IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.158 OF 2021
ALONG WITH
INTERIM APPLICATION NO.921 OF 2019

Naziya Banu Abdul Hafiz Ansari)
)
)
)
) .. Petitioner/
Applicant

Versus

1. State of Maharashtra)
through the Secretary, Social Justice and)
Special Assistance, Mantralaya,)
Mumbai – 400 032.)

2. The District Caste Certificate Scrutiny Committee)
Thane District through its Secretary)
having its Office at Ground Floor,)
Room Nos.9 and 10, Kokan Bhavan, Belapur,)
Navi Mumbai.)

3. The Municipal Corporation of Greater Mumbai)
through its Commissioner having its officer)
at Mahapalika Marg, CST,)
Mumbai – 400 001.)

4. The Election Commission)
Mantralaya, Mumbai – 400 032.)

5. Neha Khurshid Alam Shaikh)
)
)
) .. Respondents

Mr. Uday P. Warunjikar a/w Ms. Puja Achrekar for the petitioner/applicant.

Mr.A.I. Patel, Addl.G.P. a/w Mr. A. A. Alaspurkar, AGP for the respondent nos.1 & 2.

Mr.Om Suryawanshi for the respondent no.3-MCGM.
Ms. Sarika Shetye i/by Mr.S.B. Shetye for the respondent no.4-State Election Commission.

Mr.R. K. Mendadkar a/w Mr.C.K. Bhangoji and Mr.Tanaji V. Jadhav for the respondent no.5.

Ms.Savita Umesh Ranaj (Kabade), Law Officer, District Caste Certificate Scrutiny Committee, Thane, (Konkan Bhavan-CBD Belapur) – respondent no.2 present.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
RESERVED ON : 20TH AUGUST, 2022
PRONOUNCED ON : 18TH OCTOBER, 2022

JUDGMENT :-(PER R.D.DHANUKA, J.)

. By this petition filed under Article 226 of the

Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the order dated 27th August 2019 passed by the respondent no.2 i.e. District Caste Certificate Scrutiny Committee invalidating the Caste Certificate. The petitioner also seeks order and direction against the respondent no.2 to grant validity to the Caste Certificates dated 4th November 2016 issued by the Competent Authority to the petitioner.

2. The petitioner also seeks a writ of certiorari for quashing and setting aside the impugned Notification dated 6th January 2022 debarring/disqualifying the petitioner for 6 years from the date of the order for being elected or being a Councilor of the respondent no.3. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner had made an application for grant of Caste Certificate to the Competent Authority i.e. Sub-Divisional Officer, Bhiwandi. It is the case of the petitioner that the petitioner belongs to Muslim Julaha, an Other Backward Class (OBC) at Serial No.57 of the Government Resolution dated 13th November 1967 as amended from time to time.

4. The Competent Authority granted a Caste Certificate in favour of the petitioner certifying that the

petitioner was Muslim Julaha, an OBC at Serial No.57 of the Government Resolution dated 13th November 1967.

5. The petitioner filed nomination paper for one of posts of Corporator/Councilor for the General Election of the respondent Corporation and more particularly in respect of Ward No.78. The said post was declared to be reserved for other Backward Class Women. Nomination paper of the petitioner was declared valid by the Election Officer of the respondent no.4. The election of the said post for the period from 2017 to 2022 was held on 12th February 2017. The petitioner secured the highest votes, representing the National Congress Party and was declared elected. The respondent no.5 had also contested the election from the same ward representing a Political Party, Shiv Sena and was declared defeated and unsuccessful. The petitioner was required to submit the Validity Certificate of the Caste Certificate issued to the petitioner. The petitioner therefore, made an application to the respondent no.2 along with the documents for validating the caste claim of the petitioner.

6. The respondent no.5 filed a complaint/objection to the said application of the petitioner disputing the caste claim of the petitioner and passed an order dated 21st August 2017 and granted Validity Certificate to the petitioner.

