward Officer, K-West Ward of BMC to grant permission to carry on occupation of Lohar.

7. Permission dated 3.10.1974 granted by the Ward Officer, 'K' West Ward of BMC.

8. Letter of the Ward Officer, BMC dated 29.7.1971.

9. Order dated 16.12.1972 addressed to the brother of the petitioner No.1 by the Ward Officer, K Ward, BMC.

10. Notice dated 25.5.1986 issued by the Tahsildar dated 25.5.1986.

11. Marriage certificate of the petitioner No.2.

12. Certificate dated 29.4.2003 issued by the Secretary of Co-operative Housing Society Ltd.

13. Affidavit dated 13.5.2003 along with genealogy tree of the family of the petitioners.

14. Affidavit dated 4.8.2003 of Pandurang Tatyaba Bhandari confirming the issuance of

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certificate dated 20.11.1991.

15. Photographs, and

16. Agreement dated 25.9.1958 about the place of business where the black smith business is carried on.

10. Counsel for the petitioners also contended that when the Tahsildar North, Solapur, filed an application to the effect that he has issued certificate of caste dated 20.11.1991 to the petitioners, then it should have been accepted by the committee as a final proof as a caste of the petitioners. Counsel for the petitioners also contended that in the impugned order the respondent No.2 has not taken into consideration documents, circulars and various Government Resolutions.

11. On the other hand, counsel for the Respondent No.5 contended that out of the documents relied upon by the petitioners in support of their caste claim and the documents referred to above, most of them were of recent origin and could not be taken as a proof of the caste of the petitioners. Only document that was of some importance was the caste certificate dated 20.11.1991 issued by Tahsildar, North, Solapur but since the Committee

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after order of remand by this Court in the second writ petition examined the Tahsildar and also scrutinised the other evidence produced and had come to the conclusions which are all against the petitioners. There is absolutely no necessity to intervene with the impugned order. He also contended that none of the Government Resolutions help the petitioners in the sense that they do not dispense with the proof, that is, required very proof for proving the claim.

12. Since the caste certificate issued by the Tahsildar, North, Solapur on 20.11.1991 (page 77 of the petition) is important, it is reproduced as under, by us.

> **"This is to certify that Smt. Mistri Sagiruddin Israiluddin Residence of Solapur belong to Lohar (O.B.C.92) Caste / Tribe Community which is recognized as Other Backward community under the Scheduled Caste and Scheduled Tribes Amendment Act, 1976.**
>
> **Government of Maharashtra's Resolution No. Education and Welfare Departmnet, O.B.C. 1467 dated 13.10.1967.**
>
> **Smt. Mistri S.S. her family resides in the Town Solapur Tahasil North Solapur in the State of Maharashtra**
>
> **NO. MAG-CASTE-SR.367.**
>
> **Solapur 20.11.1991**

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sd/-
Tahsildar & Executive
Magistrate, North Solapur"

13. Documents which were relied upon by the Tahsildar while issuing this caste certificate are referred in the certificate,itself, they are:

1. School Leaving Certificate of Applicant.

2. Extract issued by the Head Master of S.M.C. School No. 10, Solapur.

3. Affidavit Declaration executed by the Applicant on 14.11.1991 before Executive Magistrate, North Solapur.

4. Community Certificate of the Applicants issued by President Lohar Samaj, Solapur.

14. It is necessary to see and find out at this juncture what the respondent No.2 committee found in their enquiry in respect of this caste certificate of 20.11.1991. It is necessary to note here that this enquiry is pursuant to the directions, given by this court in second writ petition, dt. 3.3.2005. In the impugned order the Committee has written that Ex Tahsildar P.T. Bhandari who has issued certificate and who has given certificate in support of the petitioners and the then Tahsildar R.G. Mane were examined and cross-examined before the

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committee through their respective advocates on 2.5.2005 and 10.5.2005. The impugned order further notes that at that time committee before it had only a zerox copy of the caste certificate. At that time the petitioners could not produce the original caste certificate issued to them by the Tahsildar. The committee noted that even though the Tahsildar in his evidence had admitted that the signature on the zerox copy of the caste certificate is his, there were reasons to suspect that other things in the certificate were changed by manipulation.

