

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.17393-17394/2000

(From the judgement and order dated 11/10/2000 in WP 2885/2000 and 4219/2000 of The HIGH COURT OF BOMBAY AT AURANGABAD)

VASANT PANDURANG NARWADE @ NARVDE

Petitioner (s)

VERSUS

SUHASH & ORS.

Respondent (s)

(With Appln(s). for exemption from filing c/c of the impugned Judgment and permission to submit additional document(s) and permission to submit additional document(s) and impleadment/directions and with prayer for interim relief)

(For Final Disposal)

Date : 20/07/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Petitioner (s) Mr. V A Bobde, Sr. adv.
Mr. Shivaji M. Jadhav, adv.

For Respondent (s) Mr. L Nageshwar Rao, Sr. adv.
Mr. S. Udaya Kumar Sagar, adv.
Mr. Balaji Sagar, adv.

Mr. S.C. Birla, adv.

Mr. S.V. Deshpande, adv.

Mr. B.Y. Kulkarni, adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.

The appeals are disposed of in terms of the signed order.

In view of the order passed in civil appeals, no orders need to be passed on the impleadment applications, which be treated as disposed of.

No costs.

.SP1

(Kanchan Jain)
AR-cum-PS

(Prem Prakash)
Court Master

Signed order is placed on the file.

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CIVIL APPEAL NOS. 4409-4410 OF 2001@@
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arising out of
SPECIAL LEAVE PETITION (C) NOS. 17393-17394 OF 2000@@
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Vasant Pandurang Narwade @ NarvdeAppellant

VS.

Suhash & Ors.Respondent

O R D E R@@
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Leave granted.

The appellant was elected as a Corporator from Ward No. 63, Aurangabad Municipal Corporation in the elections held in April, 2000. This Ward was reserved for OBC category. The appellant contested the election on the basis of a caste certificate dated 28.12.1993 issued by Tahsildar, the competent authority to issue such certificate to the effect that the appellant belong to OBC category, i.e. Kunbi Caste. After his election as a Corporator, he was even elected as a Deputy Mayor of the Municipal Corporation, Aurangabad. Election of the appellant was not challenged by taking recourse to any proceedings under the Statute. No election petition in public interest seeking setting aside of the election of the appellant as a Corporator though respondent No. 1 was neither a candidate himself nor even a voter. He prayed for the seat to be declared vacant. Doubt was cast on the genuineness and validity of the caste certificate alleging the relevent entry in the dispatch register of the Tehsildar's office having been fabricated by interpolation. It appears that on the basis of a communication received from the State Election Commission, 39 caste certificates in respect of various Corporators were referred to the Caste Scrutiny Committee. The Scrutiny Committee was requested to verify the caste claims and submit a report to the Corporation who was then to take up the issue with the State Election Commission. The Scrutiny Committee, vide order dated 28th August, 2000, opined insofar as the appellant is concerned that "The competent officer has not issued the caste certificate in favour of the candidate and since the caste certificate has not been issued the question of verification of his claim does not arise." The High Court relying upon this document and other documents, by the order impugned before us, allowed the writ petition and held the Corporator - appellant disqualified to continue to be the Corporator elected from Ward No. 63. The seat was declared vacant and the Commissioner of Aurangabad Municipal Corporation was directed to inform the State Election Commissioner accordingly and to take necessary steps to hold fresh elections.

In this appeal, questioning the order of the Division Bench of the High Court, Mr. V A Bobde,

learned Senior counsel appearing for the appellant has contended that the Scrutiny Committee fell totally in error, as instead of determining the issue of caste of the appellant, examined the question whether the caste certificate had been issued at all or not. Learned counsel has drawn our attention to the affidavit of the Tahsildar, who had issued the caste certificate dated 28.12.1993 in which his stand, even in this Court, has been that the caste certificate produced by the appellant had in fact been issued by him. Mr. L Nageshwar Rao, learned Senior counsel appearing for respondent No. 1 submits that the appellant did not belong to the caste claimed by him and that various documents, which he produced earlier as well as in this Court, do not show that he belongs to 'Kunbi' caste as claimed by him. It is not proper for us to go into that issue. We are, however, of the opinion that the Scrutiny Committee did not act fairly and failed to comply with even the basic rules of natural justice. The appellant was called upon to establish his caste but the material produced by him was not considered by the Scrutiny Committee. It is only the validity of the certificate that was considered. The real issue was overlooked by the Committee. The Scrutiny Committee ought to have returned a finding as to whether or not the appellant belonged to 'Kunbi' caste, as claimed by him, on the basis of the certificates and other documents produced by him and should not have stopped short of that determination merely by considering whether the earlier certificate was in fact issued by Tahsildar or not. Since the High Court has mainly relied upon the finding of the Scrutiny Committee, we consider it appropriate to set aside the order of the High Court and remand the petition to the High Court with a direction that the High Court shall specifically require the Scrutiny Committee to determine the question of caste of the appellant and for doing so grant opportunity to the parties to produce all such evidence as they may wish in support of their respective claims. The Scrutiny Committee shall be made time bound to furnish its report and in doing so the Scrutiny Committee shall ignore its earlier report-cum-order dated 28.8.2000 and the findings recorded therein. The High Court may, after receipt of report, decide the petition afresh after hearing the parties.

The appeals are disposed of in the above terms. We clarify that nothing said by us hereinabove shall be construed as any expression of opinion on the question of caste of the appellant.

Till the matter is disposed of by the High Court the interim order made by us on 5th January, 2001 shall remain in operation.

In view of the order passed as above, no orders need to be passed on the impleadment applications which be treated as disposed of.

No costs.

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.....CJI

.....J.
(R. C. LAHOTI)

.....J.
(K. G. BALAKRISHNAN)

New Delhi
July 20, 2001.