7. Being aggrieved by the said order dated 21st August 2017 passed by the respondent no.2 Committee validating the caste claim of the petitioner, the respondent no.5 filed a Writ Petition bearing No.12122 of 2017 before this Court. This Court passed an order in the said writ petition on 12th June 2019 remanding back the matter to the respondent no.2 Committee and the directed the respondent no.2 Committee to consider various issues formulated by this Court in the said judgment.

8. The petitioner thereafter appeared before the respondent no.2 Committee and filed their affidavit dated 9th July 2019 along with the documents and genealogical tree in support of her caste claim.

9. The respondent no.2 Committee thereafter forwarded the said paper to the Vigilance Cell for enquiry on the issues as directed by this Court as per the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the said Act”) and the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short “the

said Rules”).

10. It is the case of the petitioner that the said Vigilance Officer accordingly visited native village of the petitioner and conducted home enquiry as well as school enquiry. According to the petitioner, the Vigilance Officer also proceeded to examine and recorded statement of respected and responsible persons from the area including the representatives of local self-government. The respondent no.2 Committee thereafter summoned the Village Development Officer of Village Godey, District Pratapgadh to produce the original Pariwar Register which was produced before the respondent no.2 Committee.

11. The petitioner was served with a notice dated 31st July 2019 and also with a copy of the Vigilance Report dated 22nd July 2019 and 29th July 2019. The petitioner filed further affidavit in support of her caste claim in response to the said notice. The Vigilance Officer recorded the statements of various persons and submitted a report before the respondent no.2 Committee.

12. It is the case of the petitioner that the respondent no. 2 committee ought to have accepted the vigilance officer’s report which confirmed after due verification that the petitioner’s grandfather resided in Village Godey, District Pratapgadh and is a Muslim Julaha and was

carrying out occupation of weaving. It is submitted that based on the vigilance report the respondent no. 2 committee ought to have concluded that the caste claim of the petitioner was genuine and granted a validity certificate to the petitioner.

13. The learned counsel submits that the respondent no. 2 committee ought to have drawn an adverse inference against the respondent no. 5 and held that the document relied upon by respondent no. 5 was fabricated document and had played a fraud on the respondent no. 2 committee.

14. The learned counsel relied on a registered agreement dated 3rd November 2004 to show the specimen signature of her father was completely different from Form AR6 relied upon by respondent no. 5. It was submitted that the existence of stamp over the documents evinced that the copies received by the research officer were not copies of the original records of the Deputy Divisional Officer. Consequently, a forged signature bearing document was the basis of the conclusion derived by the respondent no. 2 committee.

15. The learned counsel submitted that the copy of the Pariwar register which showed the caste entry related to grandfather as “Muslim” only produced by the respondent no. 5 ought to have been rejected as the vigilance officer had recorded statement of Village Development officer who confirmed that the sr. no. 161 showed the name of Mohd. Salim who was recorded as Muslim Julaha.

16. The learned counsel drew our attention to the school records of the Primary School, village Godey and contended that the said document proved that the petitioner’s father had left the school on or about 31st January 1962 and that he had migrated from village Godey.

17. The learned counsel requested the court to consider the evidentiary value of the ration card issued in favour of the petitioner’s father to substantiate that the petitioner's father is a resident of Bhiwandi. It is submitted that instead of considering the report of the vigilance officer that was made in compliance of the High Court directions, the Respondent No. 2 committee has erroneously referred to and relied upon extraneous and extra ordinary material placed by the Respondent No. 5 before it. The learned counsel further submitted that the Respondent No. 2 committee also failed to give credence to the school leaving certificate issued by the Nalanda High School.

18. It is submitted that the Respondent No. 2 committee ought not to have rejected the power loom permit that was issued in favour of the father of the petitioner on the ground that he would have been 15 years of age when such permit was granted and to have considered that there was no provision which prohibited the issue of a power loom permit at the age of 15. It is submitted that the Respondent No. 2 committee ought to have given further opportunity to the petitioner before concluding the hearing. It is submitted that the Respondent No. 2 committee completed the entire exercise in extra ordinary haste and consequently was denied a reasonable opportunity to prove her case.