15. When any such certificate is issued by the officer like Tahsildar, there has to be an entry in the outward register along with the date to verify whether this certificate of the Tahsildar dated 20.11.1991 was really issued on any particular date. The committee made a thorough probe. They found that outward number given to the certificate is 367 and the date is 20.11.1991. However, in outward register of the Tahsildar, the committee did not find any outward No. 367 with reference to certificate dated 20.11.1991. It was noted that this register was written datewise and no certificate was issued at all on 20.11.1991. They

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also found from the examination of the register that certificates bearing No. 1300 to 1303 have been issued on 15.11.1991, those documents having outward entry No. 1304 onwards were issued on 22.11.1991. Therefore, they concluded that the caste certificate bearing outward No. 367 of the petitioners dated 20.11.1991 was not issued on that day and this outward number is totally wrong.

16. The Committee further found that the document having outward No. 367 appeared to have been issued on 7.6.1991 to 10.6.1991. They also found from the outward register a page showing outward entries from 366 to 384 was found torn out and outward No. 367 was given to a document issued to one Upadhya S. R. but it was found that no such person by name Upadhya had obtained any caste certificate. The committee also found that the Ex Tahsildar could not give any satisfactory explanation about discrepancy in the outward register and the outward number given to the certificate of the petitioners.

17. Apart from this the committee concluded that the petitioners had failed to produce any

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documentary evidence that any of their relatives at Solapur were of Lohar caste. Committee also took note of G.R. dated 19.11.1995 but came to the conclusion that merely because the petitioners have started fabrication business in Bombay, it cannot be said that all their ancestors were Lohar by caste. Committee referred to its orders dated 8.3.2004 and 6.12.2004 wherein they have come to the conclusion that the lease agreement regarding stay at Solapur produced by the petitioners was also a bogus document. Therefore, committee rejected the claim of the petitioners that they are residents of Solapur.

18. In this background the committee affirmed its earlier order and rejected the claim of the petitioners.

19. G.R. dated 4.10.2001, is annexed at Exhibit 'K' to the petition, which says that certificate issued by the Organisation under the presidence of National Presidence Shabbir Mohammed, Ansari, All India Muslim Organisation and the certificate issued by OBC Registered Samaj or community in muslim community shall be considered as one of the evidence

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among other evidence.

20. There is one more G.R. dated 19.10.1995 annexed at Exhibit A-4 to the petition. In this G.R. certain instructions are given about issuing caste certificate to the muslims. In the Annexure to this GR (page 379 of the petition, which is one page document) there is a list of certain caste amongst muslims. Therein following castes are mentioned in that :

(i) Bagwan
(ii) Julaha i.e. Momin (Weaver)
(iii) Ansari
(iv) Pinjara, Pinjari, Mansoori, Nadaf
(v) Fakir Bandarwale
(vi) Tamboli; and
(vii) Uttar

In this GR of 19.10.1995 there is a specific reference to this Annexure. Admittedly, the caste Lohar is not included in this. It will be clear that even if the G.Rs. are considered, they do not fortify the contention of the petitioners.

21. Counsel for the petitioners repeatedly tried

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to urge that this matter has history of three petitions, but that does not make any difference. When by last order of this court dated 3.3.2005 the matter was remanded to the committee with a specific direction to examine both the Tahsildars and reconsider the entire case, then that has been rightly, correctly and properly done by the committee and the committee has come to the conclusion, about which the Petitioners have no explanation.

22. From the findings of the committee as recorded above, it is clear that the contention of the petitioners regarding caste certificate dated 20.11.1991 is totally false and bogus. He managed to get that certificate from whatever resources available. Outward register does not support his contention; even Ex. Tahsildar who has given that certificate and who has filed his affidavit could not satisfy the committee regarding the anomaly recommended by the committee, and, therefore impugned order cannot be faulted with.

23. Counsel for the petitioners also contended that G.Rs. of the Government dated 29.1.1983 and

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circular dated 22.7.1996 of the Government have not been considered by the Committee. Circular of 1996 is reproduced in the petition at page 35. It is mentioned there :

> **".. In so far as Muslim castes are concerned, despite detailed scrutiny, particular caste is not found recorded in Muslim community. Many times word like Muslim or Musalman is found. Therefore, while verification of caste certificate of Muslim community, this factor should be borne in mind. However, it is necessary to confirm that said person is of that caste by conducting Home inquiry and other facts."**

It will be clear from this GR that it does not dispense with the proof at all. In fact none of the G.Rs. relied upon by the petitioners dispense with the proof to be tendered before the committee in support of assertion of a person belonging to a particular caste, tribe or community. The most important observation in the impugned order dated 10.6.2005 is that the petitioners could not produce any documentary evidence to show that any of his relatives at Solapur were Lohar.

