

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.853 OF 2012

Shri Mangesh Nivrutti Kashid ..Petitioner

versus

District Collector, Satara &amp; ors .. Respondents

with WRIT PETITION NO.869 OF 2012

Abdul Rashid Shola Gujar Khan .. Petitioner

versus

The State of Maharashtra &amp; ors .. Respondents

with WRIT PETITION NO.870 OF 2012

Rahebar Biraj Khan .. Petitioner

versus

The State of Maharashtra &amp; ors .. Respondents

with WRIT PETITION NO.871 OF 2012

Mahemood Adam Dalvi .. Petitioner

versus

The State of Maharashtra &amp; ors .. Respondents

with WRIT PETITION NO.873 OF 2012

Narayan Sitaram Lohar .. Petitioner

versus

District Collector, Satara .. Respondents

with WRIT PETITION NO.874 OF 2012

Chandsab Faridsar Lalkot .. Petitioner

versus

State of Maharashtra & ors .. Respondents

with WRIT PETITION (L) No.160 of 2012

Mohd.Waris Immanullah .. Petitioner

versus

State of Maharashtra & ors .. Respondents

with WRIT PETITION NO.210 OF 2012

Ruksana Saeed Ansari .. Petitioner

versus

Brihanmumbai Municipal Corpn .. Respondents

O.S.W.P.(L) NO.224/2012 and 229/2012  
Not on board.

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Mr.A.V.Anturkar a/w Mr.S.B.Deshmukh for Petitioner in  
W.P.No.853/2012, 873/2012

Mr.M.S.Karnik for Petitioner in W.P.NO.869/2012 and  
871/2012

Mr.A.Y.Sakhare,Sr.Counsel a/w Mr./Rampal Kohli for  
Petitioner in W.P.No.870/2012

Mr.Shrishail Sakhare for Petitioner in W.P.NO.874/2012

Mr.A.M.,Saraogi for Petitioner in W.P.(L)NO.  
160/2012,224/2012 and 229/2012

Mr.A.C.Singh a/w Ms.Yashshree Suttrals for Petitioner in  
W.P.(L)No.210/2012

Mr.C.R.Sonawane A.G.P. for State in W.P.NO.  
853/2012,873/2012,874/2012

Mr.S.R.Nargolkar Addl.G.P. for State in W.P.NO.  
869/2012,870/2012,871/2012

Ms.Nivedita Pawar for Corporation in W.P.NO.

869/2012,870/2012,871/2012

Ms./Sheela Tambe for Respt no.2 in 224,229/12,160/12 and Respt nos.1 aznd 2 in 210/12

Ms.Uma Palsule Desai A.G.P. For Respt nos. 1 aznd 4 in W.P. (L) NO.224,229/12

Mr.S.B.Shetye for State Election Commission in all matters

Mr.R.J.Mane A.G.P. for Respt nos.1 and 4 in W.P.(L) NO. 160/12

Mr.Niranjan Pandit A.G.P. for Respt no.4,5 and 6 in W.P.(L) NO.210/12

Mr.N.R.Bubna for Respt no.5 in W.P.NO.871 and 869/12

Mr.R.K.Mendadkar for Intervenor in C.A.NO.271/12

**CORAM : A.M.KHANWILKAR &  
N.M.JAMDAR, JJ.**

**DATED: 31st January, 2012**

**P.C.**

1. Heard counsel for the parties. Three sets of petitions are before us. The first set of petitions are filed by petitioners who intend to participate in the ensuing elections of the local government. The grievance in those petitions is that the concerned petitioner has filed application for issuance of caste validity certificate on the basis of which he intends to participate in the forthcoming election against the reserved seat. However, the Scrutiny committee has not issued any order on the said application; and in absence of caste validity certificate the petitioner would not be able to contest the forthcoming election against the reserved seat in as much as the requirement of the extant election law is that nomination form of the candidate contesting on the reserved seat

should be accompanied by the caste certificate issued by the competent authority and validity certificate issued by the scrutiny committee in accordance with the provisions of the Maharashtra Scheduled Caste, Scheduled tribes Denotified (Vimukta Jati) tribes and other backward classes and special backward category (Regulation of issuance and complaint) Caste Certificate Act, 2000 (hereinafter referred to as the Act of 2000 for the sake of brevity). In these petitions, it is prayed that the Caste Scrutiny Committee be directed to issue validity certificate forthwith so as to facilitate the concerned petitioner to file his nomination before the last date of filing nomination in relation to the reserved seat for the forthcoming elections. It is then prayed that until further orders to be passed by this court, the Returning Officer be directed to accept the nomination form to be presented by the concerned petitioner even though it is not accompanied by the validity certificate issued by the scrutiny committee under the Act of 2000 and process the said nomination as proper in anticipation of and until the issuance of caste validity certificate in favour of the candidate by the Scrutiny Committee.