19. The learned counsel of the petitioner further submits that the petitioner was not given an opportunity to deal with the voter information on the date when the matter was closed for order and ought to have given the petitioner an opportunity to give her response to the said document. It is submitted that despite the fact of pendency of the present writ petition, the Respondent No. 3 by its letter no. MGC/F/417 dated 21 September 2019 unseated the petitioner based on the order dated 27 August 2019.

20. The learned counsel for the petitioner relied upon the following judgements in support of this case.

a. ***Smt. Bismilla Mohammedsab Sayyed (Mujawar) @ Bismilla Allabaksh Shikkalagar vs Divisional Caste Certificate Committee No. 1, Solapur through its Member Secretary & Ors;***[1]
b. ***Jamadar Mehaboob Ghudubai versus State of Maharashtra & Ors;***[2]
c. ***Ansar Abdul Rashid Manchekar through his father and natural guardian Rashid Jikriya Manchekar V/s State of Maharashtra & Ors***[3]
d. ***Kumari Shaikh Shashim Mhamulal V/s State of Maharashtra***[4]
e. ***Firdos Ayyub Koti V/s The Divisional Caste Certificate Scrutiny Committee***[5]
f. ***Shri Imran A. Ajij Shaikh V/s State of Maharashtra & Ors***[6]
g. ***Shri Shahjahur Aminullah Momin V/s State of Maharashtra***[7]
h. ***Mr. Akhtar Kadar Jamadar V/s State of Maharashtra & Ors***[8]

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1 Writ Petition No. 10577 of 2013
2 Writ Petition No. 11394 of 2016
3 Writ Petition No. 188 of 2014
4 Writ Petition No. 2674 of 2016
5 Writ Petition No. 1247 of 2015
6 Writ Petition No. 8044 of 2013
7 Writ Petition No. 8687 of 2015
8 Writ Petition No. 1401 of 2018

21. Per Contra, Mr. Mendadkar learned counsel for the respondent No. 5 supports the order of the scrutiny committee dated 27th August 2019. He submits that this is the second round of litigation of the petitioner. The petitioner's case is based on fraud and should not be entertained. It is submitted that the petitioner has produced fake certificate to prove her claim and should be ousted on that ground alone.

22. Learned counsel submitted that the petitioner has sought to misguide the officer as well as produced fraudulent documents to substantiate her case. Although the father was born in Uttar Pradesh's Godey district she produced the birth certificate of her father showing that he was born in Bhiwandi, Thane Mumbai thereby deceiving the authority. The learned counsel submits that as per Rule 3 of the Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short "MSCC Rules) the petitioner ought to have applied where her father or grandfather or great grandfather resided i.e. in UP and not in Maharashtra. It is submitted that the committee also had to consider as to whether the name of the petitioner's father was Abdul Hafiz or Mohd. Hafiz. The learned counsel submitted that by merely filing

an affidavit, the Court cannot consider it conclusive evidence. The learned counsel drew our attention to pages 364, 191 and 189 and submitted that the statement of person Ubadulla Ameen cannot be accepted in as much as, if he was 70 years old on 28th July 2019 then on 7th February 1962 he was just 13 years old and could not have been running a power loom as sought to be suggested by the certificate at page 189 and could not certify that the Petitioner's father (who would be 12 years old as per the Aadhar card age shown) was working with him.

23. The learned counsel submits that the in order to avail of Rule 13 (d) of the MSCC Rules, the Petitioner has not proved that she was born in Maharashtra. It is submitted that as on 27th February 2022 the Petitioner's father was on the voters list in Uttar Pradesh. It is submitted that the petitioner has failed to challenge the Vigilance Inquiry Report dated 22nd July 2019 or the finding that her parents are on the voters list of Pratapgad, Uttar Pradesh. The learned counsel submitted that it was incumbent on the petitioner to disclose all true and correct information, including disclosure of adverse entries or material failing which it was lawful for the Scrutiny Committee to draw adverse inference.

