

(2021) 02 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 145 Of 2021

Aasiya Mahamadyunnus Gavandi

APPELLANT

Vs

District Caste Certification And Others

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Citation : (2021) 02 BOM CK 0002

Hon'ble Judges : S. J. Kathawalla, J; Vinay Joshi, J

Bench : Division Bench

Advocate : Saurabh S. Oka, S. D. Vyas

Final Decision : Allowed

Judgement

Vinay Joshi, J

1. Rule. Rule made returnable forthwith. Learned counsel Ms. S. D. Vyas waives notice for the Respondents. Heard finally by consent of parties.

2. The Petitioner claims to be belonging to "Momin" caste, recognised as Other Backward Class ("OBC"), which is at Sr. No. 1919 under

the Government Resolution CBC-1477/35256-KA-5, dated 16th August, 1977, as amended from time to time. The Petitioner's caste claim for

"Momin" was rejected by District Caste Certificate Verification Committee (Respondent No. 1 herein) vide its order dated 29th/31st July, 2020,

which is subject matter of challenge in this petition.

3. The Petitioner lady has contested the Gram Panchayat election of Mouje Agar, taluka Shirol, district Kolhapur, which was conducted in the month

of September, 2018. At the time of contesting election, the Petitioner gave an undertaking to the concerned election authorities about submitting her

caste validity certificate. In pursuance of that, Petitioner has applied to

Respondent No. 1 Committee for issuance of Caste Validity Certificate on the basis of caste certificate of Momin Caste issued by the Sub-Divisional Officer, Miraj dated 6th September, 2018. The Petitioner has filed necessary documents in support of her caste claim. As usual, the matter was referred to Vigilance Cell, who in turn investigated the matter and submitted its report. Respondent No. 1 Committee gave hearing to the Petitioner and on evaluation, was pleased to reject the Petitioner's caste claim vide impugned order dated 29th /31st July, 2020.

4. The Petitioner has challenged the impugned order by contending that Respondent No. 1 Committee failed in appreciating the documentary evidence and the Vigilance Cell report in its proper perspective. According to the Petitioner, she had ample documents to substantiate her claim of Momin caste. However, those documents were sidelined for untenable reasons. While criticising the impugned order, it has been stated that the Authority has rejected the Petitioner's caste claim solely on the ground that Petitioner does not have documents prior to 13th October, 1967. It is submitted that in Muslim community, there is no practice of mentioning caste / sub-caste. It is also submitted that without valid reasons, the Vigilance Cell report was brushed aside, which resulted into miscarriage of justice.

5. The Respondents resisted the petition vide reply affidavit dated 25th January, 2021. The State reiterated that the Petitioner failed to produce documents preceding to the year 1967, and therefore, there was no convincing evidence to establish her caste claim. Moreover, it has been submitted that Vigilance Cell report is not a decisive factor but it can be taken into aid, and therefore, much reliance cannot be placed on the said report. In short, the State has tried to justify the impugned order and ultimately prayed for rejection of petition.

6. Admittedly, there are no pre-constitutional documents nor documents preceding to the year 1967 which records caste of the forefathers of the Petitioner as Muslim Momin. However, the Petitioner has produced several documents in support of her caste claim. It is pertinent to note that in Muslim community there is no practice of mentioning caste, and therefore, it is unrealistic to insist on old documents of showing Momin caste. The Petitioner has produced several documents of which reference can be made of few for the purpose of deciding the lis. The Petitioner has produced a

copy of agreement dated 28th September, 1987 executed by her grand-father wherein there is mention of Momin caste. Likewise the Petitioner has produced the school leaving certificates of her brother dated 25th August, 2003, cousin brother dated 7th April, 2006 and another cousin brother dated 12th August, 2013 to show that the caste was mentioned as Momin. The Scrutiny Committee appears to have rejected all these documents merely by stating that they were not preceding to the year 1967. Since the Petitioner belongs to Muslim community, the reason for rejection of those documents appears to be unacceptable.

7. We have gone through the Vigilance Cell report dated 6th June, 2020. It is pertinent to note that during Vigilance inquiry, the genuineness of all these documents were investigated and they were found to be correct. During Home Study inquiry, the statements of two persons were recorded from which it was found that Petitioner's forefathers were carrying on weaving business and they belong to Momin caste. In other words, in local inquiry the Vigilance Cell found that the Petitioner's forefathers' traditional occupation was weaving and they were known and recognised as members of Momin caste. Contextually, it is to be noted that the Scrutiny Committee has simply observed that it does not agree with the report of the Vigilance Cell. It is pertinent to note that no reasons were assigned by the Respondent No. 1 Committee to indicate as to why they are unable to agree with the Vigilance Cell report. True, the Vigilance report cannot be held as a decisive factor. However, in the above context and as parties are Muslims, unless contrary is shown, the Committee ought to have given proper weightage to the Vigilance report. It is not the case that during Vigilance inquiry it was found that either documents were tainted or they have collected some adverse documents to disprove the Petitioner's claim.

8. The Petitioner's learned counsel to substantiate his stand that Vigilance Cell report has to be weighed properly, has placed reliance on the decision of this Court in the case of Shahjahur Momin Vs. State of Maharashtra & Ors. in Writ Petition No. 8687 of 2015, dated 26th February, 2019. In the said case also, this Court has taken into account that in Muslim community, there is no practice of mentioning caste and in that context insistence for pre-constitutional documents is improper. Moreover, this Court has

emphasised that in such a background proper weightage has to be given to the Vigilance Cell report.

9. In the backdrop of the aforesaid position, we find that in the absence of any contra material and cogent reasons to disagree with the Vigilance Cell report, the Respondent No. 1 Committee was not justified in negating the claim of the Petitioner. In view of the material produced by the Petitioner, coupled with the Vigilance Cell report, we are persuaded to uphold the Petitioner's claim and accordingly we pass the following order:

- (i) The writ petition is allowed.
- (ii) The impugned order passed by the Respondent No. 1 dated 29th July, 2020 is hereby quashed and set aside.
- (iii) It is declared that Petitioner belongs to Muslim Momin, which is OBC.
- (iv) The Respondent No. 1 " District Caste Certificate Verification Committee is directed to issue caste validity certificate to the Petitioner within a period of four weeks from the date of uploading of this order.
- (v) Rule is made absolute in the aforesaid terms.