2. The second set of petitions are filed by petitioners whose application(s) have already been rejected by the caste Scrutiny Committee for issuance of caste validity

certificate in their favour. In the first place they have challenged decision of the Caste Scrutiny Committee and further prayed that the Returning Officer be directed to entertain the nomination form in absence of validity certificate issued by the scrutiny committee under the Act of 2000 so that they can participate in the forthcoming elections.

3. The third set of petitions are filed by petitioners who have challenged the caste validity certificate issued by the Scrutiny Committee in favour of private respondents on the assertion that the same is obtained by fraud and relying on documents which would not substantiate the caste claim of the said private respondents. In these petitions, the order passed by the Caste Scrutiny Committee constituted under the Act of 2000 is challenged and further relief is prayed against the Election Commission to reject the nomination papers submitted by the said respondents on the ground that the accompanying caste validity certificate is fraudulent and nullity.

5. In the first two set of cases, since the principal question is whether the said petitioners can be permitted to contest the forthcoming elections without a validity certificate issued in his/her favour by the Scrutiny Committee constituted under the Act of 2000, we have no

hesitation in observing that the law on the subject is been settled. Provisions such as section 5B of the Mumbai Provincial Municipal Corporation Act and similar provisions in the Maharashtra Zilla Parishad and Panchayat Samitis Act 1961 mandates that nomination form should be accompanied by caste certificate issued by the competent authority and validity certificate issued by the scrutiny committee in accordance with provisions of the Act of 2000. In absence of such validity certificate, the nomination of the candidate against reserved seat cannot be accepted as valid nomination. The same has to be rejected.

6. Thus understood, question of permitting the petitioners before us in whose favour no validity caste certificate has been issued by the scrutiny committee, to participate in the forthcoming election does not arise. Similarly, in cases where the scrutiny committee has already rejected applications for issuance of such caste validity certificate would meet the same fate and those petitioners cannot be permitted to participate in the forthcoming elections against the reserved seat. The learned counsel for the Election Commission has rightly relied on the observation of this Court in the case of BIPINCHANDRA SHAHURAO THOMBRE & ORS VS. STATE OF MAHARASHTRA & ORS 2010 (2) BOM.C.R.656.

7. In this view of the matter, grant of any interim relief to such petitioners does not arise. We therefore, reject prayer for interim relief, as prayed by respective petitioners covered under the first two set of cases.

8. As regards the third set of cases filed by complainants, regarding issuance of fraudulent validity certificate in favour of private respondents, so long as said certificate has been issued validly by the Caste Scrutiny Committee in accordance with the provisions of the Act of 2000, it is not possible for us to accept their prayer for issuance of directions against the Election Commission to reject the nomination of those candidates. We, however, make it clear that whether the validity certificate produced by the candidate is legitimate and can be ground for rejection of nomination is the prerogative of the Returning Officer. He will have to process the nomination form of the concerned candidate and make due scrutiny thereof.

9. In the circumstances, even in these set of cases, we find no reason to pass any interim relief as prayed.

10. One interesting feature has been noticed in all these petitions and some of the petitions which were listed before us yesterday. It has been noticed that application

