



Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 326 OF 2003

POOJA MANISH SHAH,
aged about 29, Mumbai Indian Inhabitant,
Social Worker, residing at Rabadi Chawl, 3rd
Carter Road, Borivali (East), Mumbai 4 400
066.

...PETITIONER

~ VERSUS ~

- 1. MUNICIPAL CORPORATION FOR
GREATER MUMBAI,**
Mahapalika Marg,
Mumbai – 400 001.
- 2. THE COMMISSIONER,**
having his office at Mahapalika Marg,
Mahapalika Building,
Mumbai – 400 001.
- 3. ADDITIONAL COMMISSIONER,**
(Project), having his office at
Mahapalika Marg, Mahapalika
Building, Mumbai – 400 001.
- 4. THE STATE OF MAHARASHTRA,**
through Government Pleader, High
Court, O.S. , Bombay.
- 5. SCRUTINY COMMITTEE,**
through the Secretary, Research
Officer, having their office Konkan
Bhavan, 5th Floor, New Mumbai.

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6. **NEETA JI SHINDE**,
President – Bhartiya Janta Party
Residence: Ramji Sukar Chawl,
Sukerwadi, Sukerwaid-Mahatma
Gandhi Road, Borivali (E),
Mumbai 400 066.
7. **NEELABEN RATHOD**,
Residence: C-301, Goment Nagar,
Jaiwant Sawant Marg, Dahisar (W),
Mumbai 400 068.
8. **STATE ELECTION COMMISSION**,
(through Mr. Y.L. Rajwade, State
Election Commissioner) Administrative
Bldg., Mantralay, Mumbai – 400 001.

... **RESPONDENTS**

APPEARANCES

| | |
|----------------------------------|--|
| FOR THE PETITIONER | Mr Amrendra Mishra. |
| FOR RESPONDENT- BMC | Ms Priyanka Sonawane. |
| FOR RESPONDENT- STATE | Mr Abhay Patki, Addl. GP, with Himanshu Takke, AGP. |

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

RESERVED ON : 16th July 2024

PRONOUNCED ON : 2nd August 2024

JUDGMENT (Per Kamal Khata J):-

1. Rule. Rule made returnable forthwith and finally heard by consent of parties.

2. The exploitation of 'Reserved Category' benefits has reached an unprecedented level. In this instance, an electoral candidate attempted to assume the identity of a deceased individual to obtain 'Reserved Category' advantages fraudulently. The candidate nearly succeeded in securing these benefits by being elected. When the scrutiny committee was called upon to determine the correctness of the certification, it investigated the matter and cancelled the certification, providing reasons and findings. Undeterred by the denial, she proceeded to challenge the decision in court.

3. This Petition, filed under Article 226 of the Constitution of India, seeks to challenge the decision of the scrutiny committee dated 16th January 2003. The decision in question not only resulted in the cancellation of the Caste Certificate issued by the Sub-divisional Officer, Mumbai Suburban District, which certified Taruna Sundar Bhandari as 'Hindu Bhandari,' but also directed the Collector of Mumbai Suburban District to take action against Pooja Manish Shah under the Indian Penal Code through competent authority. Additionally, it ordered action against the Headmistress, A. J. Savant, and the concerned class teacher of Seth Jadhavji Jethabhai Primary School, Borivali (East), conducted by the Borivali Education Society.

4. Mr. Amrendra Mishra, representing the Petitioner, contended that the committee's findings lack substantiation from documents provided by the police officer on record. He further contends that the statements of the family members and inmates were not duly considered. Additionally, he argues that disproportionate emphasis

was placed on the death certificate, which is purportedly dubious, as well as on other documents such as the ration card. He also claims that the credibility of the caste certificate was questioned solely due to a complaint from the unsuccessful candidate. In light of these circumstances, he seeks annulment of the scrutiny committee's order dated January 16, 2003, and the subsequent order of Respondent No. 3 dated January 22, 2003, which was based on the scrutiny committee's decision.

5. Mr. Amrendra Mishra contended that the scrutiny committee's decision to reopen the caste certificate issue was entirely based on a complaint by the rival candidate who lost the election. He argued that all the family documents clearly demonstrate that the Petitioner belongs to the Hindu Bhandari community, recognized as an Other Backward Class under the Government Resolution, Education, and Social Welfare Department dated October 13, 1967, and amended subsequently.

6. Mr. Mishra reviewed the various statements recorded by the police from the Petitioner's family members and her husband. He emphasized that the Petitioner's birth name is Taruna Sunder Bhandari and that she adopted the name Pooja Manish Shah after her marriage. Following her marriage on February 20, 1994, her parents, who opposed the marriage, disowned her. Despite this, her father had assisted her in obtaining all necessary certificates and supported her election campaign.