24. The learned counsel relied upon the following judgements in support of his contentions:

a. ***Aanandra Vithoba Adsul V/s State of Maharashtra & Ors[9];***

b. S. P. Chengalvara Naidu V/s Jagannath & Ors;[10]

c. Prakash J. Koli V/s State of Maharashtra ;[11]

d. Derry & Ors. Peek;[12]

e. Bir Singh V/s Delhi Jal Board & Ors.;[13]

25. In response/rejoinder Dr Warunjikar submitted that the court had to consider whether natural justice was done to the petitioner. He submitted that since the petitioner was an ordinary resident Rule 13 (d) was required to be followed and Rule 3 did not make any distinction and cannot be given a restricted meaning and ought to be used to find out the truth. It was submitted that the Petitioner was obliged to prove every aspect beyond reasonable doubt and not beyond all doubts.

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9 2021 SCC OnLine Bom 793
10 (1994) 1 SCC 1
11 2008 (2) Mh. L. J 511
12 [1886-90] All E. R. 1
13 (2018) 10 SCC 312

REASONS AND CONCLUSION

26. We have heard Dr Warunjikar on behalf of the Petitioner and Mr. Mendadkar on behalf of the Respondents at length, perused the papers with their able assistance and have deliberated on their rival submissions.

27. This Court by its order dated 12th June 2019 permitted the petitioner to produce the family tree and genealogy which could establish the relationship with the person whose name is in the family register; and that her grandfather has a son by the name of her father; and that her grandfather had resided in that village and carried on the traditional occupation; and that her grandfather and father shifted to the State of Maharashtra. The petitioner was also permitted to prove her claim by relying upon not only the document but the material relied upon to support the entry therein. The petitioner was given an opportunity to establish and prove her claim independent of the school leaving certificate of her father. The respondent no. 2 was required to investigate and submit a report.

28. It is evinced from the record that, the pariwar register and the statements recorded by the vigilance officer as produced before the respondent no. 2 committee that the petitioner's father and grandfather were from Pratapgad in UP. Consequently, the petitioner ought to

have applied for issuance of caste certificate from the place of ordinary residence i.e. the place of permanent residence of her father or grandfather or great grandfather under sub rule (2) of Rule 3 of the MSCC Rules. On this ground itself the petitioner was not entitled to the issuance of the caste certificate from the State of Maharashtra and consequently the benefits and concessions meant for OBC candidates in the State of Maharashtra as held by the Supreme Court in the case of Bir Singh (supra).

29. Furthermore, the father of the petitioner was fully aware that he was born in the State of Uttar Pradesh on 15th August 1950 and was educated in primary school at Gode during the year 1961-62; but despite that, he made a false statement in his affidavit dated 30th January 2017 before the JMFC Bhiwandi that he was born in Bhiwandi on 1st January 1945 and obtained an order from the JMFC, Bhiwandi which directed Bhiwandi Nizampur City Municipal Corporation to register the date of birth of Abdul Hafiz Mohd. Salim Ansari based on a fabricated school leaving certificate of Nalanda High School, Borivali (East), Mumbai showing the date of birth as 1st January 1945, obtained a birth certificate on 26th June 2017. This method adopted by the petitioner's father clearly evinces mens rea. There is no other document evincing that the father of the petitioner or her grandfather are ordinary resident of State of Maharashtra. Consequently, in our view, the peti-

tioner would not be entitled to issuance of Caste Certificate as per sub rule (3) of Rule 3 of the MSCC Rules which deal with case of migration within the State of Maharashtra. We are bound by the judgment of the Hon'ble Supreme Court in the case of **Bir Singh (supra)** wherein it held that a migrant from State of Uttar Pradesh was not entitled to any benefits and concessions meant for OBC candidates in the State of Maharashtra.