for issuance of validity certificate was filed by the candidate and on the same day validity certificate came to be issued by the concerned Scrutiny Committee without obtaining vigilance report regarding the caste claim. In this context, we called upon the learned A.G.P. appearing in the concerned matters to explain as to how validity certificate can be issued within one day that too, without undergoing the formalities such as inviting vigilance report in respect of caste claim of the concerned applicants. The Apex Court in the case of Madhuri Patil AIR 1995 S.C.94, has made it abundantly clear that the State must not only adhere to the constitution of the Scrutiny Committee but, the Committee duly constituted is obliged to follow the procedure spelt out in the said judgment for verification before issuance of caste validity certificate. That procedure is indispensable and is made mandatory. In other words, it is mandatory to follow the norms specified in Madhuri Patil's case before issuance of validity certificate by the concerned Scrutiny Committee. Thus, in cases where certificate has been issued without complying with the specified formalities, it would necessarily follow that the concerned validity certificate(s) will have to be treated as one which is not issued in accordance with the procedure prescribed in the Act of 2000 and the same will be non-est and nullity. As the vigilance report is the core of investigation and

inquiry procedure to be followed by the Scrutiny Committee before issuance of validity certificate, in cases where that procedure is not followed, the Caste Validity Certificate issued will have no legal basis and is a nullity in the eye of law. The Returning Officer/Election Commission ought to examine at the time of scrutiny of nomination as to whether the caste validity certificate accompanying the nomination form of the concerned candidate has been issued by the Scrutiny Committee after following the procedure prescribed by the Apex Court in Madhuri Patil's case and requirements of the Act of 2000 and in particular whether it has been issued after obtaining vigilance report about the caste claim. In absence thereof, concerned validity certificate(s) will be of no legal value and cannot be acted upon in law being nullity.

11. The A.G.P. was at pains to point out that the State Government had constituted 35 District Committees keeping in mind mass applications received for issuance of validity certificates throughout the State due to impending elections of local authorities. The learned A.G.P. brought to our notice that such committees were constituted by the State of Maharashtra in exercise of powers under section 6 (1) of the Act of 2000 under Notification dated 30.7.2011.

12. He also invited our attention to the notification dt

8.1.2012 which has amended earlier notification by insertion of para 3A. Our attention was also invited to Government Resolution dated 17.10.2011. What is relevant to note is that, none of the aforesaid notifications or government circular have dispensed with the procedure to be observed by the Scrutiny Committee before issuance of validity certificate which ought to be in conformity with the decision of the apex Court in Madhuri Patil's case. The procedure specified in the Act of 2000 for constitution of the Scrutiny Committee as per section 6 (1) of 2000 and exercise of that power by the State Government is one thing but, the manner in which the said Committee has issued validity certificates presumably to undeserving persons is a matter which is not only the concern of the candidates participating in the elections, the voters of the constituency but also that of the State. For the simple reason that the certificates so issued will be used in future for other purposes, besides the ensuing elections. It is possible that most of the applications may have been filed before concerned 35 District Committees constituted under the notification dt 30.7.2011 to secure Caste Validity certificate without following mandatory procedure prescribed in Madhuri Patil's case or Act of 2000. Thus, the certificates so issued are and will have to be considered as nullity.

13. We call upon the State to produce the break up of the number of applications received district wise and number of validity certificates issued by the concerned District Committees constituted in terms of notification dt 30.7.2011 and also further break up as to how many persons who had secured such validity certificates have in fact filed their nomination forms in the ensuing elections for local authorities. The information to be furnished by the State should also disclose the time span within which the Scrutiny Committee issued the validity certificate day wise. For example, number of validity certificates issued on the same day or otherwise.

14. That information be furnished on an affidavit to be filed by an officer not below the rank of Deputy Secretary. The information shall also disclose as to in how many cases before issuance of caste validity certificate the concerned committee have followed the norm specified in Madhuri Patil's case in particular of inviting vigilance report on case to case basis.

15. At this stage, Mr.Sonawane learned A.G.P. submits that the break up of number of persons who have filed nomination on the basis of caste validity certificate issued in the recent period by the concerned Scrutiny Committee, can be furnished by the Election commission. We have no manner of doubt that the Principal Secretary who

is present in court will inter act with the concerned office of the Election commission before filing of the affidavit in this court.

16. Counsel appearing for the Election commission assures that instructions will be issued to all the Returning Officers forthwith to ensure that caste validity certificate accompanied with nomination form and which are not issued after following procedure under the Act of 2000 and the norms specified in Madhuri Patil's case in particular of obtaining vigilance report those caste validity certificate will have to be discarded being nullity.

All these matters to be listed on 28th February, 2012.

**(N. M. JAMDAR, J)**

**(A.M.KHANWILKAR, J)**