7. Mr. Mishra argued that Respondents Nos. 6 and 7, who stand to benefit from questioning her identity, have fabricated a false case. He relied heavily on statements from the Petitioner's father, mother, husband, and brother to assert that Pooja Manish Shah and Taruna Sunder Bhandari are the same person. He claimed that the death certificate in question is fraudulent and should not be considered. He criticized the scrutiny committee for failing to consider the police-recorded statements from all relevant parties, thus rendering its decision erroneous.

8. Mr. Mishra pointed out discrepancies in the death certificates, noting that one listed the place of death as "Coroner of Bombay" while another cited a "Hospital". He also argued that undue emphasis was placed on the marriage, which took place in 1994, and the certificate being issued on 2001. He noted that statements from neighbours corroborate that the Petitioner married in 1994 and that familial relations were strained due to the parents' disapproval of the marriage. Consequently, he urged that the Petition be granted and the scrutiny committee's findings be nullified.

9. We have heard the learned counsel for the Petitioner and carefully reviewed all documents annexed to the Petition. We are unable to accept the submissions made by Mr. Mishra. Upon meticulous examination of the scrutiny committee's report, we find no perversity or omission in the consideration of any pertinent documents or aspects of the matter. We do not find it necessary to delve into the evidentiary value of each document to reach a

conclusion and overturn the scrutiny committee's report. As it is, we are called upon to exercise judicial review which is different and distinct from the exercise of appellate jurisdiction. But, considering the nature of this matter, even if we were exercising any appellate jurisdiction, no case was made out to interfere.

10. We reject Mr. Mishra's contention that the statements of the family members should be given significant credence. Evidently the contradiction observed by us in statements of the parents and the statements of the brother with regard to the injury sustained also casts a doubt about the credibility. Whilst the parents (at page 51 in Marathi and page 54 in English translation) stated "... she was playing near house in her childhood she fell down..." the brother (at page 57 in Marathi and page 60 in English translation) stated "... she was playing in house she fell down on the floor..."

11. When queried about additional documentary evidence to substantiate that the Petitioner is indeed Taruna Sundar Bhandari, Mr. Mishra's responses were unsatisfactory. We also cannot accept that the Petitioner lacks documentary evidence to prove she is Taruna Sundar Bhandari, her maiden name before marrying Manish Shah.

12. We find it implausible that a school leaving certificate obtained at such a late stage would be valid. Typically, a school leaving certificate would include the father's name and bear a stamp indicating it is a duplicate if obtained later. Such certificates are usually issued immediately upon a student's departure from school,

often indicating the reason for leaving. The Petitioner's school leaving certificate, stating the reason for leaving as admission to another school, lacks a mention of religion and does not inspire confidence in its authenticity.

13. We also find it implausible that the Petitioner procured her marriage certificate in 2001 when, according to her own account, the marriage took place in 1994.

14. We see no reason to disbelieve the death certificates and the scrutiny committee's reports solely based on the statements from the Petitioner's parents and brother. The Petitioner's assertion of errors in the death certificate, thus rendering it unreliable, is also rejected. These statements are not pertinent in determining the correctness of the scrutiny committee's decision.

15. The Petitioner has also failed to provide proof and adequately respond to the scrutiny committee's inquiries. This raises doubts about the authenticity of her documents, supporting the scrutiny committee's findings. The absence of caste identification as Hindu Bhandari in the muster records of the Petitioner's father, which only stated Hindu, is significant. The scrutiny committee rightly emphasized the necessity of producing school leaving certificates of the father, birth certificates, or school leaving certificates of close relatives, and caste certificates issued by competent authorities to determine the Petitioner's caste claim. Since this was not done, we find no fault with the scrutiny committee's decision to cancel the Petitioner's caste certificate.

16. Additionally, while reviewing the compilation of documents tendered by the Petitioner in January 2006, we came across the Central Forensic Science Laboratory report dated August 27, 2004, which clearly indicates that Smt. Pooja Manish Shah is not the biological daughter of Shri Bhanuben Sundar Bhandari.

17. Furthermore, it is evident that the documents in question were procured specifically for the election and therefore lack credibility, especially under the scrutiny committee's detailed report and decision.

18. Given these considerations, we cannot fault the scrutiny committee's conclusion, even if family statements were disregarded.

19. We concur with the scrutiny committee's assessment that the documents produced by the Petitioner to obtain the caste certificate are unreliable.

20. The Supreme Court in the case of *Madhuri Patil vs Commr., Tribal Development*¹, has aptly stated the role of the High Court whilst considering the Committee's order as under:

“15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed

1 (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259 at page 257

before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

(Emphasis added)

21. The scrutiny committee, in our view, considered all relevant aspects and documents provided by the Petitioner.
22. Therefore, we see no reason to reject the scrutiny committee's findings and accordingly dismiss the Petition. The rule is discharged.
23. No order as to costs.

(Kamal Khata, J)

(M. S. Sonak, J)