30. In so far as the verification of form AR-6 that has been issued by the Central Excise Department in favour of the Petitioner's father on 25th March 1965 is concerned, The vigilance cell officer was informed that the records were destroyed and even the genuineness of AR-6 could not be verified. It was urged that even otherwise the AR-6 could not be considered as the father had claimed to have been born on 1st January 1945 and had applied for license in the year 1965 i.e. when he was 20 years of age. However, the documents now brought on record evince that he was born in the year 1950 and consequently was a minor of 15 years when the Power loom license was granted. We find merit in the submission of Mr. Mendadkar that no license could be granted by any government authority to a minor. Per contra, we are unable to agree with the submission of Mr. Warunjikar that there was no restriction to the age in granting of a power loom license.

31. The petitioner has not been able to produce any document dated prior to 13th October 1967 showing caste of any of the blood relatives as *"Julah"* in the State of Maharashtra. The Pariwar Register from State of Uttar Pradesh which shows the word "Julah" is in relation to Scheduled Caste and Scheduled Tribes and not in relation to OBC category and that to was prepared only after 1970 i.e. rewritten in 1992 on the ground that the record had become obsolete as per the report of the vigilance cell. Furthermore, there is no name of the petitioner in the Pariwar Register. The respondent no. 2 is also not satisfied beyond reasonable doubt as to whether Abdul Hafiz is the son of Mohd. Salim and has consequently held that the petitioner has not proved her case. In our view too, the petitioner has failed to prove and establish the genealogy tree as per the order of this Court on 12th June 2019.

32. After perusing the impugned Order of the respondent no. 2 committee, it is abundantly clear that the respondent no. 2 has accepted the report of the vigilance cell. It is evident that they have considered every aspect of the matter and given their due consideration to all the documents produced, oral arguments and written submissions of both the advocates. We find that the respondent no.2 committee has considered the entire material on

record and recorded findings based on evidence placed before it and after considering the same has rightly come to the conclusion to invalidate the caste certificate issued to the petitioner. The findings rendered by the respondent no.2 are not perverse. It is well settled that this Court is not to sit in appeal to re-appreciate the findings as held by the Supreme Court in case of ***Kum. Madhuri Patil vs Additional Commissioner Tribal Development***[14]. In our view in view of this mandate, we are not inclined to interfere with the findings of facts recorded by the respondent no. 2 committee.

33. The petitioner who is an applicant under the MSCC Rules is admittedly born after the deemed date i.e. 13th October 1967 and ought to have applied from the place of permanent residence of her father or grandfather which would be Pratapgad in U.P. and not from Maharashtra. She being a migrant after the deemed date was not entitled to contest elections in Maharashtra. The Supreme Court in the case of Action Committee on Issue of Caste Certificate to Schedule Tribes in the State of Maharashtra and ors[15] held as under:

"It will thus, be seen that so far as the Government of India is concerned, since the date of issuance of the communication dated 22nd March 1977, it has firmly held

14 (1994) 6 SCC 641
15 (1994) 5 SCC 244

the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State".

34. It would be appropriate to cite the case of ***Aanandra Vithoba Adsul*** (supra) which observed that *"A wrong caste validity certificate granted in favour of the party does not belong to that caste may deprive a genuine and deserving person belonging to such reserve category of the caste and all the benefits prescribed in the Constitution of India."* The Petitioner has clearly tried and almost succeeded in depriving another genuine candidate to avail the benefits of the caste in the elections.

35. We find no merit in the submission of Mr. Warunjikar, that the respondent no.2 ought to have given an opportunity to the petitioner for explaining the name of her parents in the voters list in Pratapgad in UP. This Court had granted sufficient opportunity to the petitioner to prove her case and it is apparent that the petitioner has failed to come to this Court with clean hands. We see no

reason to give any further latitude to the petitioner in these circumstances.