24. It is pertinent to note that the petitioners are claiming to be Lohar mainly because they are doing fabrication business at Bombay but in the impugned order, Committee rightly disagreed with

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this submission that merely because the petitioner is doing fabrication business in Bombay, it cannot be concluded that they are Lohar by caste.

25. Next contention of the petitioners was that in the impugned order committee did not consider the vigilance cell report. This is called enquiry report, annexed at Exhibit 'G' to the petition, and there is one more vigilance report or enquiry report at Exhibit A-1 to the petition. It is dated 21st /24th March, 2005. This enquiry report has considered the statement of Tahsildar R. G. Mane, the present Tahsildar and the statement of a person or the then Tahsildar P. T. Bhandare, findings regarding the outward register and ultimately conclusions. It is clear from this Exhibit A-1 that it has been fully and totally considered by the committee in the impugned order.

26. So far as Exhibit 'G' - Report of Vigilance Cell is considered, each and every document tendered and submitted by the petitioners was verified. Names and occupation of all the relatives of the petitioners were taken into consideration. The genealogical tree of the family history was also

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considered. They also enquired into the authenticity of the caste certificate dated 20.11.1991 and the enquiry is done minutely and in detail as is done by the CID. All these aspects have been considered in the impugned order.

27. It will be therefore clear that the impugned order has been passed by the Respondent No.2 in pursuance of the specific directions given by this court. Out of all the documents tendered by the petitioners and referred in the petition at different places, most of the documents are of recent origin and are of no use in determining the caste of the ancestors of the petitioners. The basic document is caste certificate of 20.11.1991 of the petitioner No.1 has got to be rejected and has been rightly done by the committee in the impugned order. Petitioners could not successfully assail the findings in the Vigilance Cell Report, particularly, in respect of the manipulation done in the caste certificate dated 20.11.1991. G.Rs. relied upon by the petitioners do not dispense with the proof, and, therefore, ultimately the petition is required to be dismissed as there is no merit in it. Even the affidavit of Ex. Tahsildar given in

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support of the petitioners should have been labelled as a false affidavit because of the specific finding of the committee in the impugned order.

28. Counsel for the respondent No.5 contended that if the petition is to be dismissed, then under Section 33(2) of the Mumbai Municipal Corporation Act, 1888, the respondent No.5 will have to be declared as an elected. The petitioner No.2 has contested elections from Ward No. 108 from the category of OBC ladies, came to be declared elected in place of Geeta Gore under the same provisions of the Mumbai Municipal Corporation Act, as has been reiterated by the petitioners in paragraph 6 of the petition and therefore consequence must follow. Section 33(2) of The Mumbai Municipal Corporation is as under:

> **"If the said Chief Judge, after making such inquiry as he deems necessary, finds that the election was valid election and that the person whose election is objected to is not disqualified he shall confirm the declared result of the election. [If he finds that the person whose election is objected to is disqualified for being a councillor be shall declare such person's election null and void. If he finds that the election is not a valid election he shall set it aside. In either case he shall direct that the candidate, if any, in whose favour the next highest number of valid votes is recorded**

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after the said person ..., and against whose election no cause of objection is found, shall be deemed to have been elected]".

It will be clear that if the court finds that the petitioner No.2 was disqualified, the said election has to be declared null and void. If the court finds that the election is not a valid election he shall set it aside.

29. Considering therefore all the circumstances and submissions, we have no hesitation to hold that the claim of the petitioners that they belong to Lohar caste is false and bogus and it is based on manipulation of Government record obviously done at the instance of the petitioners. Therefore, order :

ORDER

. Petition is dismissed with costs of Rs.5,000/-

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. Petitioner No.2 is disqualified for being elected as a Corporator, and therefore, her election is null and void. Respondent No.5 has contested election from the said Ward No. 108 from the category of OBC ladies and as has secured next highest number of valid votes, therefore respondent No.5 is declared elected as Corporator from the said Ward No.108.

(D.G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)

After this order was pronounced, counsel for the Petitioners prayed for continuation of the stay. Prayer was opposed by the counsel for the Respondent No.5 on the ground that the elections are going to be held in February, 2007. Even otherwise this is not a case for granting any stay or for continuing the stay already granted, because we have upheld the findings of the Scrutiny Committee and found that there is manipulation in the Government record.

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Therefore prayer rejected.

(D. G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)

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