36. We shall now deal with the judgments relied upon by the Petitioner in support of her contentions.

37. Apropos the judgment of this Court, in case of ***Smt. Bismilla Mohammedsab Sayyed*** (supra), and more particularly paragraph 5 relied upon by the petitioner's counsel, we are not in variance thereto. In our view, the facts, in this case, are that the petitioner's father is from Pratapgad in U. P. and not a migrant within the State of Maharashtra as was the case in the judgement relied upon hence is distinguishable and does not support the petitioner. Consequently, we cannot accept the learned counsel's submission that it was necessary for the Vigilance cell to make an enquiry in terms of Rule 13 sub-rule 1, clause (d) of the MSCC Rules.

38. Apropos the decision of this Court, in the case of ***Jamadar Mehaboob Ghudubai*** (supra), which relies on the decision of ***Smt. Bismilla Mohammedsab Sayyed*** (supra) in our view would not assist the petitioner's case as the Scrutiny Committee had discarded the Vigilance Cell report on the ground that the same was not binding

on the Scrutiny Committee. In the present case, the Scrutiny Committee has considered the report of the Vigilance Cell that is against the petitioner and which has not been challenged by the petitioner.

39. Apropos the decision of this Court, relied upon by the petitioner in the case of ***Ansar Abdul Rashid Manchekar*** (supra), the order of the Scrutiny Committee was set aside since they had not referred to the material produced by the petitioner. The present case is distinguishable since the petitioner has not challenged the report of the vigilance cell which was considered along with the material produced by the petitioner.

40. Apropos the decision of this Court in the case of ***Kumari Shaikh Shashim Mhamulal*** (supra) decided by this Court, it was held that the Scrutiny committee is bound to consider the vigilance cell's report and that there was no reason to disbelieve the same if it's in favour of the petitioner. This case too does not assist the petitioner as in her case the Scrutiny Committee has considered the vigilance cell report which is against the petitioner and not challenged by her.

41. Apropos the decision of this Court in the case of ***Mrs. Firdos Ayyub Koti*** (supra) where this Court held that the Scrutiny Committee had wrongly disagreed with the report of the Vigilance Cell and there was no contradictory material before the Scrutiny Committee to disregard the material placed on record which is distinguishable in the present case in as much as the Scrutiny Committee has considered the report of the Vigilance Cell and all the material before it. Hence this judgement would not assist the petitioners.

42. Apropos the decision of this Court in the case of ***Shri Imram A. Ajij Shaikh V/s State of Maharashtra & Ors.*** (supra) wherein it was held that once the report is in favour of the candidate found to be genuine and true, no further action needs to be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained or serious doubts are raised. In our view this judgment is distinguishable in as much as the material produced before the Scrutiny Committee, were fraudulent documents and raised serious doubts.

43. Apropos the decision of this Court in the case of ***Shri Shahjahur Aminullah Momin*** (Supra) wherein the Scrutiny Committee report was set aside for want of reasons to disagree with the Vigilance Cell report. This judgement is distinguishable in as much as the material pro-

duced before the Scrutiny Committee, were fraudulent documents and raised serious doubts and will not assist the petitioner.

44. Apropos the decision of this Court in the case of ***Mr. Akhtar Kadar Jamadar*** (supra) wherein the Scrutiny Committee report was set aside as it had not applied the affinity test nor considered the vigilance cell report, is distinguishable from the present case where the Scrutiny Committee has considered the report of the Vigilance Cell and all the material before it. Hence this judgement would not assist the petitioners.

45. In our view, entertaining a petitioner who has knowingly produced fabricated and fraudulent documents to substantiate a false claim cannot be tolerated at any stage. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. The petitioner is guilty of playing fraud on the Court as well as on the opposite party. In our view, we find no infirmity to set aside the order dated 27th August 2019 passed by respondent no. 2. The Petition is dismissed with costs of Rs. 50,000/- to be paid to the respondent no.1. Rule is discharged. Parties to act on the authenticated copy of this order.

46. In view of disposal of the writ petition, the pending Interim Application does not survive and the same is accordingly disposed off.

[KAMAL KHATA, J.] [***R.D. DHANUKA, J.]***